



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/22/1571

Re: Property at 15 Blinkbonny, Stonehouse, ML9 3QR (“the Property”)

Parties:

Naeem Ahmed, 23 Townhead Street, Hamilton, ML3 7BQ (“the Applicant”)

Mr Robert Shand, Mrs Samantha Biggar, 15 Blinkbonny, Stonehouse, ML9 3QR (“the Respondents”)

Tribunal Members:

Graham Harding (Legal Member) and Janine Green (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for the eviction of the Respondents from the property.

Background

1. By application dated 13 June 2022 the Applicant applied to the Tribunal for an order for the eviction of the Respondents under Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) in respect of alleged rent arrears arising from the Respondents’ tenancy of the property. The Applicant submitted a copy of the tenancy agreement together with a rent statement, Notice to Leave, Section 11 Notice, Pre-action letters and other correspondence in support of the application.
2. By Notice of Acceptance dated 1 July 2022 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 1 September 2022.
4. A CMD was held by teleconference on 6 December 2022. The Applicant attended in person. Mr Shand attended on behalf of the Respondents. After hearing from both parties, it was agreed that the rent due by the Respondents had increased to £2970.00. It was disputed that the Notice to Leave had been served on the Respondents. The application was continued to a hearing as the facts were disputed and the Respondents also hoped that the arrears would be reduced if their application for back-dated payments of Universal Credit was successful.
5. By emails dated 6 and 7 March 2023 the Applicant sought to amend the sum claimed in the conjoined application number FTS/HPC/CV/22/1572 to £3465.00.

The Hearing

6. A hearing was held by teleconference on 17 March 2023. The Applicant attended in person along with a witness Mr Shakil Ahmed. The Respondents did not attend nor were they represented. The Tribunal being satisfied that proper intimation of the hearing had been sent to them determined to proceed in their absence.
7. The Applicant confirmed that the parties entered into a Private Residential Tenancy that commenced on 12 December 2018 at a rent of £645.00 per calendar month. The Applicant confirmed that there was a shortfall each month between the rent due and the rent paid by Universal Credit of £165.00 and that the rent currently due had increased to £3465.00. The Applicant confirmed that at the date of serving the Notice to Leave, 14 April 2022, the amount due had been £2290.00.
8. The Applicant's witness Mr Shakil Ahmed stated that on 13 April 2022 he had attended at the property and hand delivered the Notice to Leave by posting it through the Respondent's letterbox. He said another copy had been sent by First Class post and another to Mr Shand's email address. Mr Ahmed confirmed that the document submitted to the Tribunal on 6 March 2023 and headed "BY HAND DELIVERY" was prepared and signed by him and completed on or about 13 April 2022.
9. The Applicant confirmed that a Section 11 Notice had been sent to South Lanarkshire Council and referred the Tribunal to the documents submitted with the application.
10. The Applicant submitted that it would be reasonable to grant the order as the Respondents' rent arrears continued to rise every month. He said that he had

tried to work with the Respondents and would have continued to let them remain in the property if they had made an effort to reduce the arrears. He said that he had waited before taking action because of Covid but that because of the secured loan over the property it was costing more than it was bringing in in rent and that could not continue. He said that the loan payment was about £400.00 per month and once other charges were paid the property was running at a loss. The Applicant said that Mr Shand had told him the Respondents were going to move out of the property by the end of January but they were still there.

Findings in Fact

11. The parties entered into a Private Residential Tenancy Agreement that commenced on 12 December 2018 at a rent of £640.00 per calendar month.
12. The Respondents have accrued rent arrears throughout the duration of the tenancy.
13. A Notice to Leave was served on the Respondents under Ground 12 of Schedule 3 of the 2016 Act by hand delivery and sent by First Class Post on 13 April 2022.
14. At the date of service of the Notice to Leave the Respondents owed rent of £2290.00.
15. A pre-action letter was sent to the Respondents dated 31 March 2022.
16. A Section 11 Notice was sent to South Lanarkshire Council by email on 25 May 2022.
17. At the date of the hearing the Respondents owed rent of £3465.00.
18. The Applicant has a secured loan over the property.

Reasons for Decision

19. The Tribunal was satisfied from the written representations and documents together with the oral submissions at the CMD and the Hearing that the parties had entered into a Private Residential Tenancy that had commenced on 12 December 2018 at a rent of £640.00 per calendar month. The Tribunal was also satisfied that although some rent was being paid each month by Universal Credit there was a shortfall that had continued to accrue and that at the date of service of the Notice to Leave the Respondents had been in arrears for a continuous period of three months with £2290.00 being due at that time. The Tribunal was also satisfied that at the date of the hearing the rent due had increased to £3465.00. There was therefore at least one month's

rent due in terms of the statutory requirement of Ground 12 of Schedule 3 of the 2016 Act. The Tribunal was also satisfied that proper intimation of the proceedings had been given to the local authority by way of a Section 11 Notice. Therefore, were it not for the terms of the Coronavirus (Scotland) Act 2020 and the Coronavirus Recovery and Reform (Scotland) Act 2022 the Tribunal would have been obliged to have granted the order sought as it was previously a mandatory ground for eviction. However, that is no longer the case and the Tribunal must now consider whether it is reasonable in all the circumstances to grant the order sought. In so doing it is well settled that the Tribunal must consider the whole of the circumstances in which the application is made.

20. The Tribunal was satisfied that an appropriate pre-action letter had been sent by the applicant to the Respondents and at the CMD the Respondents were given time to resolve the issues they said they were having with their Universal Credit. Since that time the Respondents have not been in communication either with the Respondents to make any offer to try to reduce the rent arrears or with the Tribunal administration. They have chosen not to attend the hearing or offer any explanation for their non-attendance. Although at the CMD the Respondent Mr Shand made passing reference to some personal issues these have not been followed up and it does appear from the evidence of the Applicant that he had indicated that the Respondents were prepared to vacate the property at the end of January although they have not done so.
21. The Applicant has explained that the secured loan over the property is significant and that he cannot afford to continue to run the property at a loss and requires to evict the Respondents in order to rent it out and recover the full rent.
22. In reaching its decision the Tribunal has taken account of the circumstances of both parties and in particular that the rent arrears are continuing to increase each month with no sign of this likely to change. The Respondents have been given an opportunity to see if they are entitled to back dated benefits to clear or reduce the debt and by their non-attendance and failure to communicate with the Applicant or the Tribunal that does not appear to be the case. The tribunal is therefore satisfied that it is reasonable that the order should be granted.

Decision

23. The tribunal having carefully considered the written representations and oral submissions finds the Applicant entitled to an order for the eviction of the Respondents from the property.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.



**Graham Harding
Legal Member/Chair**

**17 March 2023
Date**