

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Chamber Ref: FTS/HPC/EV/22/2413

Re: Property at 53 MacDonald Crescent, Clydebank G81 1DG (“the Property”)

Parties:

Mrs Helen Cohn, 12 Fintry Gardens, Bearsden, Glasgow, G61 4RJ (“the Applicant”), and

Bannatyne, Kirkwood France & Co, 16 Royal Exchange Square, Glasgow, G1 3AJ (“the Applicant’s Representative”) and

Ms Chloe McLean, formerly residing at 53 MacDonald Crescent, Clydebank G81 1DG and now residing at 10 Cherry Crescent, Clydebank G81 3JA (“the Respondent”)

Tribunal Members:

G McWilliams- Legal Member

A Moore- Ordinary Member

Background

- 1. The Applicant has applied under Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the 2017 Rules”) (Application for an eviction order).**

Case Management Discussions

- 2. A Case Management Discussion (“CMD”) proceeded remotely by telephone conference call at 10am on 27th October 2022. Reference is made to the Notes on that CMD which were prepared by the Tribunal and issued to the parties.**

3. A further CMD proceeded remotely by telephone conference call at 10am on 15th December 2022. The Applicant's Representative's Ms A Wooley and the Respondent Ms Mclean attended.
4. Ms Wooley referred to the updated rent statement which she had sent to the Tribunal's Office on 14th December 2022. She submitted that no rental payments had been made in November and December 2022 and that the outstanding rent arrears amount now due to the Applicant is £3,520.00. Ms Wooley stated that she had been liaising with the Letting Agent, for the Property, and that the keys for the Property had not been returned and the Applicant had not been able to recover possession. Ms Wooley sought the grant of the Eviction Order as well as an Order for Payment of the outstanding rent arrears amount.
5. Ms McLean stated that she had moved with her child to their new accommodation at 10 Cherry Crescent, Clydebank, G81 3JA on 4th November 2022. She said that she still had some items to remove from the Property and wished to carry out some cleaning there. She stated that she had been delayed in attending to matters as her step-father has recently been hospitalised. Ms McLean said that she had been liaising with the Letting Agent and had proposed return of the keys on Monday 19th December 2022, as well as a repayment arrangement. Ms McLean then forwarded copies of her recent online communications with the Letting Agent for consideration by the Tribunal and Ms Wooley. Ms McLean accepted that the outstanding rent arrears amount is £3,520.00.
6. Having heard Ms McLean's submission, and considered the terms of the copy communications which she had sent, Ms Wooley repeated her request for grant of both Orders, for Eviction and Payment. Ms Wooley also stated that, having heard Ms McLean's submission today, the Applicant would not seek interest on the Payment sum sought.

Statement of Reasons for Decision

7. In terms of Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act") the Tribunal is to issue an eviction order under a private residential tenancy if, on application by a landlord, it finds that one of the eviction grounds named in Schedule 3 applies.
8. Schedule 3 (12) (1) of the 2016 Act provides that it is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.
9. The Tribunal considered all of the Application papers, including the PRT and Notice to Leave lodged by the Applicant's Representative, as well as the statements and submissions of the Applicant, her Representative's Ms Wooley and the Respondent.

10. The Applicant, through her Representative, had complied with the pre-action requirements for these proceedings.
11. The total rent arrears owing, at present, are in the sum of £3520.00, which sum represents arrears of rent of more than three consecutive months. The Respondent agreed that this is the case. She did not contradict the Applicant's evidence regarding the issue of the rent arrears, compliance with the pre-action requirements and the reasonableness or otherwise of a grant of an eviction order.
12. Having considered all of the available evidence and submissions, the Tribunal found in fact that the Respondent had been in rent arrears for three or more consecutive months at the date of the Application, and is in arrears of £3520.00 at the present date. Accordingly, the Tribunal found in law that the ground in Schedule 3 (12) (1) of the 2016 Act was met. The Tribunal also found that it was reasonable that an eviction order be granted, in particular given the considerable sum of rent arrears owing, the impact of this on the Applicant's finances and as the Respondent has resided in alternative accommodation since 4th November 2022.
13. The Tribunal stated to Ms Wooley and Ms McLean that it was unfortunate that matters had not been resolved since the CMD on 27th October and that now, on balance, the Tribunal considered that it was fair and just to afford the Applicant the protection of the grant of the Orders sought. The Tribunal expressed their hope that Ms McLean would now vacate the Property and reach an arrangement for repayment of the rent arrears as soon as possible so that the Orders do not require to be enforced. Ms McLean said that she understood the Tribunal's reasoning for granting the Orders. Ms Wooley confirmed that Ms McLean should liaise directly with the Letting Agent regarding return of the keys for the Property and a repayment arrangement.

Decision

14. The Tribunal therefore granted an eviction order as sought in this Application.

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.

Gerald McWilliams

15th December 2022

Legal Member

