



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

Chamber Ref: FTS/HPC/EV/22/2690

Re: Property at 73 Craigneuk Avenue, Airdrie, ML6 8BA (“the Property”)

Parties:

Dacasa Ltd, C/O Oscar IP and CO Accountants, 23 Argyle Street, Liverpool, L1 5BL (“the Applicant”)

Miss Michelle Hall, 73 Craigneuk Avenue, Airdrie, ML6 8BA (“the Respondent”)

Tribunal Member:

Karen Kirk (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted

- 1. An Eviction Order against the Respondent, and**
- 2. Orders a delay of 2 weeks in the normal execution of the Order in terms of Rule 16A(d) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017.**

1. Introduction

This Case Management Discussion concerned an Application for an Eviction Order in respect of a Private Residential Tenancy under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The hearing took place by teleconference.

2. Attendance and Representation

The Applicants were represented by Vikki McGuire, Jewel Homes, Atrium Business Centre North Caldeen Road Coatbridge ML5 4EF

The Respondent was not present. She had been served by Sheriff Officer on 17th October 2022 personally and received postal intimation of the outcome of the previous callings of the case and the Directions previously issued. No written representations had been received

3. Background

- a) This Application called before the Tribunal as a Case Management Discussion on 18th November 2022 and thereafter again on the 16th January 2023. The Tribunal made a number of Directions to the Applicants to provide further information to the Tribunal at the first hearing and on the second hearing further time was given to allow the Applicant's representative was unable to comply with the Directions.
- b) Prior to this hearing the Applicant's representative had complied with the Directions and provided significant information on the Applicant's financial position, property portfolio, mortgages and rental income. The Applicant's representative had also provided information on the Respondent's circumstances known to the Applicant.
- c) The Applicant's representative confirmed that her office had spoken to the Respondent on the matter of repairs and they had asked her for an update on alternative accommodation but she commented only that she cannot move forward at present without presumably an order.

4. Case Management Discussion

The Applicant's representative advised that the Respondent's rent arrears had changed slightly since the updated rent statement lodged with the Tribunal. The arrears as at 21st March 2023 was £1908.76. The Respondent continues to make no additional payments other than the housing payment she receives as part of her universal credit.

The Applicant's representative had lodged a list of all properties owned by the Applicants. All were mortgaged. The Applicant had 7 properties including this property. The mortgage on this property was £54,000 and the value of the property is £85,000. The Applicant's have outstanding mortgages of £447,525 and rental income of £6400. The Applicant's are retired and depend on the rental income for daily expenses and to meet the mortgages on the property. The order is sought for financial reasons.

The Applicant's rent has been £525 on this property since the start of the tenancy. The Applicant's representative said that the Applicant would at least be looking to increase the rent by 3% at present but this is not possible for the Respondent. If the property was re-let it would be let at £650 per month due to

its size and condition. She said the property was refurbished for the tenant moving in.

The Applicant's representative sought that the Eviction order as the rent and property is not affordable for the tenant and will not be going forward. There would need to be a change of circumstances and the tenant seeks to move. The property is a 3 bedroom mid terrace and an order was sought. The Applicant's representative had lodged information that the Respondent resides with her children aged 9 years and 13 years at the property.

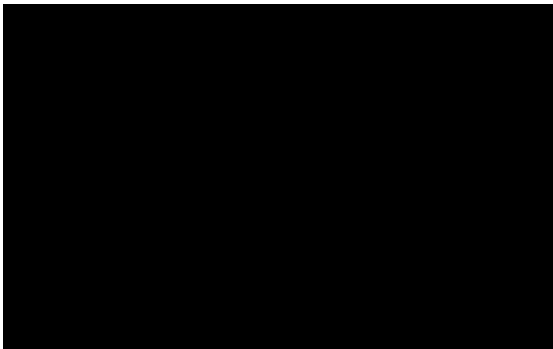
1. Reasons for Decision and Findings in Fact

- 1. The Tribunal was satisfied that a decision could be made in the absence of the Respondent and that to do so would be in the interests of the parties, in the interests of justice and having regard to the Overriding objective. The Respondent had been served personally by Sheriff Officer and had not provided any written representations or appeared at the hearings in the application.**
- 2. The Applicant sought an Order for Eviction on the grounds of rent arrears.**
- 3. The Tribunal was satisfied that the Applicant was the heritable proprietor of the Property as a copy title was lodged with the Application.**
- 4. There was a PRT in place between parties dated 4th September 2020.**
- 5. A Notice to Leave was sent to the Respondent on 12th April 2022. The Applicant has sent pre action requirement correspondence to the Respondent and a copy of same was lodged.**
- 6. The Tribunal was satisfied on balance that the Respondent was in terms of Schedule 3, Part 3 Ground 12 of the 2016 Act at the beginning of the day the Tribunal first considered the application for an Eviction Order on its merits in arrears of rent by an amount equal to or greater than the amount which would be payable as rent under the tenancy on that day and has been in arrears of any amount for a continuous period of up to 3 or more consecutive months.**
- 7. As at the 21st March 2023 the rent arrears for the property due by the Respondent amounted to £1908.76. Monthly contractual rent is £525.**
- 8. Further the Tribunal was satisfied on a balance of probabilities that the said arrears are not wholly or partly due to delay or failure of payment of the relevant benefit.**
- 9. The Tribunal found that the requirements of Ground 12 of Schedule 3 to the Act had been met.**
- 10. Further the Tribunal was satisfied that the rent arrears had only continued to accrue and that no extra payments to rent had been received over benefit for rent being obtained. On the 16th January 2023 when the application last called the rent arrears for the property was £1750.74. As at the hearing the arrears on the rent statement as at 21st March 2023 was £1908.76.**
- 11. The Tribunal was also satisfied that in terms of Section 52 of the 2016 Act a valid Notice to Leave had been given to the Respondent by valid means and the Application had been raised after the correct notice period.**
- 12. The Tribunal noted the Local Authority under the 2016 had been notified.**

13. On the evidence available to the Tribunal the Respondent had dependents residing with her aged 9 year and 13 years. She was not opposed to the application. The Applicant's have a substantial mortgage on the properties and whilst have other properties all are mortgaged, there is a substantial mortgage amount owing and they are retired. The Respondent cannot afford the monthly rent and the monthly rent is not presently at market value. The Tribunal found an Order was reasonable in terms of the Coronavirus (Scotland) Act 2020.
14. Accordingly, in terms of Section 51 of the 2016 Act the Tribunal granted an Eviction order against the Respondents. A delay of a further 2 weeks was ordered given the Respondent has children.

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.



Legal Member

12th April 2023

Date