

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 Section 51(1) of the Private Housing (Tenancies) Scotland Act 2016

Chamber Ref: FTS/HPC/EV/18/2836

Re: Property at 5/1 Powderhall Rigg, Edinburgh, EH7 4GA ("the Property")

Parties:

Mr Kenneth Anderson, 34 Castle Lawns, Sandyford, Dublin 18, Ireland ("the Applicant")

Mr Nicholas Green, 5/1 Powderhall Rigg, Edinburgh, EH7 4GA ("the Respondent")

Tribunal Members:

Alastair Houston (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an eviction order should be made in favour of the Applicant.

1. Background

1.1 This is an application under Rule 109 of the Chamber rules for a Private Residential Tenancy Eviction Order. The application is accompanied by, amongst other things, a copy of the written tenancy agreement between the parties, a copy of a notice to leave, a rent statement and a copy of notice given to the local authority of the present application.

2. The Case Management Discussion

2.1 The Case Management Discussion took place in George House, Edinburgh on 22 November 2018. The Applicant was represented by Mr Duncan McDonald of Broughton Property Management, letting agents. The Respondent was neither present nor represented.

2.2 The Tribunal noted that the Respondent had emailed the casework team on the day of the Case Management Discussion requesting that the Case

Management Discussion be changed to a later date to allow the Respondent to secure legal representation and submit evidence. The Tribunal further noted that no other representations had been received from the Respondent prior to the email.

2.3 Mr McDonald confirmed that the request for an adjournment of the Case Management Discussion was opposed. He submitted that the Respondent had been given notice of the Case Management Discussion and highlighted the execution of service by Sheriff Officers of the notification of the Case Management Discussion. In light of this, and in the absence of any further submission by the Respondent, the Tribunal considered that none of the requirements in Rule 28 relating to a request for an adjournment were satisfied and that it was appropriate to proceed in the absence of the Respondent.

2.4 Mr McDonald confirmed the application was insisted upon. The notice to leave was founded upon. This confirmed as having been sent by certified email on 19 September 2018. He submitted that the Respondent had failed to make payment of rent. No payment had been received since 31 July 2018, when a payment was received from the former co-tenant's father. Requests had been made of the Respondent to make payment but he had refused to do so.

3. Reasons For Decision

3.1 In terms of Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"), the First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 of the 2016 Act applies. In the present application, the Applicant founded upon Paragraph 12 of Schedule 3, which is the ground relating to rent arrears.

3.2 Paragraph 12(1) and (2) of Schedule 3 of the 2016 Act states:-

12 (1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months

(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—

(a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant—

(i) is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day, and

(ii) has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, and

(b) the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

In the present application, the Respondent was due to make payment of £800.00 per calendar month by way of rent. No payment had been received since 31 July 2018. The present application was received by

The Tribunal on 22 October 2018. The merits of the application were first considered on 22 November 2018. The Respondent was therefore in arrears greater than one month's rent, and had been for a period in excess of three months.

- 3.3 The Respondent had failed to make any written representations as to whether the arrears were in consequence of a delay or failure in payment of a relevant benefit. The correct period of notice of the application had been given by the Applicant in terms of Section 54 of the 2016 Act. Accordingly, the Tribunal was bound to make the order sought by the Applicant.

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.

Mr Alastair Houston

Legal Member/Chair

22 November 2018

Date