

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/19/1525

Re: Property at 90 2/2 Westmoreland Street, Glasgow, G42 8LQ (“the Property”)

Parties:

Robert Pringle c/o Grant Property Solutions Ltd, c/o 14 Coates Crescent, Edinburgh, EH3 7AF (“the Applicant”)

Mr Volodymyr Ozymko and Ms Petra Gaziova, 90 2/2 Westmoreland Street, Glasgow, G42 8LQ (“the Respondents”)

Tribunal Members:

Shirley Evans (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland grants an order against the Respondents for possession of the Property under section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016. **The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondents.**

The order will include a power to Officers of Court to eject the Respondents and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth and from the Property and to make the same void and redd that the Applicant or others in her name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application dated 17 May 2019 the Applicant's agent applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") for an order for recovery of possession of the property at 90 2/2 Westmoreland Street, Glasgow, G42 8LQ ("the Property").
2. On 28 June 2019 the Tribunal gave notification of acceptance of the application to the Applicant and the Respondents under Rule 9 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Regulations").
3. On 5 July 2019 the Tribunal enclosed a copy of the application and invited the Respondents to make written representations to the application by 23 July 2019. The Tribunal advised parties on 5 July 2019 that a Case Management Discussion under Rule 17 of the Regulations would proceed on 14 August 2019. This paperwork was served on the Respondents by Graeme Kirk, Sheriff Officer, Greenock on 8 July 2019 and the certificates of execution of service were received by the Tribunal administration.
4. The Respondents did not make any written representations by 23 July 2019.

Case Management Discussion

5. The Tribunal proceeded with the Case Management Discussion on 14 August 2019. The Applicant was represented by Ms Syme from Grant Property Solutions Ltd. She was accompanied by Ms Murray. The Respondents did not appear and were not represented.
6. The Tribunal had before it a Private Residential Tenancy Agreement between the Applicant and the Respondents signed and dated 7 May 2018, Notice to Leave dated 13 February 2019 addressed to the Respondents with Proof of Postage dated 13 February 2019, a rent statement, and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Glasgow City Council dated 14 May 2019.
7. The Applicant moved the Tribunal to grant an order for eviction under Section 51(1) of the Private Housing (Scotland) Act 2016 ("the 2016 Act") on the basis the Respondents had been continuously in arrears of rent for three consecutive months and the arrears were in excess of a month's rent.
8. The Tribunal considered the Private Residential Tenancy dated 7 May 2018 in relation to the Property between the parties. In terms of Clause 8 of the Private Residential Tenancy Agreement, the Respondents agreed to pay monthly rent of £515 to the Applicant. The Applicant's agent explained the

Respondents had fallen into arrears of rent and that the arrears were increasing. The Respondents had totally ignored the Applicant's agents when they had attempted to contact them. It appeared that the Respondents had cut off all form of communication with the agents. All mobile numbers had been tried but calls were not being accepted or possibly blocked. Ms Syme explained arrears were increasing and no attempt had been made by the Respondents to clear the arrears or pay any rent. The last payment as per the rent statement was £900 on 15 April 2019. She explained that when the Notice to Leave had been served the Respondents were in arrears of £1545. She submitted the current arrears had increased to £4245.

9. Ms Syme also explained that when the Respondents moved into Property, Mr Ozymko was working but had changed jobs. She was not aware of any issues with benefits that either Respondent may have been entitled to and had never had any correspondence at all about the Property that would lead her to believe there were outstanding benefits issues.
10. The Tribunal noted the terms of the Notice to Leave under Section 50(1) and Ground 12 of Schedule 3 of the Private Housing Tenancies (Scotland) Act 2016 dated 13 February 2019. The Notice to Leave requested that the Respondents leave the Property by 10 May 2019. The Respondents had not vacated the Property.
11. The Tribunal also noted a Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 had been intimated on Glasgow City Council on 14 May 2019.

Findings in Fact

12. The Applicant and the Respondents agreed by way of a Private Residential Tenancy Agreement dated 5 May 2018 in relation to the Property at 90 2/2 Westmoreland Street, Glasgow, G42 8LQ that the Respondents would pay the Applicant a calendar monthly rent of £515.
13. The Respondents had fallen into arrears of rent. They had accrued 3 months arrears by the time the Notice to Leave had been served on 13 February 2019 when the arrears stood at £1545.00 The last payment to account was of £900 on 15 April 2019.
14. The Applicant's agent had attempted to engage with the Respondent to get them to pay rent, but the Respondents had cut off all form of communication and the agent had been unable to speak to them.
15. On 13 February 2019 the Applicant served a Notice to Leave on the Respondents requesting that they remove from the Property before 10 May 2019 based on their failure to pay rent.

16. The Respondents did not remove from the Property by 10 May 2019.
17. Arrears of rent were £2354.32 as of 17 May 2018, being the date of application. Arrears were increasing and stood at £4245. That figure represented more than one month's arrears. The Respondents had been in arrears for a continuous period of three or more consecutive months
18. There were no outstanding benefits issues which resulted in the delay or failure in payment of benefits that the Respondents may have been entitled to.
19. A Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 was intimated on Glasgow City Council on 14 May 2019.

Reason for Decision

20. The Applicant's agent provided evidence of non-payment of rent in the form of a rent statement and tenancy agreement. The agent also provided evidence of service of the Notice to Leave. The Tribunal was satisfied that Ground 12 of Schedule 3 to the 2016 Act had been established by the Applicant. On the basis of the evidence provided and the supporting oral submissions made on behalf of the Applicant the Tribunal was satisfied the Respondents were in arrears of rent greater than £515 being the monthly rent and that they had been in arrears of rent for a continuous period for three or more months. The Tribunal was also satisfied that the arrears were not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

Decision

21. The Tribunal granted an order for recovery of possession

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.

Shirley Evans

Legal/Member/Chair



Date

14 August 2019.