



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 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/23/2787

Re: Property at 51 Barclay House, West Langlands Street, Kilmarnock, KA1 2PR (“the Property”)

Parties:

Atrium Initiatives Limited, 14 Central Avenue, Kilmarnock, KA1 4PS (“the Applicant”)

Mr Ryan Brown, 51 Barclay House, West Langlands Street, Kilmarnock, KA1 2PR (“the Respondent”)

Tribunal Members:

Alastair Houston (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be made in terms of paragraph 12A of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016

1. Background

- 1.1 This is an application under Rule 109 of the Chamber Rules whereby the Applicant seeks an order for eviction of the Respondent from the property let on a private residential tenancy. This is on the ground that the Applicant intends to sell the property.
- 1.2 The application was accompanied by copies of the written tenancy agreement between the parties, the notice to leave given to the Respondent, email correspondence between the parties and a rent statement. The application was conjoined with the application reference FTS/HPC/CV/23/2789 being an application for payment of rent arrears.

1.3 On 6 December 2023, the Applicant had submitted an application to have the Tribunal consider issuing an eviction order in terms of ground 12A. An updated rent statement and copy of a further notice to leave issued to the Respondent accompanied this. No written representations were received at any point from the Respondent.

2. The Case Management Discussion

2.1 The Case Management Discussion took place on 9 January 2024 by teleconference. The Applicant was represented by Mr Haswell, solicitor. The Respondent was neither present nor was he represented.

2.2 The Applicant's representative confirmed that the application was insisted upon. The Tribunal noted that intimation of the application and Case Management Discussion had been given to the Respondent and considered it appropriate to proceed as permitted by rule 29 of the Chamber Rules.

2.3 The Tribunal first considered the application to consider issuing an eviction order on the basis of ground 12A, that being substantial rent arrears in excess of 6 months' worth of rent. The Tribunal noted that s.52 of the 2016 Act permitted consideration of a ground not included in a notice to leave, notwithstanding that a further notice to leave had been served on the Respondent in December 2023. The Applicant's representative confirmed that the balance of arrears had continued to increase since the application had been made. It had since crossed the threshold of 6 months' worth. Notice had been given of the Applicant's intention to seek an eviction order on the basis of ground 12A and a further formal notice to leave had been given. The Tribunal therefore considered it appropriate to grant permission for it to be included in the present application.

2.4 The Applicant's representative confirmed that the rent outstanding was now £4121.00. A payment had been received from the DWP which resulted in the balance reducing slightly from that reflected in the December rent statement. It was understood that the Respondent had previously been in employment however, variable payments from the DWP were being received directly in respect of the ongoing rental charge of £550.00 per calendar month. The amount of those payments varied and the full rental charge was not being meant. The Respondent was believed to be residing at the property alone. The Applicant had made numerous efforts to contact the Respondent to discuss the arrears but no payment or proposal for same had been made.

2.5 As the Tribunal had granted permission for ground 12A to be included in the application, the Applicant's representative confirmed that ground 11, having been included in the original notice to leave, did not require to be considered. The Tribunal confirmed that the order sought would be granted on the basis of ground 12A only.

3. Reasons For Decision

- 3.1 The Applicant had served the requisite notice to leave upon the Respondent. He had provided a rent statement and details of the rent outstanding. In the absence of any representations to the contrary, the Tribunal considered that £4121.00 of rent had gone unpaid by the Respondent and, accordingly, ground 12A was established. The only issue the Tribunal required to consider was whether it was reasonable to grant an order for recovery of possession.
- 3.2 The Tribunal approached the issue of reasonableness in accordance with the case of *Barclay v Hannah* 1947 SC 245 whereby the Tribunal was under a duty to consider the whole facts and circumstances in which the application was made. The Tribunal also had reference to the factors specified in paragraph 12A(3) of schedule 3 of the 2016 Act. There was no evidence that the failure to pay rent was in any way connected to the Respondent's benefit entitlement. Furthermore, the efforts to contact the Respondent to discuss the arrears broadly constituted compliance with the pre-action protocol prescribed by the Scottish Ministers under paragraph 12(4)(b) (and continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022).
- 3.3 The Respondent was solely occupying the property with no dependent children. The rent arrears were significant and the Applicant had a reasonable apprehension that they would continue to accrue. No proposals had been made for their payment. In all of the circumstances it was reasonable to grant the order sought.

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.

09/01/2024

Legal Member/Chair

Date

