

Housing and Property Chamber

First-tier Tribunal for Scotland



Decisions with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014 and Section 18 of the Housing (Scotland) Act 1988.

Chamber Ref: FTS/HPC/EV/23/3733 and FTS/HPC/CV/23/3734

Re: Property at 44 Elmbank Crescent, Hamilton, ML3 9JG (“the Property”)

Parties:

Mr Adrian Sydney Taylor, 56 Windermere Road, Patchway, Bristol, BS34 5PR (“the Applicant”) and

T.C. Young, Solicitors, 7 West George Street, Glasgow, G2 1BA (“the Applicant’s Representative”) and

Ms Claire Burnett, 44 Elmbank Crescent, Hamilton, ML3 9JG (“the Respondent”)

Tribunal Members:

G McWilliams- Legal Member

E. Williams - Ordinary Member

Decisions in absence of the Respondent

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined as follows:

- 1) To grant an eviction order; and**
- 2) To grant an order for payment by the Respondent to the Applicant of the sum of ££9,894.00 with interest thereon at the rate of 4% per annum until payment.**

Background

1. These Applications have been brought in terms of Rules 65 and 70 (Application for an order for possession in relation to assured tenancies and Application for civil proceedings in relation to an assured tenancy) of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the 2017 Rules").

Case Management Discussion 20th February 2024 at 10.00am

2. A Case Management Discussion ("CMD") proceeded by remote teleconference call at 10.00am on 20th February 2024. The Applicant's Representative's Ms K. Donnelly attended. The Respondent Ms Burnett did not attend and was not represented. The Tribunal noted that Sheriff Officers served copies of the Application papers, with notification of the CMD, on the Respondent Ms Burnett in the hands of her son W. Burnett on 5th January 2024.
3. Ms Donnelly stated that the current amount of rent arrears owing is £12,386.00. She acknowledged, however, that the Applicant Mr Taylor can only seek an order for payment of the amount of arrears owing at the date of the Application, £9,894.00 as the updated arrears amount had not been intimated to the Respondent Ms Burnett. She referred to the Application papers and submitted that the Ms Burnett's rent had been paid through DWP Housing Benefit until June 2021. She said that Ms Burnett had not paid any rent since November 2022. Ms Donnelly stated that she understood that Ms Burnett was aged between 40 and 50 and that the letting agents for the Property understood that she had at least one son residing with her (A. Burnett) and possibly two given that Sheriff Officers served papers in the hands of another son, W. Burnett. Ms Donnelly stated that neither she, Mr Taylor nor the letting agent were aware of whether or not Ms Burnett is in employment or has any health issues. Ms Donnelly also stated that the letting agent had had some communication with Ms Burnett in October 2023, when Ms Burnett stated that she was looking for alternative private rented accommodation for her and her family. She said that Mr Taylor was no longer able to sustain the continuing loss of rent and sought orders for payment of the rent arrears of £9894.00 as well as for recovery of possession of the Property. With reference to the Application under reference CV/23/3734, Ms Donnelly also stated that Mr Taylor sought that interest be applied to the payment order amount sought at the rate of 8% per annum. She also said, however, that she was content to leave the issue of application of an appropriate rate of interest in the hands of the Tribunal.

Findings in Fact and Law and Reasons for Decisions

4. The parties have a tenancy agreement which began on 8th June 2015. The monthly rent due is in the sum of £623.00.
5. Ms Burnett was in substantial arrears of rent, of £9894.00, on 4th August 2023, when Mr Taylor gave notice of his intention to raise proceedings to recover

possession of the Property, through Sheriff Officers service of the appropriate papers on Ms Burnett on 4th August 2023.

6. The Ground upon which Application EV/23/3733 proceeds, namely Ground 8A in Schedule 5 to the Housing (Scotland) Act 1988 is satisfied. Ms Burnett had rent arrears of £9894.00, an amount which exceeds the equivalent of 6 months' rent due, when notice of intention to raise these proceedings was given to her on 4th August 2023.
7. The rent arrears are currently in the amount of £12,386.00. Ms Burnett has not made any payment of rent since November 2022.
8. It is reasonable that orders for possession and payment of the rent arrears due at the date Mr Taylor gave notice of his intention to lodge Application EV/23/3733 are granted.

Reasons for Decision

9. Section 16 of the Housing (Scotland) Act 2014 provides as follows:

“16. Regulated and assured tenancies etc.

This section has no associated Explanatory Notes

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal -

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43))

10. Accordingly, the Tribunal now has jurisdiction in relation to claims by landlords, such as Mr Taylor, against tenants, such as Ms Burnett, for possession and payment of rent arrears relating to a tenancy agreement, such as the parties' tenancy agreement.

11. In terms of Section 18 of the 1988 Act the Tribunal shall not make an order for possession of the house let on the tenancy except on one or more of the grounds set out in Schedule 5 to the 1988 Act.

12. Ground 8A in Schedule 5 to the 1988 Act provides that it is an eviction ground that the tenant has accrued arrears of rent and the cumulative amount of those arrears

equates to, or exceeds, the equivalent of 6 months' rent when notice of intention to raise proceedings is served or, if dispensed with, when proceedings are raised for an order for possession on this ground.

13. The Tribunal considered all of the Application papers and Ms Donnelly's submissions. Having done so the Tribunal made the above findings in fact and law. The Tribunal found that the arrears of rent of £9894.00 referred to by Ms Donnelly were consistent with, and established by, the documentation lodged with the Applications. Ms Burnett had not made any representations to the Tribunal in respect of the Applications and had not attended at the CMD to contradict the evidence in the Applications papers and Ms Donnelly's submissions.
14. Therefore, having considered and weighed the available evidence, and Ms Donnelly's submissions, the Tribunal found, on a balance of probabilities, that there were substantial arrears of rent owing, in the sum of £9894.00, when notice of intention to raise proceedings for recovery of possession of the Property was given to Ms Burnett on 4th August 2023. The Tribunal found that the outstanding rent owing at that time was in a cumulative amount exceeding the equivalent of 6 months' rent.
15. Rule 17(4) of the 2017 Rules provides that the Tribunal may do anything at a CMD which it may do at a Hearing, including making a decision. Having considered and weighed the available evidence and submissions, the Tribunal was satisfied that Ground 8A in Schedule 5 to the 1988 Act was met and that it was reasonable that Ms Burnett's occupation of the Property, without payment of rent to Mr Taylor, be brought to an end. They also found that it was fair and just to grant an order for payment of rent arrears of £9894.00.
16. Therefore, the Tribunal granted the eviction order and order for payment sought in the Applications. The Tribunal considered that it is appropriate to apply interest to the order for payment at the rate of 4% per annum running from the date of the order until full payment is made.

Decisions

17. The Tribunal granted the Applications for an eviction order and for payment of the outstanding rent arrears amount due, when notice of intention to raise proceedings was served on Ms Burnett, of £9,894.00 with interest thereon at the rate of 4% per annum until payment is made.

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.



G McWilliams

20th February 2024

Legal Member

Date