

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal")

Decision and Statement of Reasons :

Rule 39 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended ("the Procedure Rules")

Chamber Ref: FTS/HPC/EV/22/1331

Re: Property at 2 Fraser Place, Keith, Moray, AB55 5EB ("the Property")

Parties:

Mrs Una Geddes, Mr Gilbert Geddes, Nether Corskie Croft, Dunecht, Aberdeenshire, AB32 7EL ("the Applicants")

Kelly Dunton, Mr Dale McDonald, 2 Fraser Place, Keith, Moray, AB55 5EB; 2 Fraser Place, Keith, Aberdeenshire, AB55 5EB ("the Respondents")

The Tribunal comprised:-

Valerie Bremner	-	Legal Member
Elizabeth Williams	-	Ordinary Member

Decision

The Tribunal having reviewed its decision of 18th August 2022 sets aside the decision to grant an eviction order only in so far as it relates to Ground 11 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 given that no information was submitted to support that ground and Ground 11 of the Act cannot apply to a term under which rent is to be paid, and confirms that its decision of 18th August 2022 remains in place as far as the granting of an eviction order under Ground 12 of Schedule 3 of the Act in that the Respondents have been in arrears of rent for three or more consecutive months and it is reasonable to grant an eviction order on account of that fact.

The Decision of the Tribunal was unanimous.

Background

1. On 6th June 2022 the Application for eviction was accepted by the Tribunal and a case management discussion was fixed for 18th August 2022 at 2pm.
2. The date of the case management discussion together with applications and supporting documentation was intimated to all parties.
3. On 18th August 2022 at the Case Management Discussion the Tribunal granted an eviction order for the property in favour of the Applicants in terms of Grounds 11 and 12 of the Private Housing (Tenancies) (Scotland) Act 2016. The Respondents were not present at the case management discussion, details of which had been intimated to them by Sheriff Officer. The Applicants were present along with their legal representative. The Tribunal decision and statement of reasons was issued to parties on 23rd August 2022. This decision and statement of reasons are referred to for their terms and held to be incorporated within this statement of decision.

Ground for Review

4. The First Tier Tribunal sought to review its decision in respect of the eviction order made in terms of Ground 11 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 only. It was appropriate in the interests of justice that this ground, one of two under which the Eviction Order was granted be reviewed in the circumstances set out below.
5. The Applicant's solicitor sought an eviction order at the case management discussion on 18th August 2022 on the basis of Grounds 11 and 12 of Schedule 3 of the 2016 Act. The Respondent had entered into a private residential tenancy with the Applicants at the property with effect from 1st December 2017. The monthly rent in terms of the tenancy agreement was £450 and arrears started to accrue in August 2019. At the time the Notice to Leave was sent the arrears were in excess of 6 months' rent payments. In March 2022 the arrears stood at £4628.23, and this was the sum awarded to the Applicants by the Tribunal in terms of a payment order application on 5th April 2022. Since that date a further £2250 had accrued in terms of rent arrears. No other information regarding a breach of any other obligation in terms of the tenancy agreement was placed before the Tribunal at the case management discussion on 18th August 2022.

Relevant Legislation

6. Ground 11 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 states :-

11(1)It is an eviction ground that the tenant has failed to comply with an obligation under the tenancy.

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

(a)the tenant has failed to comply with a term of the tenancy, and

(b)the Tribunal considers it to be reasonable to issue an eviction order on account of that fact.

(3)The reference in sub-paragraph (2) to a term of the tenancy does not include the term under which the tenant is required to pay rent.

7.The terms of Ground 11 (3) of the Act suggest that the ground does not include any term of the tenancy by which the tenant is required to pay rent and in the absence of any evidence of a breach of another term of the tenancy agreement the Tribunal considered that it may have misdirected itself in law as to the granting of an eviction order in terms of Ground 11 of Schedule 3 of the 2016 Act.

8.In terms of Rule 39 of the Procedure Rules and section 43 of the Tribunals (Scotland) Act 2014, an application for review made by the First Tier Tribunal can be made at any time.

9. In terms of Rule 39 of the Tribunal rules of procedure the Tribunal issued a statement of decision dated 29th August 2022 indicating that it was seeking to review the decision to grant an eviction order in terms of Ground 11 of Schedule 3 of the 2016 Act only and this decision was sent to parties. In terms of Rule 39(4)(a) of the Tribunal rules of procedure the views of the parties were sought within 14 days of receipt of the decision to review on both the subject matter of the review and whether it could be disposed of without a Hearing.

10.No response was received from parties until the Applicant's solicitor submitted a response dated 13th October 2022.In this response the Applicant's solicitor stated:-

“On the basis that the position as we understand it is that the panel is seeking to review the decision relative to Ground 11 (and we in fact agree with them on their interpretation) and is not seeking to review its decision in respect of the eviction relative to Ground 12(which would leave us with an eviction order) we confirm that we have no difficulty in the review being granted – ie that the order would then be for eviction on the basis of Ground 12 only.

We are also of the view that it may not in fact be necessary for there to be a hearing and would simply be content for the review that you're referencing to be granted”.

11.The Respondents did not lodge any response to the statement of review at any time.

12. The Tribunal considered the terms of Rule 18 of the Tribunal rules of procedure which states:-

Power to determine the proceedings without a hearing

18.(1) Subject to paragraph 2, the First Tier Tribunal –

(a) may make a decision without a Hearing, if the First Tier Tribunal considers that

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- (i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and
- (ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to –

- (i) correcting; or
 - (ii) reviewing on a point of law
- a decision made by the First Tier Tribunal

(2) Before making a decision under paragraph (1), The First Tier Tribunal must consider any written representations submitted by the parties.

13. The Tribunal considered the representations made by the Applicant's solicitor who agrees that an error in law has been made and does not object to a review of the decision to grant an eviction order in terms of Ground 11 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016. The Respondents have not responded to the review document at any stage.

14. The Tribunal considers it is necessary and in the interests of justice to correct an error in law which it has made and that it must do so without a hearing in terms of Rule 18(1) (b) of the Tribunal rules of Procedure.

15. The Tribunal considers it appropriate to review its decision of 18th August 2022 and to set aside its decision as it relates to Ground 11 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 only and to confirm the grant an eviction order in terms of Ground 12 of the Act only.

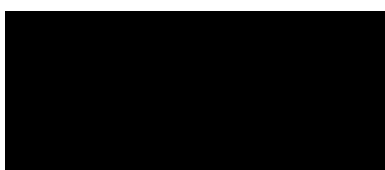
Decision

The Tribunal having reviewed its decision of 18th August 2022 sets aside the decision to grant an eviction order only in so far as it relates to Ground 11 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 given that no information was submitted to support that ground, and Ground 11 of the Act cannot apply to a term under which rent is to be paid and confirms that its decision of 18th August 2022 remains in place as far as the granting of an eviction order under Ground 12 of Schedule 3 of the Act in that the Respondents have been in arrears of rent for three or more consecutive months and it is reasonable to grant an eviction order on account of that fact.

Reasons for Decision

This application for an eviction order was based on accumulated rent arrears in terms of Ground 12 of the 2016 Act and not on any other breach of a term of the tenancy. The Tribunal erred in law when it also granted an eviction order under Ground 11 of the Act given that there was no information before it to suggest that another term of the tenancy had been breached and Ground 11 cannot apply to a tenancy term under which rent is to be paid. This decision corrects that error, and an eviction order remains in place having been granted under Ground 12 of Schedule 3 of the Private Housing(Tenancies) (Scotland) Act 2016 on 18th August 2022.

Signed



Date: 7th December 2022

**Valerie Bremner
Legal Member of the First Tier Tribunal**