



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016.

Chamber Ref: FTS/HPC/EV/22/4351

Re: Property at 70 Alyth Drive, Polmont, FK2 0YW (“the Property”)

Parties:

Jane Watson, 10 Woodhill Road, Blackridge, West Lothian, EH48 3RN (“the Applicant”)

Christopher Fitzpatrick, 70 Alyth Drive, Polmont, FK2 0YW (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 12A of schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

- Background
 1. An application was submitted to the Tribunal under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). Said application sought a repossession order against the Respondent on the basis of substantial rent arrears accrued by the Respondent under a private residential tenancy, being Ground 12A under Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”).
- Case Management Discussion
 2. A Case Management Discussion (“CMD”) took place on 20 February 2023 by conference call. The Applicant was personally present and represented herself. The Respondent did not attend nor was he represented. The papers had been

served on the Respondent by Sheriff Officer on 6 January 2023. The Tribunal, was satisfied that the Respondent had received notification of the CMD and that the CMD could proceed in his absence.

3. The Applicant moved for the Order to be granted as sought. The parties had entered into a Private Residential Tenancy Agreement (“the Agreement”), which commenced 21 August 2020. The Respondent had fallen into arrears of rent in December 2021 and has been in a continuous arrear since then. A Notice to Leave had been served on the Respondent on the basis of Ground 12A of Schedule 3 to the 2016 Act, dated 2 November 2022. The monthly rent was £380. The Respondent had accrued arrears of rent at the point of service of the notice to leave of £4560, which equated to over 6 months’ rent. At the date of the CMD the arrears stood at £5,700. Attempts had been made to discuss matters with the Respondent but he had failed to engage. He lived alone with no dependants.
4. The Applicant’s representative submitted that the Pre-Action Requirements (“PARs”) had been complied with in terms of the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. 15 separate emails sent between 5 March 2021 and 24 November 2022 had been lodged and which highlighted the arrears due and signposted the Respondent to various advice agencies for help and support with financial matters.
5. The following documents were lodged alongside the application:
 - (i) Copy Private Residential Tenancy Agreement
 - (ii) Copy Notice to Leave
 - (iii) Proof of service of the Notice to Leave
 - (iv) Section 11 notification to the local authority under the Homelessness etc. (Scotland) Act 2003
 - (v) Rent statement
 - (vi) Correspondence to the Respondent by letter regarding payment agreements and signposting to advice agencies.

- Findings in Fact

6. The Tribunal made the following findings in fact:
 - (i) The parties entered into a Private Residential Tenancy Agreement (“the Agreement”) which commenced on 21 August 2020;
 - (ii) In terms of Clause 8 of the Agreement the Respondent was due to pay rent to the Applicant in the sum of £380 per calendar month payable in advance;
 - (iii) The Applicant has served a Notice to Leave on the Respondent on the basis of Ground 12A of Schedule 3 to the 2016 Act, and which was served on 2 November 2022;
 - (iv) The Respondent has been in continuous arrears of rent since December 2021;
 - (v) The Respondent was in arrears of rent in an amount in excess of 6 months’ rent at the date of service of the notice to leave;

(vi) The Respondent is in arrears of rent amounting to £5,700 at the date of the CMD;

- Reasons for Decision

7. Section 51 of the 2016 Act states as follows:

51 (1) 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 applies.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may or must find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

8. Ground 12A of Schedule 3 to the 2016 Act states as follows:

12A(1) It is an eviction ground that the tenant has substantial rent arrears.

(2) The First-tier Tribunal may find that the ground named by [sub-paragraph](#)

(1) applies if—

(a) the tenant has accrued rent arrears under the tenancy in respect of one or more periods,

(b) the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy when notice to leave is given to the tenant on this ground in accordance with section 52(3), and

(c) the Tribunal is satisfied that it is reasonable to issue an eviction order.

(3) In deciding under [sub-paragraph \(2\)](#) whether it is reasonable to issue an eviction order, the Tribunal is to consider—

(a) whether the tenant being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit,

(b) the extent to which the landlord has complied 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).

(4) For the purpose of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the Housing Benefit Regulations 2006 (S.I. 2006/213),

(ii) a payment on account awarded under regulation 93 of those Regulations,

(iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,

(iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,

(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.]

9. The Tribunal was satisfied that a Notice to Leave had been served on the Respondent and which specified that ground, in accordance with the requirements of section 52 of the 2016 Act. The Tribunal was satisfied that the terms of Ground 12A of Schedule 3 to the 2016 Act had been met, namely that the Respondent has accrued rent arrears under the tenancy in respect of one or more periods and that the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy when the notice to leave was given to the Respondent. The Tribunal was satisfied that there was no information before it to suggest that the tenant's being in arrears of rent over that period was either wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

10. The Tribunal was satisfied that it was reasonable to grant the Order sought. The Respondent had been in arrears of rent since December 2021. No explanation had been given by him as to the reason for falling into arrears. The Tribunal was satisfied that the Applicant had taken appropriate steps to try and engage with the tenant, offer them assistance and signpost to appropriate advice agencies. It appeared that the Respondent had simply chosen not to engage with any such contact. In the absence of any representations by the Respondent to the contrary, the Tribunal was satisfied that it was reasonable to grant the Order.

- Decision

11. The Tribunal granted an order against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 12A under schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

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.



Legal Member

Date: 20 February 2023