

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/23/2568

Re: Property at 32 Gardyne Place, Dundee, DD4 7PQ (“the Property”)

Parties:

Mr Ross Howat, 15a Douglas Terrace, Broughty Ferry, DD51EA (“the Applicant”)

Mr Darren Britton, 32 Gardyne Place, Dundee, DD4 7PQ (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Tony Cain (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and issued an Eviction Order against the Respondent.

Background

1. By application, dated 1 August 2023, the Applicant sought an Order for Possession of the Property under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Ground relied on was Ground 12 of Schedule 3 to the 2016 Act, namely that the Respondent was in arrears of rent over three consecutive months.
2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Applicant and his wife, Mrs Christine Howat, as Landlords and the Respondent as Tenant, commencing on 1 March 2021 at a monthly rent of £470, and a Notice to Leave, dated 29 June 2023, advising the Respondent that the Applicant was seeking an Eviction Order under Ground 12 of Schedule 3 to the 2016 Act and that an application to the Tribunal would not be made before 31 July 2023. The Notice to Leave stated that the arrears stood at £2,202. The application also included a Rent Statement showing arrears at the date of application of £2,672. The Rent

Statement indicated that no rent had been paid since 9 March 2023. The Applicant also provided copies of letters to the Respondent of 29 May, 8 June and 20 June 2023, advising him of the rent arrears and signposting him to sources of possible help and assistance.

3. On 29 August 2023, the Applicant asked that the application be amended to include Ground 12A of the 2016 Act as a Ground for seeking an Eviction Order, as the rent arrears now exceeded 6 months.
4. On 2 November 2023, the Applicant advised the Tribunal that the Property had been purchased out of his and his wife's "pension pot". Both of them are well into their retirement and the Applicant is in his 80s. He is finding the situation is increasingly affecting his health, causing anxiety and stress, quite apart from the fact that he is receiving no rental income.
5. On 12 December 2023, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 2 January 2024. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

6. A Case Management Discussion was held by means of a telephone conference call on the morning of 7 February 2024. The Applicant was present. The Respondent was not present or represented.
7. The Applicant told the Tribunal that no payments of rent had been received since the date of the application and that the arrears now stand at £5,492. He advised the Tribunal that he is undergoing treatment for a medical condition and that the stress of the situation with the tenancy was having a significant effect on his mental health. He understood that the Respondent lives in the Property on his own, but that he had a child who may stay with him at weekends. From information he had received from neighbours, he was not sure that the Respondent had been living in the Property for the last month or so.

Reasons for Decision

8. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.
9. Section 51 of the 2016 Act states that the 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.

10. Ground 12 of Schedule 3 to the Act states that it is an Eviction Ground that the tenant has been in rent arrears for three or more consecutive months and that the Tribunal may find that Ground 12 applies if, at the beginning of the day on which the Tribunal first considers the application for an Eviction Order on its merits, the tenant is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day, and has been in in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, that the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, and the Tribunal is satisfied that it is reasonable on account of that fact to issue an Eviction Order.
11. The Tribunal was satisfied that the Respondent has been in rent arrears for three or more consecutive months and that the current arrears exceed one month's rent. No evidence had been presented to indicate that the Respondents' being in arrears might be wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
12. Ground 12A of Schedule 3 to the Act states that it is an Eviction Ground that the tenant is in substantial rent arrears and that the Tribunal may find that Ground 12A applies if the tenant has accrued rent arrears under the tenancy in respect of one or more periods, 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) of the Act and the Tribunal is satisfied that it is reasonable to issue an Eviction Order. In deciding whether it is reasonable to issue an Eviction Order, the Tribunal is to consider whether the tenant's 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.
13. In an email of 29 August 2023, the Applicant had sought permission to amend his application to include Ground 12A and this request was included in the case paperwork served on the Respondent. The Tribunal was content to consent to the amendment and allow this Eviction Ground to be included in the application, even though not stated in the Notice to Leave under Section 52(5)(b) of the 2016 Act.
14. The Tribunal was satisfied that, at the date of the application to amend to include Ground 12A, the rent arrears exceeded the equivalent of 6 months' rent and that no evidence had been produced to indicate that the Respondent's 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. The Applicant had stated that the arrears now stand at £5,492.
15. Having decided that the other requirements of Grounds 12 and 12A had been met, the only matter for the Tribunal to determine was whether it was reasonable to issue an Eviction Order. The Tribunal noted that the purchase of the Property had been part of the Applicant's retirement planning and that he

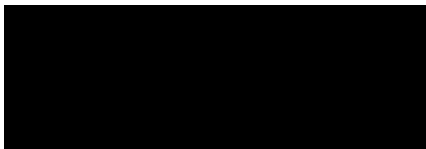
had received no rent at all since 9 March 2023, and also the effect that the situation was having on his health. The Tribunal also noted that the Respondent had made no representations for the Tribunal to take into consideration in deciding whether it would be reasonable to issue an Eviction Order and that he had not engaged with the Tribunal process. He also owes almost a full year's rent and has offered no explanation regarding his personal circumstances which he would ask the Tribunal to consider. The Respondent appears to have simply stopped paying his rent, despite, on three occasions, having been signposted by the Applicant to possible sources of help and assistance. Accordingly, having considered all the information before it, the Tribunal decided that it would be reasonable to issue an Eviction Order under Ground 12A of Schedule 3 to the 2016 Act.

16. The Tribunal's Order under Ground 12 is affected by the provisions of the Cost of Living (Tenant Protection) (Scotland) Act 2022, but the Order under Ground 12A is not so affected.

17. The Tribunal's Decision was unanimous.

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/Chair

7 February 2024
Date