



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for eviction/ possession of a Rented Property in terms of Rule 109 of the Procedure Rules.

Chamber Ref: FTS/HPC/EV/23/3640

56 Barclay House, West Langlands Street, Kilmarnock, KA1 2PR ("the Property")

Parties:

Kiln Holdings Limited T/A Kilncribs.com, Andrew Barclay Heritage Centre, West Langlands Street, Kilmarnock, KA1 2PY ("the Applicant")

Ardanach Lettings Ltd, Andrew Barclay Heritage Centre, West Langlands Street, Kilmarnock, KA1 2PY ('The Applicant's Representative')

Tahir Khaliq residing at 56 Barclay House, West Langlands Street, Kilmarnock, KA1 2PR ("the Respondent")

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

Tribunal Members: Jacqui Taylor (Legal Member) and Helen Barclay (Ordinary Member)

1. Background

1.1. The Applicant submitted an application to the Tribunal for eviction/ possession of the Rented Property under section 51(1) of the Private Housing Tenancies (Scotland) Act 2016, in terms of Rule 109 of the Procedure Rules.

1.2 The application was dated 13th October 2023. The application stated that the ground for eviction was as follows:

'Ground 12A: Tenant is over 12 months arrears in rent. There is a total of £7690 unpaid and despite meeting with the tenant and the tenant providing three different payment plans the plans have not been adhered to.'

1.3 Documents lodged with the Tribunal were:-

- The Tenancy Agreement dated 29th November 2021. Clause 8 of the lease states that the rent is £630 per calendar month payable in advance.
- Preaction email addressed to the Tenant dated 16th January 2023 and emails to the tenant regarding payment plans dated 2nd November 2022, 16th January 2023.
- Notice to Leave dated 12th September 2023 advising the Tenant that an application will not be submitted to the Tribunal for an eviction before 12th October 2023.
- Certificate of Execution of Notice to Leave dated 13th September 2023 by Sam Mitchell, Sheriff Officer.
- Rent statement for the period April 2022 to October 2023 showing rent arrears of £7690.
- Section 11 Notice addressed to East Ayrshire Council and accompanying email addressed to homelessness@east-ayrshire.gov.uk dated 16th August 2023.

2. Written Representations by Respondent.

The Respondent did not lodge any written representations.

3. Case Management Discussion

This case called for a conference call Case management Discussion (CMD) at 14.00 on 5th February 2024

The Applicant's Representative, Mrs Carol Dickie attended the CMD.

The Respondent did not attend and was not represented. He had been notified of the CMD by, Jamie Barr, Sheriff Officer on 11th December 2023. The Tribunal were content to proceed with the CMD as the requirements of Tribunal Rule 29 had been satisfied.

3.1 Mrs Dickie advised the Tribunal as follows:

3.1.1 The current rent arrears amount to £10,210.

3.1.2 The Respondent still resides in the Property.

3.1.3 She met with the Respondent in January 2023 and he agreed to make payment towards the arrears but no payments have been made.

3.1.4 It was only when the Sheriff Officers served the Notice to Leave that she discovered that the Respondent had been receiving Universal Credit. She unsuccessfully tried to get the Universal Credit payments paid to the Landlords direct. She suspects that this will be due to the Respondent now having a job.

3.1.5 She considers it reasonable for the eviction to be granted as the arrears now exceed £10,000. The Applicant has a mortgage over the Property and is now seriously out of pocket.

3.1.6 In terms of the Respondent's circumstances she understands that he resides in the Property alone and has one child who visits occasionally.

3.1.7 The Property is a furnished let.

3.1.8 The Respondent made promises to make payments but he did not keep his promises and no payments towards the arrears have been made.

4. The Tribunal made the following findings in fact:

4.1. The Respondent is Tenant of the Property in terms of the lease between the parties.

4.2. The lease is a Private Residential Tenancy in terms of the Private Housing Tenancies (Scotland) Act 2016 ('The 2016 Act').

4.3. The Applicant is Landlord of the Property and heritable proprietor of the Property.

4.4 The title of the Property is Land Certificate title number AYR47667.

4.5 The Notice to Leave was dated 12th September 2023 and it served on the Tenant on 13th September 2023 by Sheriff Officer.

4.6 The Notice to Leave stated that the tenant had breached a term of the tenancy agreement; he was in rent arrears over three consecutive months and he has substantial rent arrears (equivalent to six months worth of rent), which is Ground 12A of Schedule 3 of the Private Housing (Tenancies) Scotland Act 2016 and that the Applicants would not apply to the Tribunal for an eviction order before 12th October 2023.

4.8 The rent arrears amount to £7690 as at 13th October 2023.

4.9 The rent arrears exceeded six months rent (£630 x 6=£3780) at 12th September 2023 (the date of the Notice to Leave), at 13th October 2023 (the date of the Application) and at today's date.

4.10 The rent arrears were not due to a delay or failure in the payment of a relevant benefit.

5. Decision

5.1. Requirements of Section 109 of the Procedure Rules.

5.1.1 The Tribunal confirmed that the application correctly detailed the requirements of section 109(a) of the Procedure Rules namely:-

(i) the name, address and registration number of the Landlords.

(ii) the name and address of the Landlords' representative.

(iii) the name and address of the Tenant.

(iv) the ground of eviction. The ground stated in the application is that the Tenant has substantial rent arrears, at least six months rent arrears on the date on which the notice to leave was served. The Tribunal accepted that this is Ground 12A of Schedule 3 of the 2016 Act.

5.1.2 The Tribunal confirmed that the application complied with the requirements of Section 109(b) of the Procedure Rules:

(i) evidence showing that the eviction ground or grounds had been met.

The rent statement for the period had been provided.

(ii) a copy of the notice to leave given to the Tenant as required by section 52(3) of the 2016 Act.

The Tribunal confirmed that the Notice to Leave was in correct form as set out in Schedule 5 of the Private Residential Tenancies Notices and Forms (Scotland) Regulations 2017.

The Notice to Leave was dated 12th September 2023 and advised the Tenant that the Applicant intends to apply to the Tribunal for an eviction order in respect of the property on the basis of substantial rent arrears, exceeding 6 months rent. It also advised that an application would not be submitted to the Tribunal for an eviction order before 12th October 2023.

The lease states that the commencement date of the tenancy was 1st December 2021. As at 12th September 2023 (the date of the Notice to Leave) the Tenant had resided in the property for more than six months and consequently, the period of 28 days notice was required.

The Respondent had been given the required period of twenty eight days notice.

(iii) a copy of the notice given to the local authority as required by Section 56(1) of the 2016 Act.

The Tribunal confirmed that a copy of the required notice had been provided.

5.1.3 The Tribunal confirmed that the application form had been correctly signed and dated by the Landlords' representatives as required by Section 109(c) of the Procedure Rules.

5.2 The Tribunal found in law that Ground 12A of Schedule 3 of the 2016 Act was met. The Tribunal acknowledged that the Respondent was due to pay the Applicant rent at the rate of £630 per month. The rent payments were due in advance. At (i) the date of the Notice to Leave (ii) the date of the Application and (iii) today's date the rent arrears exceeded £3780, being the amount of six months rent.

5.3 The Tribunal found that the rent arrears were not due to a delay or failure in payment of a relevant benefit.

5.4 The Tribunal considered Mrs Dickie's representations as to whether it was reasonable to grant the Eviction Order.

The Tribunal were mindful of the decision of Lord Greene in the case of *Cummings v Dawson* (1942) 2 All ER 653 on matters to consider when determining reasonableness:

'In considering reasonableness... it is my opinion, perfectly clear that the duty of the judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad, common sense way as a man of the world, and to come to his conclusion giving such weight as he thinks right

to the various factors in the situation. Some factors may have little or more weight, others may be decisive.'

The Tribunal found that it was reasonable for the eviction order to be granted given the considerable amount of the rent arrears owing; the fact that the arrears have been ongoing since April 2022; the fact that the Letting Agents had issued preaction letters to the Respondent and tried to arrange a payment plan and also the fact that the Respondent has not provided any written representations.

5.6 The Tribunal found that the provisions of the Cost of Living (Tenant Protection)(Scotland) Act 2022 in relation to delaying evictions do not apply to this application as there are substantial rent arrears amounting to more than six months rent.

5.7 The Tribunal granted the eviction Order.

6. 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.

**Jacqui Taylor
Legal Member**

**5th February 2024
Date**