



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 109 of the Private Housing
(Tenancies)(Scotland) Act 2016**

Chamber Ref: FTS/HPC/EV/23/4413

**Re: Property at 40 Windsor Gardens, Burnbank, Hamilton, ML3 0ND (“the
Property”)**

Parties:

**Mr Richard Hill, Mrs Jan Hill, Techno Park, Al Raha Gardens, Khalifa City, United
Arab Emirates (“the Applicant”)**

**Mr Gordon Frew, 40 Windsor Gardens, Burnbank, Hamilton, ML3 0ND (“the
Respondent”)**

Tribunal Members:

Ms Susanne Tanner KC (Legal Member) and Mrs Mary Lyden (Ordinary Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”)**

**was satisfied that Ground 12A in Schedule 3, Part 3 to the 2016 Act was
established by the Applicant, in that: the Respondent 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 was given to the tenant on
this ground in accordance with section 52(3) of the 2016 Act, and the Tribunal
is satisfied that it is reasonable to issue an eviction order; and made an order
for eviction in terms of Section 51 of the 2016 Act.**

The decision of the tribunal was unanimous.

Statement of Reasons

1. A Case Management Discussion (CMD) took place on 27 March 2024. A CMD in a related civil application involving the same parties and a second Respondent (a guarantor under the tenancy agreement) also took place today and that matter was adjourned for the reasons given in the CMD Notes relating to that case.
2. The Applicant's Representative attended this CMD on behalf of the Applicant.
3. The Respondent did not attend this CMD. Shortly prior to the CMD, the Respondent sent a communication to the tribunal's administration as follows:

'Good morning

Please accept this email as confirmation and an apology for being unable to attend this mornings Case Management Discussion due to illness...

In an effort to update all parties I can confirm that I am in a position to vacate 40 Windsor Gardens, Hamilton, ML3 0ND by no later than the 22nd April and I will contact the letting agent to arrange the return of all keys.

I hope this gives clarity on case 4413

In terms of case 4416 I would be extremely grateful if this could be rearranged for another date.

Many Thanks'

4. The tribunal decided to proceed with the eviction application in the absence of the Respondent. The tribunal was satisfied that the requirements of rule 24(1) of the 2017 Rules regarding the giving of notice of a CMD had been duly complied with and proceeded with the Application upon the representations of the party present and all the material before it.
5. The tribunal heard from Ms Wooley in relation to the Application. She sought the Respondent's eviction from the Property given the level of rent arrears at the time that the Application was made, and at present. The rent arrears are currently £11,175. Ms Wooley wished to proceed with the Application despite the respondent's stated intention to leave the Property on 22 April 2024. The Respondent has substantial rent arrears and no payment plan has been offered. A civil application has been made. The Applicant needs to sell the property to fund the purchase of a new home. The Applicant does not know who lives with the Respondent in the Property. As far as the Applicant is aware the Respondent is self employed as a personal speaker.

6. The rent statement produced shows that the rent due under the tenancy agreement is £875.00 per calendar month. The Respondent has accrued rent arrears under the tenancy in respect of one or more periods.
7. The rent arrears as at 26 August 2023 were £5925.00.
8. The Respondent has not opposed the Application for eviction or asked for it to be adjourned. He has stated his intention to move out of the Property on or before 22 April 2024.

Findings in Fact

9. The Applicant and Respondent entered into a Private Residential Tenancy agreement in respect of the Property.
10. The rent due under the tenancy agreement is £875.00 per calendar month.
11. The Respondent has accrued rent arrears under the tenancy in respect of one or more periods.
12. The rent arrears as at 26 August 2023 were £5925.00.
13. A Notice to leave was served in terms of Ground 12A of Schedule 3 of the 2016 Act on 13 September 2023.
14. The Respondent has not made payment of any arrears since the Notice to Leave was served or provided any proposals for payment.
15. The cumulative amount of the Respondent's rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy when notice to leave was given to the tenant on ground 12A in accordance with section 52(3) of the 2016 Act.
16. The Respondent intends to leave the Property on or before 22 April 2024.
17. The Respondent has not opposed the Application for eviction.

Discussion

18. The tribunal was satisfied after considering submissions from the Applicant's Representative and the written submissions from the Respondent on 27 March 2024 that the requirements of Ground 12A were met, including a decision that it was reasonable to make an eviction order in the circumstances.

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.

27 March 2024