



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/23/4621

1/R, 76D Clepington Road, Dundee, DD3 7SW ("the Property")

Parties:

Quarry Management & Investment Co Limited, Quarry Cottage, Main Street, Inchtute, Perth, PH14 9RN ("the Applicants")

Dymock Properties Ltd ('The Applicants' Representative')

Mr Hemenath Guna Sekeran and Mr Sathya Damodaran residing at 1/R, 76D Clepington Road, Dundee, DD3 7SW ("the Respondents")

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

Tribunal Members: Jacqui Taylor (Legal Member) and Donald Wooley (Ordinary Member)

1. Background

1.1. The Applicants 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 20th December 2023. The application stated that the ground for eviction was as follows:

'Ground 12A: Tenant is in substantial arrears of over six months rent. Rent is due at the rate of £470 per month. As of today the arrears are £11,900.'

1.3 Documents lodged with the Tribunal were:-

- Undated Tenancy Agreement showing commencement date of 20th November 2020. Clause 8 of the lease states that the rent is £470 per calendar month payable in advance.

- Preaction letter.
- Notice to Leave on the ground that there are substantial rent arrears, dated 13th October 2023 advising the Tenant that an application will not be submitted to the Tribunal for an eviction before 30th November 2023.
- Recorded delivery slip signed for by 'Sathya', confirming delivery on 14th October 2023.
- Rent statement for the period 29th December 2020 to 28th November 2023 showing rent arrears of £11,900.
- Section 11 Notice addressed to Dundee City Council.
- Copy email to Dundee City Council sending section 11 notice dated 31st August 2023.

2. Amendment of the Application.

The Applicants' agent sent the Tribunal an email dated 23rd January 2024 asking to amend the details of the Applicants to 'Quarry Management & Investment Co Limited'.

3. Written Representations by Respondents.

The Respondents did not provide any written representations.

4. Case Management Discussion

This case called for a conference call Case management Discussion (CMD) at 14.00 on 29th May 2024.

The Applicants' Representative Mr Dymock attended the CMD.

The Respondents did not attend and were not represented. They had been notified of the CMD by Roderick Stevenson, Sheriff Officer on 18th April 2024. The Tribunal were content to proceed with the CMD as the requirements of Tribunal Rule 29 had been satisfied.

4.1 The Tribunal agreed to amend the Applicants to Quarry Management & Investment Co Limited, being the heritable proprietors and Landlords of the Property.

4.2 Mr Dymock advised the Tribunal as follows:

4.2.1 The Preaction letter had been hand delivered to the Respondents in May 2023.

4.2.2 The current rent arrears amounted to £14720. No rent payments have been made since the rent statement produced to the Tribunal.

4.2.3 He has no reason to believe that the rent arrears are due to a delay or failure to pay benefits to the Respondents.

4.2.4 The Respondents are still living in the Property. They have made no attempt to correspond with him regarding the rent arrears.

4.2.5 The Respondents are two single individuals in their twenties. At one point they had been studying at one of the universities. As far as he is aware they have no disabilities and no dependants.

4.2.6 It is reasonable for the Tribunal to grant the eviction due to the fact that the Respondents have not paid rent for over two years and this is causing the Applicants financial hardship.

5. The Tribunal made the following findings in fact:

5.1. The Respondents are Tenants of the Property in terms of the lease between the parties.

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

5.3. The Applicants are Landlords and heritable proprietors of the Property.

5.4 The title of the Property is Land Certificate title number ANG33887.

5.5 The Notice to Leave was dated 13th October 2023 and it sent to the Respondents by recorded delivery mail which they signed for on 14th October 2023.

5.6 The Notice to Leave stated that the tenants have 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 30th November 2023.

5.7 The rent due in terms of the lease is £470 per month.

5.8 The rent arrears exceeded six months rent (£470 x 6=£2820) at 13th October 2023 (the date of the Notice to Leave), at 20th December 2023 (the date of the Application) and at today's date.

6. Decision

6.1. Requirements of Section 109 of the Procedure Rules.

6.1.1 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.

6.1.2 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 29th December 2020 to 28th November 2023 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 13th October 2023 and advised the Tenants that the Applicants 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 30th November 2023.

The lease states that the commencement date of the tenancy was 20th November 2020. As at 13th October 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.

6.1.3 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.

6.2 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 £470 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 £2820, being the amount of six months rent.

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

6.4 The Tribunal considered Mr Dymock's representations that the high level of rent arrears meant 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 2021; the fact that the Letting Agents had issued a preaction letter to the Respondents and also the fact that the Respondents have not provided any written representations nor engaged in any way with the Tribunal.

6.5 The Tribunal granted the eviction Order.

7. 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.

Jacqueline Taylor

Legal Member

29th May 2024