



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 51(1) of the Private Housing
(Tenancies) (Scotland) Act 2016**

Chamber Ref: FTS/HPC/EV/24/0180

**Re: Property at 153 Baird Hill, East Kilbride, South Lanarkshire, G75 0EQ (“the
Property”)**

Parties:

**James Fitzsimmons, 105 Alberta Avenue, East Kilbride, G75 8AZ (“the
Applicant”)**

**Patience Wilson, 153 Baird Hill, East Kilbride, South Lanarkshire, G75 0EQ
 (“the Respondent”)**

Tribunal Members:

Valerie Bremner (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted against the Respondent and in favour of the Applicant as the Respondent has accrued substantial rent arrears in terms of one or more periods of the tenancy and the cumulative amount of the rent arrears exceeded 6 months’ rent when Notice to Leave was given and it is reasonable to grant an eviction order.

Background

1. This application for an eviction order in terms of Rule 109 of the tribunal rules of procedure was first lodged with the tribunal on 12 January 2024 and accepted by the tribunal on 13th February 2024. A case management discussion was fixed for this and a related payment order application with reference FTS/HPC/CV/24/0184 for Friday 5th July 2024 at 10.00am.

Case Management Discussion

2.The case management discussion was attended by Mrs Saddiq solicitor of TCH Law on behalf of the Applicant. There was no appearance by or on behalf of the Respondent and the Tribunal noted that the applications, supporting papers and the date of the case management discussion had been intimated to the Respondent by Sheriff Officer putting these papers through the letterbox at her address on 3rd June 2024. The tribunal was satisfied that the Respondent had received fair notice of the applications and case management discussion and that the Tribunal could proceed in her absence.

4.The Tribunal had sight of the applications, a tenancy agreement, a Notice to Leave in terms of Ground 12 A dated 13 November 2023,an execution of service of the Notice to Leave on the Respondent on 14th November 2023 by Sheriff Officer, a letter sent with the Notice to Leave, a tenant rent statement and reconciliation dated December 2023, a notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 sent to the local authority dated 12 January 2024 together with e mail confirmation of notification to the local authority and two letters sent to the Respondent in terms of the pre action protocol.

5.The parties had entered into a private residential tenancy at the property with effect from 21st May 2020.The monthly rent payable in terms of the tenancy agreement was £450.At the start of the tenancy the Respondent was known to be in work as a support worker. It was not known if she has children. Rent arrears started to accrue in terms of the tenancy early on and since 2021 calls were made every week to the Respondent to discuss the rent arrears. Sometimes the rent was paid and sometimes it was not or was partly paid. The Respondent advised that she was struggling to get shifts at work and in April 2024 it was understood that she may be no longer working and she had referred in a contact with the Letting Agents to waiting for another property. An application had been made to the DWP for direct payment of any benefit. The Letting Agents understood that the Respondent may not have been working for up to two years of the tenancy. There was no information to suggest that the arrears had accrued due to any delay or failure in the payment of any benefit. During the period when the rent arrears accrued at no time did the Respondent contact the Letting Agent to come to any arrangement regarding rent payment or payment of the arrears. The Respondent had made only one payment towards rent in 2024 and as of December 2023 the rent arrears had reached £3440.27.

6.A Notice to Leave had been served on the Respondent on 14th November 2023 when the rent arrears had reached a sum of £3100, in excess of 6 months' rent.

7.Pre action protocol letters were sent to the Respondent in December 2023 and January 2024 advising that the outstanding rent had reached £3440.27 and signposting the Respondent to sources of assistance.

8. Mrs Saddiq advised the Tribunal that rent arrears had reached the sum of £5760.65 and the Respondent had made one payment of £400 towards the rent arrears on 19th June 2024.

9.A Notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 was sent to the local authority in terms of this application on 12 January 2024.

10. Mrs Saddiq advised the Tribunal that the Applicant landlord wished to sell the property as this was his only rental property and was no longer economical for him to rent out the property. Rent arrears had started since the tenancy itself had started and there had been no contact from the Respondent or proposals for payment of the arrears which he could consider.

10. The Tribunal considered that it had sufficient information upon which to make a decision and that the proceedings had been fair.

Findings in Fact

11. The parties entered into a tenancy agreement at the property with effect from 21st of May 2020.

12. The monthly rent payable in respect of the property as set out in the tenancy agreement is £450 per month.

13. From early on in the tenancy rent arrears started to accrue and in some months no rent was paid whilst in others part payment of rent was made.

14. As of the beginning of November 2023 rent arrears had reached £3100, a sum in excess of 6 months' rent due in terms of the tenancy agreement.

15. A Notice to Leave in terms of Ground 12 A of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 was served on the Respondent by Sheriff Officer on 14th November 2023 and this Notice indicated that no application would be made to the tribunal for an eviction order before 14th of December 2023.

16. A notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 was sent to the local authority on 12th January 2024 in relation to this application.

17. Pre action protocol letters were sent to the Respondent in December 2023 and January 2024 setting out the level of rent arrears and signposting the Respondent to source of support.

18. During the period of the tenancy in which the rent arrears accrued the Respondent was known to be working but she had contacted the Letting Agents at one stage to say that she was having trouble getting shifts at her job.

19. It is understood that the Respondent may have been unemployed for a period of the tenancy but there is no suggestion that the rent arrears have accrued due to any delay or failure in the payment of any benefit.

20. The Letting Agent acting for the Applicant applied to the DWP for direct payment of rent as they understood the Applicant may not be working.

21. A rent statement dated December 2023 shows that the rent arrears had reached the sum of £3440.27 at that time and the rent arrears have reached £5760.65 as at the date of the case management discussion, the Respondent having made one payment of £400 towards the rent in June 2024.

22. The Respondent has accrued substantial rent arrears in excess of 6 months rent due in terms of the tenancy agreement and at no time during the tenancy has she contacted the Applicant or his agents to seek to make a payment plan for the rent arrears or make any proposals for payment.

23. This is the Applicant's only rental property and he wishes to sell it as it is no longer economical for him to rent it out given the level of rent arrears outstanding in this tenancy.

24. Since the tenancy commenced the Respondent has accrued rent arrears and at no time has made contact with the Applicant or his agents to offer a payment plan towards the rent arrears to allow the Applicant to consider this.

Reasons for Decision

25. The Tribunal considered that the Applicant had complied with the requirements of the legislation and that the eviction ground had been made out. The rent arrears had accumulated over most of the tenancy and there had been no contact from the Respondent to explain the situation or offer a payment plan. The Applicant wishes to sell the property as it is no longer economical for him to rent it out. In all of the circumstances the Tribunal considered that it was reasonable to grant an eviction order.

Decision

The Tribunal granted an eviction order against the Respondent and in favour of the Applicant as the Respondent has accrued substantial rent arrears in terms of one or more periods of the tenancy and the cumulative amount of the rent arrears exceeded 6 months' rent when Notice to Leave was given and it is reasonable to grant an eviction order.

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.

V Bremner

Legal Member/Chair

5/7/24
Date

