



**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/24/0913**

**Re: Property at 143 Drum Street, Gilmerton, Edinburgh, EH17 8RU (“the Property”)**

**Parties:**

**Drum Farm LLP , 147 Drum Street, Gilmerton, Edinburgh, EH17 8RX (“the Applicant”)**

**Miss Ria Thomson, 143 Drum Street, Gilmerton, Edinburgh, EH17 8RU (“the Respondent”)**

**Tribunal Members:**

**Melanie Barbour (Legal Member) and Ann Moore (Ordinary Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.**

**Background**

1. An application had been received under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession under a private residential tenancy by the Applicant against the Respondent for the Property.

2. The application contained: -
  - a. the tenancy agreement,
  - b. the notice to leave with evidence of service
  - c. section 11 Notice with evidence of service
  - d. rent statement
  - e. pre-action requirement emails.
3. A case management discussion took place on 16 August 2024. In attendance was the applicant's agent, Leanne Young from D J Alexander Lettings LTD.
4. Notice of the case management discussion had been made by sheriff officers on 16 July 2024. The respondent did not appear. The tribunal was prepared to proceed in their absence given they had notice of the discussion.

### Discussion

5. The applicant's agent advised that the applicants were seeking an order for recovery of the possession of the property under the ground 12 (three months rent arrears).
6. She advised that the tenant had moved into the property on the 3rd of August 2020. She had not paid any rent since the 1st of February 2021. There was a very significant amount of rent arrears outstanding. The arrears currently totalled £71,552.50. The applicants had tried to engage with the respondent and offer her support and provide advice about where she could seek support in relation to her rent payments and arrears, however the support and advice offered had been unsuccessful. There had been no engagement whatsoever with the respondent since 2021. The respondent ignored the applicants' emails and attendance at the property.
7. The agent advised that the non-payment of rent was impacting upon the applicants' financial and emotional situation and was causing them distress. The applicants pass the property every day, it is a family run business and they are upset about the rent arrears and failure to engage. The agent advised that the applicants business was a farm estate. They care for the estate and enhance the wildlife. They manage a riding centre for the disabled on the estate. They have three properties in their portfolio, and this is one of them. In

relation to the respondent's situation she advised that the applicant had previously managed the property privately and at first, they were not sure what action to take against the respondent for non payment of rent. They also give the respondent time to sort out her rent and arrears as they appreciated that lockdown had been difficult for people.

8. The applicant's agent advised that as far as she was aware there were no outstanding benefit issues, and she did not believe that there were any backdated benefits due to be paid to the respondent. The respondent was a self-employed hairdresser and she understood that she's currently working.
9. They understand that it's only the respondent who resides within the property and she has no dependants residing with her.
10. They were unaware of the respondent having any health issues.

### Findings in Fact

11. The Tribunal found the following facts established: -
12. There existed a private residential tenancy between Drum Farm LLP and Ria Thomson.
13. It had commenced on 3 August 2020.
14. The tenant was Ria Thomson.
15. The landlord was Drum Farm LLP.
16. The property was 143 Drum Street, Gilmerton, Edinburgh, EH17 8RU.
17. The tenancy stated that rent was £1695 a calendar month payable in advance.
18. Rent arrears as of 16 August 2024 were £71,552.50.
19. There was submitted a notice to leave dated 29 November 2023, stating that an application would not be made until 30 December 2023. It sought eviction under ground 12A rent arrears. It set out that the respondent had been in significant rent arrears at that time of £56,720. A rent statement had been attached to it. The notice to leave had been posted to the tenant. There was evidence of service.
20. A section 11 notice had been sent to the local authority advising that the landlord was seeking possession of the property. There was evidence of service.

21. There was evidence that pre-action protocol requirements had been followed the applicants had been in touch with the respondent about her arrears and to try and resolve the matter.
22. There was no evidence of failure or delay in any benefit payment to the respondent.
23. The respondent had failed to rent since February 2021. The arrears had been steadily accruing over the years.

### Reasons for Decision

24. Section 51 of the 2016 Act provides the Tribunal with the power to grant an order for eviction for a private residential tenancy if it finds that one of the grounds in Schedule 3 of the Act applies.
25. The ground which the Applicant seeks eviction under is ground 12. It is in the following terms :-

#### 12 Rent arrears

(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2) [...]

(3) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) for three or more consecutive months the tenant has been in arrears of rent, and

(b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.

(4) In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider [ — ] 3 [

(a) whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, and

(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations. ] 3

(5) For the purposes of this paragraph— ...

26. The applicant's agent confirmed that they sought an order for eviction based on the fact that the respondent had been in rent arrears for three or more consecutive months.
27. The application had been made under ground 12A substantial rent arrears. The tribunal considered that ground 12 also applied in this case. Ground 12a was now repealed. The respondent had fair notice that eviction was sought due to rent arrears. We were prepared to determine the application under ground 12.
28. When the notice to leave was served in November 2023 the respondent had been in rent arrears for well over three months. The arrears were already very significant at that time. The rent statement showed that there had been rent arrears on the rent account since March 2021. There had been no further payments to rent since February 2021. There did not appear to be any benefit issues which were causing the arrears. It appeared that the first part of the ground 12 was met.
29. Given the first part of the ground is met the tribunal is therefore required to proceed to consider if it would be reasonable to grant the order.
30. We find it would be reasonable to grant the order for eviction, in coming to this conclusion we took into account the following matters:-
31. Matters in support of granting the order were as follows:- The arrears were now £71,552.50. Arrears had been accruing since March 2021. The respondent had no payments to rent or arrears since that date. There were no proposals to repay the arrears. That the applicant had tried to engage respondent and provide advice, but the respondent was not willing to engage in addressing the rent and arrears. The respondent was a self employed hairdresser. She did not have any dependents living with her. She did not appear to have any health issues.
32. That the applicants had a commercial business, they had three properties in their portfolio, they managed a farm estate, and equestrian centre for disabled riders. The arrears were having a financial impact on the business. The business was family run and the arrears were causing the partners emotional distress too.

33. Matters against the order being granted: we were unaware of any reasons why the order should not be granted. The respondent did not appear or provide any submission to explain her failure to pay rent.

34. In considering this matter, we consider that there are clear reasons why we should grant the order for eviction, the level of arrears alone are a sufficient reason to grant eviction in our opinion.

35. Accordingly, considering the papers before us and the oral submission by the applicant's agent the tribunal was prepared to grant the order for recovery of possession, given that the first part of ground 12 was met and in all the circumstances it appeared to us to be reasonable to grant the order.

### Decision

36. The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

### **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.**

**Melanie Barbour**

16 August 2024

Legal Member/Chair

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Date