



**Decision 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/24/1280**

**Re: Property at 28A Wilson Avenue, Kirkcaldy, KY2 5EG (“the Property”)**

**Parties:**

**Mr Manjeet Hayre, Mrs Tarandeep Kaur Hayre, 30 Billesdon Close, Leicestershire, LE3 9SH; 30 Billesdon Close, Leicestershire, LE3 9SH (“the Applicant”)**

**Mr Jake James, Miss Rachael Proudfoot, 28A Wilson Avenue, Kirkcaldy, KY2 5EG; 28A Wilson Avenue, Kirkcaldy, KY2 5EG (“the Respondent”)**

**Tribunal Members:**

**Melanie Barbour (Legal Member) and Frances Wood (Ordinary Member)**

**Decision**

**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 12A 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 letters.
3. A case management discussion took place on 10 September 2024. In attendance was the applicant's agent, Ms Donnelly from T C Young. The respondents also appeared.
4. Ms Donnelly had submitted papers to amend the sum sought. They had been sent to the respondents on 19 August 2024. The respondents confirmed that they had received those papers.
5. Ms Donnelly advised that she further sought to amend at the hearing the sum sued, as a further month's rent was owed. She moved to amend the payment order to £9975. There was no objection to her verbal motion by the respondents. The tribunal granted this amendment.

### Discussion

6. The applicant's agent advised that the applicants were seeking an order for recovery of the possession of the property under the ground 12A (you have substantial rent arrears equivalent to 6 months rent). She also sought an order for payment of outstanding rent arrears totalling £9975 together with interest at 8% from the date of the decision.
7. The applicant's agent advised that the arrears were at a very significant level. She advised that it would be reasonable for the order to be granted given the significantly high level of arrears outstanding and further, as there had been no payments to rent since February 2023. She advised that the applicants had

made efforts to engage with the respondents, but these attempts have been unsuccessful. She advised that the applicants had made contact with the local authority as they understood that there had been a Universal Credit application made in March 2023, but the council had said that they were not processing any claim.

8. She advised that there had been no contact with the respondents about the arrears. She understood that the respondents had contacted the Citizens Advice Bureau and had been told not to leave the property until an order had been granted by the tribunal at which time the local authority may assist them in obtaining alternative accommodation.
9. It was her submission that the fact that the respondents were not opposing either order, had admitted the arrears were significant, and that they had been outstanding for some time, then it would be reasonable to grant the order for eviction.
10. She noted that the respondents had one child of around one years of age living in the property but notwithstanding that fact she submitted it was still reasonable to get out the order for eviction.
11. She advised that the applicants had two children, and the applicant had recently had a heart attack. This applicant relied on rental income to support his family and the ongoing arrears were causing financial difficulties to the applicant and stress.
12. The agent advised that she was also seeking interest of 8% on the payment order. She confirmed that it was not contractual interest that was being sought and she accepted it was subject to the discretion of the tribunal in terms of any award of interest. She submitted that the arrears were large, and it would take some time for them to be repaid. It was appropriate in all the circumstances for interest to be awarded.

13. The agent advised that the applicant has other properties over and above this property in this application.
14. The respondents advised that they were not opposing the application for eviction and further they were not opposing the application for a payment order or the award of interest as sought by the applicant.
15. The respondents advised that she had fallen pregnant and at that time both herself and her partner Mr. James had lost their jobs. This had led to them getting into financial difficulties. They had made a claim for Universal Credit. She advised that she had emailed the letting agent regarding this. They had trouble getting Universal Credit and the housing element did not cover the full rent. She said the benefits obtained were not enough to support the family. They could not afford the the rent and accordingly any payments that they had received from universal credit had been retained and used to live off. They had been in touch with the local authority, and they were waiting on the eviction notice at which time they were hopeful that the local authority would find them suitable accommodation. The respondent advised that Mr James was still receiving benefits at the present time, and she was now working. There was therefore still some Universal Credit coming into the household, the amount depended upon how much she earned. She advised that the couple had other debts and were currently seeking money advice from the Citizens Advice Bureau about trying to sort out all their debts. She confirmed that she had one child of one years of age.

#### Findings in Fact

16. The Tribunal found the following facts established: -
17. There existed a private residential tenancy between Manjeet Hayre and Rachel Proudfoot and Jake James.

18. It had commenced on 4 November 2022.

19. The tenant was Rachel Proudfoot and Jake James.

20. The landlord was Manjeet Hayre.

21. The property was 28A Wilson Avenue, Kirkcaldy.

22. The tenancy stated that rent was £525 a calendar month payable in advance.

23. There was submitted a notice to leave dated 23 January 2024, stating that an application would not be made until 23 February 2024. It sought eviction under ground 12A rent arrears. It set out that the respondent had been in significant rent arrears at that time of £5775. A rent statement had been attached to it. The notice to leave had been emailed to each tenant. There was evidence of service.

24. As of 10 September 2024, the rent arrears were £9975.00.

25. 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.

26. There was evidence that pre-action protocol requirements had been followed and the applicants had been in touch with the respondent about her arrears and to try and resolve the matter.

27. There was no evidence of failure or delay in any benefit payment to the respondent.

28. The respondent had failed to pay rent since March 2023. The arrears had been steadily accruing.

### Reasons for Decision

29. 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.

30. The ground which the Applicant seeks eviction under is ground 12A.

12A(1) It is an eviction ground that the tenant has substantial rent arrears.

(2) The First-tier Tribunal may find that the ground named by [sub-paragraph \(1\)](#) applies if—

(a) the tenant has accrued rent arrears under the tenancy in respect of one or more periods,

(b) 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 is given to the tenant on this ground in accordance with section 52(3), and

(c) the Tribunal is satisfied that it is reasonable to issue an eviction order.

(3) In deciding under [sub-paragraph \(2\)](#) whether it is reasonable to issue an eviction order, the Tribunal is to consider—

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

(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers under paragraph 12(4)(b) (and continued

in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022).

(4) For the purpose of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the Housing Benefit Regulations 2006 ([S.I. 2006/213](#)),

(ii) a payment on account awarded under regulation 93 of those Regulations,

(iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,

(iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,

(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.

31. The applicant's agent confirmed that they sought an order for eviction based on the fact that the respondent had substantial rent arrears. When the notice to leave was served in January 2024 the respondent had been in rent arrears for over six months. The arrears were already substantial at that time given that there had been no rental payment for 10 months. The rent statement showed that there had been rent arrears on the rent account since March 2023. There had been no further payments to rent since February 2023. 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.

32. 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.

33. We find it would be reasonable to grant the order for eviction. In coming to this conclusion, we took into account the following matters:-

34. Matters in support of granting the order were as follows:- The arrears were now £9975. Arrears had been accruing since March 2023. The respondent had no payments to rent or arrears since that date. There were no proposals to repay the arrears. The applicant had tried to engage the respondent and provide advice, but the respondent was not willing or able to engage in addressing the rent and arrears. The respondents had had periods of unemployment and had not been able to make payments to rent during those periods. The respondents had attended the hearing and advised that they were not opposing the order. They had been in touch with the local authority and were hopeful of getting rehoused when the eviction order was granted. The applicant had had a heart attack, and the ongoing arrears were causing him stress. The applicant had two children, and the nonpayment of rent affected him financially to his detriment.

35. Matters against the order being granted: The applicant had a commercial business renting out properties. The respondents had a 1-year-old child.

36. In considering this matter, we consider that there are clear reasons why we should grant the order for eviction. The fact that the respondents do not oppose the order being granted is a material reason to grant eviction in our opinion. That coupled with the the level of arrears, the lack of any offer to repay the arrears and the fact that the arrears will continue to increase provides us with a sufficient basis to grant the order. While there are two matters against the order being granted we did not consider them to be sufficient to refuse the order.



37. 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 12A was met and in all the circumstances it appeared to us to be reasonable to grant the order.

### Decision

38. The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 12A 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

10 September 2024

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**Legal Member/Chair**

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**Date**