



**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/24/0761**

**Re: Property at 1/2, 2 Merlin Way, Glasgow, G77 6ZH (“the Property”)**

**Parties:**

**Rothsay Life PLC, The Post Building, 100 Museum Street, London, WC1A 1PB (“the Applicant”)**

**Ms Denise Khalid, 1/2, 2 Merlin Way, Glasgow, G77 6ZH (“the Respondent”)**

**Tribunal Members:**

**Alison Kelly (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 that the order for eviction should be granted.**

**Background**

1. On 15<sup>th</sup> February 2024 the Applicant lodged an Application with the Tribunal under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondent from the property under Ground 12A of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.
2. Lodged with the application were: -
  - i. Copy Private Residential Tenancy Agreement showing a commencement date of 6<sup>th</sup> July 2022 and a rent of £630.53 per month;
  - ii. Copy Notice to Leave dated 15<sup>th</sup> November 2023;
  - iii. Copy email dated 15<sup>th</sup> November 2023 to the Respondent serving the Notice to Leave;
  - iv. Section 11 Notice and proof of service;
  - v. Pre Action Requirement letter dated 2<sup>nd</sup> December 2022;

3. The Application was served on the Respondent by Sheriff Officers on 19<sup>th</sup> August 2024.
4. On 23<sup>rd</sup> August 2024 the applicant's solicitor lodged an up to date rent statement showing arrears as at 6<sup>th</sup> August 2024 of £15857.50.

### **Case Management Discussion**

5. The Case Management Discussion ("CMD") took place by teleconference. The Applicant was represented by Miss Callaghan of TC Young, Solicitors. There was no attendance by the Respondent or any representative on her behalf.
6. The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. The Chairperson explained that the Applicant needed to provide sufficient evidence to establish the ground of eviction, and that it was reasonable for the Tribunal to grant the order.
7. Miss Callaghan sought an order for eviction in terms of ground 12A of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016. The tribunal allowed her to amend the Paper part, which erroneously referred to ground 12. She said that at the time the Notice to Leave was served the arrears were £9457.95 and at the time the application was lodged they were at £11349.54. They have now risen to £16507.84.
8. In relation to reasonableness Miss Callaghan said that the Respondent had paid her initial months rent and deposit when she took entry but she had not paid anything since. The pre Action protocol had been complied with as the Respondent had been sent letters on 4<sup>th</sup> and 31<sup>st</sup> October 2022, and emails and texts had been sent on 2<sup>nd</sup> December 2022, 31<sup>st</sup> January 2023, 26<sup>th</sup> May 2023 and 4<sup>th</sup> July 2023. There had been other attempts to contact her since then. She was spoken to on 19<sup>th</sup> December 2022 when she apologised and said she thought the rent had been paid and she would sort it out. She said that as far as the Applicant was aware the Respondent lived alone and was in employment. They was no knowledge of her having applied for benefits.
9. Miss Callaghan moved for interest at 8%. She conceded that there was no contractual provision for interest. She said that the interest was to cover loss if income and inconvenient. The Tribunal were not of a mind to grant interest as there was no contractual provision, and the Applicant could have taken steps sooner to mitigate their loss given that the Respondent had not paid rent since August 2022.

## Findings in Fact

- a. The Respondent entered into a Private Residential Tenancy Agreement in respect of the property with Pace Trustees Ltd;
- b. The tenancy commenced on 6<sup>th</sup> June 2022;
- c. The monthly rent was £630.53;
- d. A Notice To Leave, dated 15<sup>th</sup> November 2023, was served timeously and correctly;
- e. Pace Trustees Ltd sold the property to Rothesay Life plc in December 2023;
- f. A section 11 notice was served on the local authority;
- g. The Application was served on the Respondent by Sheriff Officer on 19<sup>th</sup> August 2024;
- h. At the time the Notice to Leave was served the arrears were £9457.95;
- i. At the time the application was lodged they were £11349.54;
- j. The arrears are currently £16507.24;
- k. The Applicant lives alone;
- l. The Applicant is in employment.

## Reasons for Decision

10. Ground 12A of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 was introduced by the Cost Of Living (Tenant Protection) (Scotland) Act 2022. The ground ceased to apply on 31st March 2024. However in terms of Cost of Living (Tenant Protection) (Scotland Act 2022 (Savings Provisions) Regulations 2024 states that the expiry of the provisions will not affect applications where the landlord has served an eviction notice on one of the temporary grounds before 1 April 2024 or has raised proceedings on one of these grounds in cases where an eviction notice is not required. Where the savings provisions apply, the Tribunal can grant (and a landlord can enforce) an eviction order based on one of the temporary grounds. Ground 12A is therefore a valid ground in this case as the Notice to Leave was served on 15<sup>th</sup> November 2023.

11. Ground 12A is as follows:

*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.*


12. The Tribunal were satisfied that the level of arrears meant that the ground had been met. The level of arrears, which equates to over two years of rental payments, makes it reasonable in and of itself to grant the order for eviction.

## **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.

**Alison Kelly** \_\_\_\_\_

Legal Member/Chair 

**19 September 2024** \_\_\_\_\_

Date