



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/24/2000

Re: 107 Willow Drive, Johnstone, PA5 0BZ ("the Property")

Parties:

Mijak Limited, 54 Cowgate, Kirkintilloch, Glasgow, G66 1HN ("the Applicant")

Alexandra Wooley, Bannatyne, Kirkwood France & Co, Solicitors ('The Applicant's Representative')

Megan Macnab residing at 107 Willow Drive, Johnstone, PA5 0BZ ("the Respondent")

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

Tribunal Members: Jacqui Taylor (Legal Member) and Nick Allan (Ordinary Member)

1. Background

1.1. The Applicant 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 30th April 2024. The application stated that the ground for eviction was Ground 12.

1.3 Documents lodged with the Tribunal were:-

- Private Residential Tenancy Agreement between the parties dated 21st July 2023. The commencement date of the tenancy was 21st July 2023. The rent was £800 per calendar month.
- A rent statement for the period 21st June 2023 to 21st April 2024 showing £2300 rent arrears.

- Notice to Leave dated 1st February 2024 advising the Tenant that an application will not be submitted to the Tribunal for an eviction before 3rd March 2024.
- Email from the Applicant's representative to the Respondent dated 1st February 2024 sending her the Notice to Leave.
- Section 11 Notice addressed to Renfrewshire Council.
- Email to Renfrewshire Council dated 30th April 2024 attaching the section 11 Notice.
- Copies of Pre action letters/ emails sent to the Respondent dated 12th September 2023, 27th December 2023, 3rd January 2024,

2. By Notice of Acceptance by Josephine Bonnar, Convener of the Tribunal, dated 21st May 2024 she intimated that she had decided to refer the application (which application paperwork comprises documents received on 1st May 2024) to a Tribunal.

3. Written Representations

The Respondent 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 14th October 2024.

Alexandra Wooley, the Applicant's Representative attended the CMD.

The Respondent did not attend and was not represented. The Tribunal clerk attempted to contact the Respondent by telephone but she did not answer his call.

The Respondent had been served with letters advising her of the CMD by Paul Miller, Sheriff Officer on 9th September 2024. The Tribunal were satisfied that the requirements of Tribunal Rule 29 had been complied with and continued with the CMD.

In support of the application Alexandra Wooley advised the Tribunal as follows;

- The current rent arrears amounted to £3200, which is more than three months rent.
- The rent arrears started in July 2023.
- She stated that she considered it to be reasonable for the eviction to be granted due to the level of the rent arrears and the fact that the rent account has been in arrears for over one year.
- The Applicant has sent preaction letters to the Respondent encouraging her to enter into a payment plan. The Respondent had advised the Applicants in February 2024 that she wished to enter into a payment plan but she never completed the paperwork.
- If the Tribunal grant the eviction the Local Authority are required to house the Respondent.
- The Applicant has no information to suggest that the rent arrears are due to a delay or failure in paying benefits to the Respondent.

- She does not know the age of the Respondent but she believes that a child lives with her in the Property.
- The Property has not been adapted for disabilities.

5. Decision

5.1. Requirements of Section 109 of the Procedure Rules.

5.1.1 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 Landlord.
- (ii) the name and address of the Landlord's representative.
- (iii) the name and address of the Tenant.
- (iv) the ground of eviction. The ground stated in the application is that the tenants are in rent arrears over three consecutive months.

The Tribunal accepted that this is Ground 12 of Schedule 3 of the 2016 Act.

5.1.2 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 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 1st February 2024 and advised the Tenant that the Applicant intends to apply to the Tribunal for an eviction order in respect of the property on the basis of Ground 12 (The Tenant is in rent arrears over three consecutive months). It also advised that an application would not be submitted to the Tribunal for an eviction order before 3rd March 2024.

The Tenancy commenced on 21st July 2021. As at 1st February 2024 (the date of the Notice to Leave) the Tenant had resided in the property for more than six months.

The application for eviction was based on Ground 12 of Schedule 1 of the 2016 Act and therefore twenty eight days notice was required.

The Landlord served the Notice to Leave on the Tenant on 1st February 2024 by email and correctly gave the Tenant a minimum 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.

5.1.3 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.

5.2 The Tribunal made the following findings in fact:

5.2.1 The Respondent is Tenant of the Property in terms of the lease between the parties dated 21st July 2023.

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

5.2.3 The Applicant is Landlord of the Property.

5.2.4 The Applicant is heritable proprietor of the Property. The Tribunal had a copy of title sheet REN10317 which confirmed that **Mijak Limited** is heritable proprietor of the Property.

5.2.5 The rent detailed in the tenancy agreement is £800 per calendar month, payable in advance.

5.2.6 The Notice to Leave was dated 1st February 2024 and it was emailed to the Respondent on the same day.

5.2.7 Clause 4 of the lease states that the Landlord and the Tenant agrees that all communications under the Act, including Notices, will be made in writing using the email address set out in the lease.

5.2.8 The Notice to Leave stated that the Respondent was in rent arrears over three consecutive months, which is Ground 12 of Schedule 3 of the Private Housing (Tenancies) Scotland Act 2016.

5.2.9 The rent account has been in arrears since December 2023.

5.2.10 The rent arrears as at 21st December 2023 were £1600.

5.2.10 The rent arrears as at 1st February 2024 were £1600.

5.2.11 The rent arrears as at 30th April 2024 were £2300.

5.2.12 The rent arrears as at 14th October 2024 were £3200.

5.2.12 The rent arrears were not due to the delay or failure in the payment of a benefit.

5.2.14 The Landlord's representatives had sent the Respondent pre action letters dated 12th September 2023, 27th December 2023 and 3rd January 2024.

5.3 In relation to the requirements of Ground 12 of the Private Housing (Tenancies) (Scotland) Act 2016 the Tribunal found as follows:

5.3.1. The Tribunal determined that the Respondent had been in arrears of rent for three or more months at the date of the Notice to Leave, the date of the Application to the Tribunal and at today's date.

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

5.3.3 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 Applicant had issued three preaction letters to the Respondent, which had been produced to the Tribunal, and the Respondent has not provided any written representations and the Local Authority are required to rehouse the Respondent.

5.4 Accordingly, the Tribunal found in law that the ground in Schedule 3(12)(1) of the 2016 Act was met.

5.5 The Tribunal granted the eviction.

6. 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.

Jacqui Taylor

Legal Member

17th October 2024