



**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/24/1136**

**Re: 15 Summer Road, East Wemyss, Fife, KY1 4QB ('the Property')**

**Parties:**

**Aitchison and Jones Limited ('the Applicant')**

**Miss Gray, Professional Property Letting Limited ('The Applicant's Representative')**

**Alan Mackechnie residing at 15 Summer Road, East Wemyss, Fife, KY1 4QB ('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 received by the Tribunal on 27<sup>th</sup> May 2024. The application stated that the ground for eviction was Ground 11 and Ground 12.

1.3 Documents lodged with the Tribunal were:-

- Private Residential Tenancy Agreement between the parties dated 13<sup>th</sup> May 2021. The commencement date of the tenancy was 27<sup>th</sup> May 2021. The rent was £360 per calendar month.
- A rent statement for the period 27<sup>th</sup> January 2022 to 27<sup>th</sup> February 2024 showing £3510 rent arrears.

- Notice to Leave dated 2<sup>nd</sup> February 2024 advising the Tenant that an application will not be submitted to the Tribunal for an eviction before 4<sup>th</sup> March 2024.
- Email from the Applicant's representative to the Respondent dated 2<sup>nd</sup> February 2024 sending him the Notice to Leave.
- Section 11 Notice addressed to Fife Council.
- An email from the Applicants' Representative to the Tribunal administration dated 2<sup>nd</sup> May 2024 advising that Alan Jones owns the Property and he is director and shareholder of Aitchison Jones Limited. The Property is traded through Aitchison Jones Limited. Rental income is paid to Aitchison Jones Limited. Their accountant has confirmed that the Property is traded through Aitchison & Jones Limited. The mortgage payment and other expenses are greater than the rental income.
- A letter from Ian Brown & Co dated 19<sup>th</sup> April 2024 advising that they are tax advisers to Aitchison and Brown Limited and that the company is struggling to survive financially.

2. By Notice of Acceptance by Helen Forbes, Convener of the Tribunal, dated 13<sup>th</sup> June 2024 she intimated that she had decided to refer the application (which application paperwork comprises documents received between 8<sup>th</sup> March 2024 and 27<sup>th</sup> May 2024 ) to a Tribunal.

### **3. Written Representations**

The Respondent did not provide any written representations.

### **4. The First Case Management Discussion**

This case called for a conference call Case management Discussion (CMD) at 14.00 on 6<sup>th</sup> September 2024.

The Applicant's Representative attended the CMD.

The Respondent did not attend and was not represented.

The Respondent had been served with a letter advising him of the CMD by William Wywalec, Sheriff Officer on 5<sup>th</sup> August 2024. The Tribunal were satisfied that the requirements of Tribunal Rule 29 had been complied with and continued with the CMD.

#### **4.1 Oral Submissions by Miss Gray.**

Miss Gray advised the Tribunal as follows:

4.1.1 Mr Mackechnie has made recent rent payments. The current arrears are £3085. She agreed to provide the Tribunal with a copy of the up dated rent statement.

4.1.2 She had sent the section 11 notice to Fife Council by email dated 8<sup>th</sup> March 2024.

4.1.3 She wanted to amend the application to grounds 12 and 12A

4.1.4 She would provide the Tribunal with copies of the pre-action letters that had been sent to Mr MacKechnie.

#### **4.2 Outcome of the First Case Management Discussion.**

The First Case Management Discussion was continued to a continued Case Management Discussion to allow time for the Applicant's Representative to amend the application and produce the up to date rent statement and pre-action letters sent to the Tenant.

#### **5. The Amended Application.**

The Applicants' Representative sent the Tribunal an amended application dated 19<sup>th</sup> September 2024 which sought to amend the grounds of eviction to grounds 12 and 12A. An updated rent statement was provided for the period 26<sup>th</sup> December 2023 to 27<sup>th</sup> August 2024 which showed that the rent arrears amounted to £3085.

#### **6. The Second Case Management Discussion**

This case called for a Second conference call Case management Discussion (CMD) at 10.00 on 3<sup>rd</sup> February 2025

The Applicant's Representative attended the CMD.

The Respondent did not attend and was not represented.

The Respondent had been sent a letter advising him of the CMD dated 18<sup>th</sup> December 2024. The Tribunal were satisfied that the requirements of Tribunal Rule 29 had been complied with and continued with the CMD.

##### **6.1 Oral Submissions by Miss Gray.**

Miss Gray advised the Tribunal as follows:

6.1.1 The Respondent had last made a rent payment on 12<sup>th</sup> August 2024.

6.1.2 The Respondent has made no contact.

6.1.3 The Rent arrears as at 31<sup>st</sup> January 2025 amount to £4885.

6.1.4 She is not aware of the rent arrears being the result of any delay in the payment of benefits due to the Respondent.

6.1.5 She has sent the Tribunal a copy of emails sent to the Respondent regarding the rent arrears dated 18<sup>th</sup> December 2023, 15<sup>th</sup> January 2024, 5<sup>th</sup>, 13<sup>th</sup> and 16<sup>th</sup> February 2024, 1<sup>st</sup> March 2024.

6.1.6 She had an inperson meeting with the Respondent regarding the level of rent arrears in January 2024 when Professional Property Letting Limited took over the management of the tenancy.

6.1.7 She considered that it was reasonable for the Tribunal to grant the eviction due to the level of the rent arrears and the fact that the tenant has not made any payments and does not communicate with them regarding the arrears.

#### **7. Decision**

7.1. The Tribunal accepted the amended application.

##### **7.2 Requirements of Section 109 of the Procedure Rules.**

7.2.1 The Tribunal confirmed that the amended application correctly detailed the requirements of section 109(a) of the Procedure Rules namely:-

- (i) the name, address and registration number of the Landlords.
- (ii) the name and address of the Landlords' representative.
- (iii) the name and address of the Tenant.
- (iv) the ground of eviction. The grounds stated in the application are Grounds 12 and 12A of Schedule 3 of the 2016 Act.

**7.2.2** The Tribunal confirmed that the amended 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 required rent statement had been provided showing rent arrears over three consecutive months and the rent arrears exceeded six months rent (£360 x 6 =£2160). The rent arrears amounted to £3085 as at 27<sup>th</sup> August 2024.

(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 2<sup>nd</sup> February 2024 and advised the Tenant that the Applicants intend 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) and 12A (The tenant has substantial rent arrears). It also advised that an application would not be submitted to the Tribunal for an eviction order before 4<sup>th</sup> March 2024.

The Tenancy commenced on 27<sup>th</sup> May 2021. As at 2<sup>nd</sup> February 2024 (the date of the Notice to Leave) the Tenant had resided in the property for more than six months.

The amended application for eviction was based on Grounds 12 and 12A of Schedule 3 of the 2016 Act and therefore twenty eight days notice was required.

The Landlords had served the Notice to Leave on the Tenant on 2<sup>nd</sup> February 2024 by email and correctly gave the Tenants a minimum of twenty eight days notice. Clause 4 of the tenancy agreement authorised service of notices by email.

(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.

**7.2.3** The Tribunal confirmed that the amended application form had been correctly signed and dated by the Landlords' representatives as required by Section 109(c) of the Procedure Rules.

### **7.3 The Tribunal made the following findings in fact:**

7.3.1 The Respondent is Tenant of the Property in terms of the lease between the parties.

7.3.2 The start date of the Tenancy detailed in the lease was 27<sup>th</sup> May 2021.

7.3.3 Applicants are Landlords of the Property.

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

7.3.5. The rent detailed in the tenancy agreement was £360 per calendar month, payable in advance.

7.3.6 The Rent arrears as at the date of the Notice to Leave (2<sup>nd</sup> February 2024) was £3650 ; as at the date of the original application (27<sup>th</sup> May 2024) was £3085; as at the date of the amended application (19<sup>th</sup> September 2024) was £3085 and as at 3<sup>rd</sup> February 2025 was £4885.

7.3.7 The Notice to Leave was dated 2<sup>nd</sup> February 2024 and it was served on the Respondent by email also dated 2<sup>nd</sup> February 2024.

7.3.8 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 and that he has substantial rent arrears, which is which is Ground 12A of Schedule 3 of the Private Housing (Tenancies) Scotland Act 2016.

7.3.9 The rent account has been in arrears since January 2022.

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

7.3.11 The Applicants had sent the Respondent pre-action emails dated 18<sup>th</sup> December 2023, 15<sup>th</sup> January 2024, 5<sup>th</sup>, 13<sup>th</sup> and 16<sup>th</sup> February 2024, 1<sup>st</sup> March 2024 regarding the level of rent arrears.

**7.4 In relation to the requirements of Grounds 12 and 12A of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 the Tribunal found as follows:**

7.4.1 The Tribunal determined that the Respondent had been in arrears of rent for three or more months and the rent arrears amounted to more than six months rent as at the date of the Notice to Leave, the dates of the Application and Amended Applications to the Tribunal and at today's date.

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

7.4.3 The Tribunal found that it was reasonable for the eviction order to be granted for the following reasons:

7.4.3.1 The considerable amount of the rent arrears owing.

7.4.3.2 The fact that the Applicants had issued a pre-action emails to the Respondent.

7.4.3.3 The fact that the Respondent did not have any proposals to make in relation to the rent arrears.

7.5 The Tribunal found in law that the grounds 12 and 12A in Schedule 3 of the 2016 Act were met.

7.6 The Tribunal granted the eviction but determined that the Order should not to be executed prior to 12 noon on 7<sup>th</sup> March 2025.

## **8. 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

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**Legal Member**

**3<sup>rd</sup> February 2025**