



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/24/1295

Re: Property at 12 Kilpatrick Court, Irvine, KA11 1JJ (“the Property”)

Parties:

Easton Property Limited, 2 Newfield Drive, Dundonald, KA2 9EW (“the Applicant”)

Ms Suzanne Glass, 12 Kilpatrick Court, Irvine, KA11 1JJ (“the Respondent”)

Tribunal Members:

Yvonne McKenna (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery and possession of the Property should be granted in favour of the Applicant.

Background

1. This is an application in terms of Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). The Applicant is seeking an order for recovery of possession of the Property in terms of Ground 12A of the 2016 Private Housing (Tenancies) (Scotland) Act, namely that there are substantial rent arrears due.

2. The Tribunal had before it the following documents:

- a) Application dated 15 March 2024.
- b) Tenancy agreement with a commencement date of 23 September 2019.
- c) Rent Statement for the period 23 September 2019 to 15 March 2024.
- d) Notice to Leave dated 5 February 2024 together with proof of service.

e) Section 11 Notice in terms of the Homelessness etc. (Scotland) Act 2003 to North Ayrshire Council.

f) Pre-Action Requirement letter sent by the Applicant to the Respondent dated 5 February 2024.

3. A CMD was set for 17 July 2024 at 10am.

4. On 11 June 2024 all parties were written to with the date for the CMD.

5. Service was effected on the Respondent by Sheriff Officers on 12 June 2024.

6. On 2 July 2024, the Respondent forwarded to the Tribunal written representations setting out that she disputed the sums due. Her position as detailed in her written representations was that she was withholding the rent for the Property due to her contention that the Property had been and continued to be, below tolerable standard, and highlighting various repairs issues. She included with her written representations, confirmation that she had been attempting to send these documents in by e-mail, and had been encountering difficulties uploading them. Her representations amounted to 110 pages in total and included;-

- Witness statements from Mr Edward Glass and Ms Hannah Glass
- E-mails exchanged between the parties
- Text messages between the Respondent and a handyman
- Photographs of the Property
- Landlord gas safety records dated 4 November 2019 and 7 November 2022
- Single Survey of the Property dated 16 May 2019

These representations were received by the Tribunal on 9 July 2024, and forwarded to the Applicant's representative.

7. On 9 July 2024, the Applicant's representative submitted an updated rent statement of even date showing an outstanding rent due of £6,617.38. This was forwarded to the Respondent.

The Case Management Hearing (CMD) 17 July 2024

8. A CMD took place by teleconference on the 17 July 2024 at 10am. The Applicant was represented by Ms Ainslie Barclay. The Respondent was also present. The CMD was conjoined with an application for a payment order under Chamber Reference FTS/HPC/CV/24/1296.

9. The Tribunal explained the purpose of the CMD and the procedure that would be adopted. The Tribunal also went over the paperwork that had been received by the Tribunal.

The Applicant's position

10. Ms Barclay said that she had only received the written representations for the Respondent late on the afternoon of Friday 12 July. She had not had sufficient time

to go through this paperwork before the CMD. She sought a continuation of the CMD to enable her to do so.

11. Ms Barclay said that she required further time to consider her position and to obtain further information/ ingather witness statements and so on.

The Respondent's Position

12. The Respondent said that the Applicant should be well aware of the issues she had raised and the documents had been sent to the Applicant on many occasions.

13. The Respondent seemed to be under the impression that as she had raised these repairs issues, that they would be considered by the Tribunal. The Tribunal explained that they would be taken account of, as regards her position that she was withholding rent only. If she wished to make her own application regarding repairs issues she would require to make a separate repairing standards application to the Tribunal. The only live cases under consideration relate to the action for payment and application for eviction. The Tribunal detailed that it was unable to provide legal advice in that regard, but that the Respondent may wish to obtain her own legal advice, or take advice from a charitable organisation, such as Citizens Advice, or Shelter Scotland.

14. In all of the circumstances the Tribunal adjourned the CMD, proceeding to a further CMD, to take place by teleconference at 10 am on 4 November 2024.

The Case Management Hearing (CMD) 4 November 2024

15. A CMD took place by teleconference on 4 November 2024 at 10am. The Applicant was represented by Ms Ainslie Barclay. The Respondent was also present, although she joined the call later, having encountered some difficulties joining the conference call initially. Again, the CMD was conjoined with an application for a payment order under Chamber Reference FTS/HPC/CV/24/1296.

16. The Tribunal explained the purpose of the CMD, and the procedure that would be adopted. The Tribunal also went over the paperwork that had been received by the Tribunal in the intervening period between the two CMDs.

17. The Applicant had lodged with the Tribunal an updated rent statement dated 24 October 2024, which showed rent arrears due of £7260.62.

The Applicant's Position

18. Ms Barclay said that following the last CMD, that arrangements were made with the Applicant's gas engineer, to identify and resolve the issues with the boiler in the Property. A new boiler was installed. There have been no further issues since.

19. Ms Barclay also said that having checked matters, a payment was made of rent on the 24 October 2024 by the Applicant, which brought the outstanding balance down to £6815.62.

20. The Applicant still sought an Order for Eviction and an Order for Payment. There has been sparse communication from the Respondent. Prior to the representations made by the Respondent on 2 July 2024, the Applicant had no contact with the Respondent since January 2024, as all of the Applicant's external contractors were

of the view there were no outstanding issues until the written representations were received.

21. She said that the previous issues with the boiler had been resolved. If the Respondent maintained that there had been no heating or hot water in the Property, she would have expected her to have been in touch. Issues would have been reported via the repairs portal which went straight to the maintenance team.

22. Prior to the boiler issues being reported in November 2023, the Respondent had acknowledged that she had substantial rent arrears issues of just under £4000. She had stated at that time, that she would make arrangements to meet the shortfall.

23. If a full Hearing is required, Ms Barclay said that she would need to respond to the Respondent's written submissions.

The Respondent's Position

24. The Respondent is still opposed to both applications. She said that there were still "so many repairs issues". There had been no heating or functioning boiler since January 2024. She said that if the issues were fixed, she would need to come to some sort of arrangement with the Applicant. The Applicant's electrician had been out the previous week, and had told her that there were still urgent electrical issues which required to be repaired in the Property.

25. She said that she had put up with water coming through the ceiling before. This had been fixed, but yet again there was water dripping through the ceiling between the upstairs toilet and the kitchen. She had needed to spend more money to heat the Property because of this, and to dry towels and items used to mop up the excess water. She needed all these issues to be fixed.

26. A new boiler was fitted on 20 August 2024. It had taken from January 2024 until August 2024 for this to be done. Electrical checks have not been carried out. There is a wasp's nest in the gutters, which have not been cleared. The previous tenants' belongings remain in the loft. She said that there were lots of issues which should have been fixed as she had highlighted in her submissions. She should not be expected to pay rent when the Property was unliveable in. It was beyond a tolerable standard.

27. The Respondent said that she had paid the full month's rent for August, September and October 2024. She had also attempted to pay something towards the arrears, but she is only working 20 hours per week. She did not accept the terms of the updated rent statement, and the sums allegedly due by her were disputed. She is still paying a fortune on heating and electricity. The front door does not even shut properly. She confirmed that she had not made a separate application to the Tribunal regarding the repairing standards.

28. Given the disputes between parties, the case will require to proceed to a full Hearing.

29. The Tribunal discussed what witnesses parties envisaged would give evidence. Ms Barclay said that her likely witnesses would be:-

- Mr John Simpson, the Applicant's maintenance engineer.

- Ms Lynn Parker, her colleague at Easton Group.
- Mr Wilson Howie, the relevant gas engineer.

The Respondent said that she would likely give evidence along with;

- Ms Maria Glass, her daughter.
- Ms Hannah Glass, her daughter.
- Edward Glass potentially, although he has had a stroke so he may not be able to attend.

30. The following matters were agreed between parties;

- The terms of the PRT including the rent payable.
- The Notice to Leave was served on the Respondent and the content thereof.
- A new boiler was installed at the Property on 20 August 2024.
- Since August 2024, the Respondent has paid the rent together with an additional amount towards the arrears.

31. Neither party anticipated requiring to lodge any further productions.

32. Separate Directions were issued by the Tribunal regarding witness lists, and further time for the Applicant to respond to the Respondent's written submissions.

33. The case was continued to a full Hearing.

The Hearing 28 January 2025

34. The Hearing took place by teleconference at 10am on 28 January 2025. The date and time of the teleconference hearing was intimated by the Tribunal to both parties. The Hearing was conjoined with the application for a payment order under Chamber Reference FTS/HPC/CV/24/1296.

35. Since the date of the second CMD on 4 November 2024, the Applicant had lodged, as directed a witness list and had responded to the Respondent's submissions. These were copied over to the Respondent.

36. The Respondent had not complied with the Tribunal's Direction, and had not lodged a witness list with the Tribunal.

37. At the Hearing, the Applicant was represented by Ms Ainslie Barclay. The Respondent was not present nor were any of her anticipated witnesses. Two attempts were made by the clerk to contact the Respondent on the telephone number provided by her to the Tribunal, to no avail.

38. Ms Barclay said that in the period of time between the last CMD, and the date of the Hearing, that the Respondent had not communicated with the Applicant at all, except for stating some minor repair work she required to be carried out at the Property. The Applicant's maintenance manager, Mr John Simpson had been due to visit the Property a few days ago to look at the repair issues, but the Respondent had not been present when he called at the pre-arranged time.

39. In the meantime the rent arrears for the Property had continued to accrue. Since the date of the last CMD, the Respondent had made no payments for the month of November 2024. She had paid £540.55 on 20 December 2024. She had paid £141.26 on 22 January 2025. The current rent arrears stand at £7468.81.

40. The Applicant sought an Order for eviction on the basis that the Respondent is in substantial rent arrears. The rent was initially £435 in terms of the PRT. The rent was increased in March 2021 to £445.

41. Ms Barclay said that as far as she was aware, it was only the Respondent who lived in the Property. She believed that the Respondent had been employed in the past, in the care sector, for 20 hours per week. At one point the Respondent had been in receipt of Universal Credit and Housing Benefit. There had been a short period of time, when the Respondent had been paying towards the rent arrears. This had however stopped, and the Applicant was under the impression that the Respondent was no longer in receipt of any Housing Benefit element.

42. Ms Barclay said that the Respondent had been quite difficult to deal with in person as she was aggressive and "stand-offish". This had been confirmed by the Applicant's maintenance manager Mr Simpson. Her communication with the Applicant had not been great. Despite Ms Barclay's colleague e-mailing her frequently, there was not much of a response from the Respondent.

43. The landlord company owns over 10 properties. The fact that the Respondent has accrued such a high level of rent arrears has impacted on the company's financial position. There is a standard security over the Property which has still needed to be paid without the rental income being paid by the Respondent.

Findings in Fact

44. The parties entered into a Private Residential Tenancy Agreement with a commencement date of 23 September 2019.

45. In terms of the rental agreement, the rent payable was initially £435 per month. This was increased in March 2021, to £445 per month.

46. Since the beginning of the tenancy, the Respondent has not maintained prompt and regular payments of the full rental, so that rent arrears have accumulated.

47. By 5 February 2024, the rent arrears were £4,682.09. Today, there are arrears of rental totalling £7468.81.

48. On 5 February 2024, the Applicant served a Notice to Leave on the Respondent in terms of s.50 of the Private Housing (Tenancies) (Scotland) Act 2016.

49. On 15 March 2024, the Applicant submitted this application to the tribunal.

50. The Applicant seeks recovery of possession of the Property in terms Ground 12A of part 3 of schedule 3 to the 2016 Act. The rent arrears are substantial and amount to more than 6 months rent. Ground 12A has been established.

51. The Applicant has complied with the pre-action requirements set out in the Rent Arrears Pre Action-Requirements (Coronavirus) (Scotland) Regulations 2020.

52. The Respondent remains in the Property. She has no dependents. There are no known delays or failures in the payment of benefits which have caused the arrears.

53. It is reasonable to grant an order for repossession of the property.

Reasons for Decision

54. The Tribunal had regard to the application, and the documents lodged by the Applicant and by the Respondent. The Tribunal also took into account the oral submissions and evidence provided at the CMDs on 17 July 2024, and 4 November 2024, and at the Hearing on 23 January 2025.

55. The Tribunal was satisfied that the arrears of rent at the Property amounted to £7468.81 as at the date of the Hearing.

56. The Respondent was in agreement that the Notice to Leave had been properly served on her. The Notice to Leave cited Ground 12A which is a temporary ground of eviction introduced by the Cost of Living (Tenant Protection) (Scotland) Act 2022 ('the 2022 Act'). The temporary grounds introduced by the 2022 Act, do not apply from 31 March 2024. However the Cost of Living (Tenant Protection)(Scotland) Act 2022 (Savings Provisions)Regulations 2024 stipulate that the expiry of the provisions do not affect applications where the eviction notice has been served on one of the temporary grounds before 1 April 2024. The savings provisions apply, and the Tribunal can therefore grant an eviction order based on the temporary ground.

57. The Respondent had attended two earlier CMDs and at no time had suggested that the arrears were in any part due to issues with her benefits. She had maintained throughout this process that she had been withholding rent, due to repairs issues. She maintained that the Property fell below the tolerable standard.

58. The Respondent had not lodged an application to the Tribunal under the repairing standards application procedure, dealing with repairs issues.

59. The Tribunal noted the high level of arrears, which continued to rise, and in particular that no rent had been paid at all, as recently as November 2024 for that entire month. Since the last CMD in November 2024, the Respondent had paid £540.55 on 20 December 2024 and £141.26 on 22 January 2025.

60. The Tribunal took account of the fact that despite suggesting that she had been withholding rent due to a failure by the Applicant to carry out essential repairs, that there was nothing in writing from the Respondent to the Applicant to this effect.

61. The Respondent had not complied with the Tribunal's Direction. She had not lodged a list of witnesses for the Hearing.

62. The Respondent did not attend the Hearing. The Tribunal were satisfied that she had been provided notice in writing of the date and time fixed for the Hearing.

63. The Respondent had been sent a copy of the Applicant's response to her written submissions. She had made no comment on the same, after this was sent out to her by e-mail, on 28 November 2024.

64. The information from the Applicant was that there had been very sparse communication from the Respondent, and that she had failed to allow their maintenance manager entry to the Property, at a pre-arranged time, only a matter of days ago.

65. Prior to the Respondent's written representations to the Tribunal, there had been no communication or written response from the Respondent to the Applicant, since 31 January 2024. There had been no response to the Notice to Leave in February 2024, nor were there any repayment plan attempts made by the Respondent.

66. The Respondent had acknowledged her substantial rent arrears in November 2023, when the Applicant had contacted her by e-mail in an attempt to resolve the rent arrears, which at that time amounted to £3,818.78. The Respondent had not disputed the amount, and stated that she would make arrangements to pay the 'shortfall'. She did not communicate any issues or concerns at that time.

67. Following the submission made by the Respondent to the Tribunal on the 12th of July 2024, where the boiler issue was highlighted, arrangements were made for an external gas engineer to attend the Property and a new boiler was installed.

68. With regards to the other repairs mentioned by the Respondent, the only issues that were reported to the Applicant's maintenance team were issues relating to the skirting boards, which were measured up and had not yet been addressed as they were not urgent, and the leak under the sink, which was resolved by the Applicant's maintenance team on the day it was reported. All other repairs that had been mentioned by the Respondent in her submissions were never formally lodged with the Applicant's maintenance team, and as a result, they would not have known about, or been able to resolve, them.

69. Having taken the foregoing factors into account the Tribunal determined that on balance it was reasonable to grant an 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.

Yvonne McKenna

28 January 2025

Legal Member/Chair

Date