



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/24/1699

Property at 1 De Walden Terrace, Kilmarnock, KA3 7AY (“the Property”)

Parties:

Mrs Ann Adams or Spence, 9 Holmlands Place, Kilmarnock, KA1 1UT (“the Applicant”)

Ms Moleen Omar, Mr Imran Khan (SBA), 1 De Walden Terrace, Kilmarnock, KA3 7AY; 1 De Walden Terrace, Kilmarnock, KA3 7AY (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Helen Barclay (Ordinary Member)

Decision - in absence of the Respondents

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

Background

- 1.** The Applicant seeks an eviction order on ground 12A of schedule 3 of the 2016 Act. A CMD took place on 19 August 2024. The Applicant was represented by Mr Haswell. The First Respondent was represented by Mr Anderson. The parties did not attend, and the Second Respondent was not represented.
- 2.** Following the CMD, the Tribunal continued the case to a hearing by telephone conference call. This was scheduled for 24 January 2025 at 10am. Prior to the hearing the Applicant submitted an updated rent statement. Thereafter both the Applicant and First Respondent submitted further documents although both were late in terms of the Procedure Rules. The First Respondent’s representative also notified the Tribunal that the First Respondent had advised him that she was unable to attend due to health problems. He was unable to provide medical evidence.

3. The hearing took place on 24 January 2025. The Applicant was represented by Mr Haswell. The Applicant and her daughter initially joined the call but then left when the clerk advised that witnesses could not be present until it was time to hear their evidence. Mr Anderson participated. Neither Respondent joined the call.
4. Mr Anderson advised the Tribunal that he had been unable to speak again to the First Respondent, since she notified him that she was unable to attend. She had given him a recent soul and conscience certificate, but it related to jury service and not the hearing. As far as Mr Anderson was aware, the application was still opposed. However, if the hearing was proceeding, he would require to withdraw from acting as he did not have full instructions.
5. The Legal Member advised the parties that the Tribunal had identified a number of issues which required to be addressed before the hearing can proceed.
 - (a) Service of the applications on the Second Respondent. The Tribunal noted that the applications had been deposited at the property by Sheriff Officer in relation to both Respondents. However, the first Respondent had lodged submissions which state that he did not reside there and that he moved out following an assault on her. The submission goes on to state that his whereabouts are unknown. Mr Anderson confirmed that this is what Ms Omar told him. Mr Haswell said that the Applicant and her letting agent were not aware of this and could not confirm whether he is at the property or not.
 - (b) The update rent statement submitted was not accurate. It contained arithmetical errors, and the running and final totals were clearly incorrect.
 - (c) Both parties had lodged documents late. As these were only received two days before the hearing, it could not be established that they were received by Mr Khan before the hearing, even if he was still resident at the property.
 - (d) The Applicant had not provided any evidence of compliance with the Rent Arrears Pre Action Protocol. Mr Haswell said that he is sure that the relevant letters were issued to the parties, but he will require to contact the letting agent to obtain them.
6. The Legal Member advised the parties that the hearing would require to be adjourned, principally due is the issue of service on Mr Khan. However, the other issues also required to be addressed. The Tribunal indicated that the first Respondent's absence was not a reason for the case to be adjourned and should she fail to attend on the next occasion, the hearing would proceed in her absence unless a postponement was granted.

7. Following the hearing, the Tribunal issued a direction to the parties.
8. The parties were notified that a further hearing by telephone conference call would take place on 20 March 2025 at 10am. The Second Respondent was notified by post to the property address, email and by advertisement on the Chamber website. Prior to the hearing the Applicant provided a response to the direction. She lodged an updated rent statement and a series of letters in terms of the rent arrears pre action protocol. Shortly before the start of the hearing the First Respondent's representative submitted a soul and conscience certificate from her GP stating that she was ill and unable to attend. He also submitted email correspondence with the Local Authority indicating that the First Respondent had been offered accommodation which should be available within a week or so.
9. The hearing took place on 20 March 2025. The Applicant participated together with her son and daughter, Mr and Ms Adams. They were represented by Mr Haswell. Mr Anderson participated but the Respondent was not present.

The Hearing

10. The Legal Member advised the Applicant of the late submissions. Mr Anderson advised that he had not been instructed to seek a postponement and did not think this was required. However, although he recently met with the Respondent, her instructions in relation to the applications were not clear and he could not confirm whether they are still opposed or otherwise. However, the Respondent has been offered alternative accommodation by the Council which should be available for occupation within a few days. Mr Anderson said that he had asked the Respondent to provide evidence of rent payments, as stipulated in the direction, but she had not done so and the information given to him kept changing. In relation to the eviction application, he said that the household still comprises the Respondent and her four children and the Council accommodation offered is for all five of them. Although he had previously indicated that the Second Respondent had previously lived at the property, recent information from the Respondent suggests otherwise. The couple are estranged, and she has confirmed that his whereabouts are still unknown.
11. Ms Adams told the Tribunal that she manages the property for her mother, the Applicant. She said that the sum specified in the updated rent statement is still outstanding and there has been no contact with the Respondent. The property is the Applicant's former family home. When she re-married, she moved to live with her husband and rented the property out. However, her husband is terminally ill, and it is her intention to move back in to the property, with Ms Adams. The property is mortgage free, but the Applicant will require to spend a considerable sum re-instating it as a result of damage caused by recent storms and by the Respondent. The Applicant does not own any other properties.

Findings in Fact

12. The Applicant is the owner and landlord of the property.
13. The Respondents are the tenants of the property in terms of a private residential tenancy agreement.
14. The Respondents are due to pay rent at the rate of £1100 per month.
15. The Respondents have been in arrears of rent since December 2022. No payments have been made to the rent account since June 2023.
16. The Respondents currently owe the sum of £23,800 in unpaid rent.
17. The Applicant served a Notice to leave on the Respondents on 12 January 2024.
18. The Applicant has issued information to the Respondents in compliance with the Rent Arrears Pre action Protocol.
19. The First Respondent has been offered alternative accommodation by the Local Authority, and it will be available for occupation within a short period of time.
20. The Applicant intends to move back into the property when it becomes vacant although she will require to carry out repairs to it before she will be able to do so.

Reasons for Decision

21. The application was submitted with a Notice to Leave dated 12 January 2024, together with Sheriff Officer certificates of service which establish that the Notice was served on 16 January 2024. The Notice states that an application to the Tribunal is to be made on ground 12A, substantial rent arrears.
22. The application to the Tribunal was made after expiry of the notice period. The Tribunal is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a Section 11 Notice with evidence that it was sent to the relevant Local Authority. The Tribunal is therefore satisfied that the Applicant has complied with Section 56 of the 2016 Act.
23. Section 51(1) of the 2016 Act states, "The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies."

24. Ground 12A of Schedule 3 states “(1) It is an eviction ground that the tenant has substantial rent arrears (2) The First-tier Tribunal may find that the ground named in 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 in accordance with section 52(3), and (c) the Tribunal is satisfied that it is reasonable to issue an eviction order.”
25. Sub-Paragraph (2) states, “In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider - (a) whether the tenant’s 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, and (b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers.....” Relevant benefits are defined in sub-paragraph (4) and include housing benefit and universal credit. The Pre Action-Requirements Regulations include the provision of clear information relating to the terms of the tenancy agreement, the level of the arrears, the tenant’s rights in relation to eviction proceedings and how the tenant can access information and advice.
26. From the documents submitted and the information provided at the Hearing, the Tribunal is satisfied that the Respondents currently owe the sum of £23,800. The application is based on ground 12A, a temporary ground which has been repealed, but was in force at the date of service of the Notice. The Tribunal is satisfied that the Respondents owed rent of £8,400 at the date of service of the Notice, which was more than six months rent. Ground 12A 2(a) and (b) are therefore established.
27. The Tribunal proceeded to consider whether it would be reasonable to grant the order and noted the following: -
- (a) The Tribunal is satisfied that the Applicant has complied with the Rent Arrears Pre-Action Protocol. The Applicant submitted a series of letters which contain the information required in terms of the protocol.
 - (b) The Tribunal is also satisfied that there is no evidence that the arrears are attributable to a delay or failure in the payment of a relevant benefit. The Respondents did not participate in the hearing and did not provide any information or evidence about the cause of the arrears.
 - (c) The arrears are substantial, and the Respondents have made no rental payments since June 2023
 - (d) The Applicant intends to return to reside at the property.
 - (e) The First Respondent has been offered alternative accommodation by the Local Authority which will shortly be available for occupation by her.

(f) The Second Respondent did not participate in the process and the Tribunal has no information about him. The first Respondent told her representative that he does not live at the property and that his current whereabouts are unknown. This has not been vouched, and no evidence was heard which established it to be the case. However, as he has not opposed the application, or provided any information about his circumstances, the Tribunal is satisfied that they do not have to consider the possible impact of the order on him. If he does not reside at the property, then eviction will have no impact.

28. The Tribunal concludes that the Applicant has complied with the requirements of the 2016 Act that ground 12A has been established. For the reasons outlined in paragraph 27, the Tribunal is also satisfied that it would be reasonable to grant the order for eviction.

Decision

29. The Tribunal determines that an eviction order should be granted against the Respondents.

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.

J Bonnar

Josephine Bonnar, Legal Member

20 March 2025