

Housing and Property Chamber
First-tier Tribunal for Scotland



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/24/3956

Re: Property at 40 Eton Avenue, Dunoon, PA23 8DG (“the Property”)

Parties:

Culmore Investments Ltd, 36 Washington Street, Glasgow, G3 8AZ (“the Applicant”)

Mr Douglas Wilson, 40 Eton Avenue, Dunoon, PA23 8DG (“the Respondent”)

Tribunal Members:

Martin McAllister (Legal Member) and Elaine Munroe (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order against the Respondent be granted.

Background

1. This is an application for recovery of the Property. The application is dated 7 August 2024. The Applicant is seeking recovery under Ground 12, Part 3 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016. This ground states that it is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. The date and time of the Hearing was intimated to parties who were given the opportunity to make written representations and/or lodge productions.

Preliminary Matters

2. The case management discussion was held by audio conference on 7 April 2025. Mr Kenneth Caldwell, solicitor, represented the Applicant. The

Respondent was present. The Legal Member outlined the purpose of a case management discussion and the terms of Rule 17 of the Chamber Rules:

Case management discussion

17.— (1) The First-tier Tribunal may order a case management discussion to be held—

(a) in any place where a hearing may be held;

(b) by videoconference; or

(c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

(a) identifying the issues to be resolved;

(b) identifying what facts are agreed between the parties;

(c) raising with parties any issues it requires to be addressed;

(d) discussing what witnesses, documents and other evidence will be required;

(e) discussing whether or not a hearing is required; and

(f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision

3. Both parties had submitted written representations.

4. Prior to the case management discussion, Mr Caldwell had submitted an updated rent statement showing the rent outstanding to be £13000 with the calculation of rent due to 11 January 2025. Mr Caldwell confirmed that this reflected the current level of rent arrears. He said that there had been a change of letting agent and that the Respondent had made payment of the current rent payments from February 2025.

5. The Respondent said that he had no issue with the accuracy of the rent statement which had been submitted and he accepted that there are rent arrears of £13000. He said that, at one point, he had thought that the Property had been sold and had been uncertain at that point where to make rental payments. He accepted that he had misunderstood the position and he confirmed that, for that period, he had not set aside the rent to be paid once he was clear on where rent was to be paid.
6. Mr Caldwell confirmed that the Applicant was seeking an order of eviction on the ground that the Respondent has been in rent arrears for three or more consecutive months as evidenced by the rent statement which had been submitted. He confirmed that the current monthly rental was £13000.
7. The Respondent said that he accepted that the ground for eviction was met but that his position was that it was not reasonable to grant the order of eviction.
8. Parties acknowledged that there was no reason for a Hearing to be fixed and that the matter could be dealt with at the case management discussion.

Documents before the tribunal

- 8.1 Copy of the private residential tenancy agreement for the Property dated 8 October 2020 showing the commencement of the tenancy to be 11 October 2020 and the monthly rent to be £550. The tenancy agreement showed the tenant to be the Respondent.
- 8.2 Copy rent statement from 11 October 2020 showing the rent outstanding on 11 May 2024 to be £8600.
- 8.3 Copy rent statement from 11 October 2020 to 11 January 2025 showing the rent outstanding to be £13000.
- 8.4 Notice to Leave dated 29 May 2024 and delivered by email on the same day.
- 8.5 Notice to the local authority in terms of Section 11 of The Homelessness etc. (Scotland) Act 2003 dated 5th August 2022.
- 8.6 Print of Title Sheet for ARG25518 (the Property).

Findings in Fact

9.1 The Applicant is the owner of the Property.

9.2 The Applicant and the Respondent entered into a Private Residential Tenancy Agreement for the Property on 8 October 2020.

9.3 The start date for the tenancy was 11 October 2020.

9.4 The initial monthly rent for the Property was £550 per month and is currently £550.

9.5 The Applicant gave the Respondent Notice to Leave which was served on him on 29 May 2024.

9.6 The Applicant has given notice to the local authority in terms of Section 11 of the Homelessness etc. (Scotland) Act 2003.

9.7 The Respondent resides at the Property.

9.8 There are currently rent arrears of £13000.

9.9 On 29 May 2024, there were rent arrears of £8600.

Findings in Fact and Law

10.1 The Private Residential Agreement dated 8 October 2020 contains eviction grounds including Ground 12: "It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months."

10.2 The Notice to Leave which was dated 29 May 2024 referred to Ground 12 which is being relied on by the Applicant as the reason for seeking recovery of the Property.

10.3 The Notice to Leave indicated that any proceedings for eviction would not be commenced prior to 29 June 2024.

10.4 As at the date of the case management discussion, the Respondent is in rent arrears for three or more consecutive months.

The Law

The following are provisions of the Private Housing (Tenancies) (Scotland) (Act) 2016

Section 51: First-tier Tribunal's power to issue an eviction order

(1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

(introduced by section 51)

Schedule 3, Part 12

Rent arrears

12(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—

(a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant—

(i) is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day, and

(ii) has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, and

(b) the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

(3) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

- (a) for three or more consecutive months the tenant has been in arrears of rent, and*
- (b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.*

(4) In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

(5) For the purposes of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the [Housing Benefit \(General\) Regulations 1987 \(S.I. 1987/1971\)](#),

(ii) a payment on account awarded under regulation 91 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.

Evidence and Submissions

11. The tribunal had regard to the documentation which had been lodged by the Applicant.

12. The rent statements showed that there are arrears of rent amounting to £13000 and that arrears of rent have continued for a period in excess of three months and started in 2022.

13. The Respondent did not dispute that the eviction ground was met.

14. The Respondent explained the personal difficulties he had experienced. His parents had died and his marriage had broken down. He said that he took to drinking alcohol and smoking to excess. He said that he had been diagnosed with various health issues. He said that he had spent money frivolously and that "things had got on top of him." He said that his employer had been supportive, that occupational health had been involved and that it had arranged counselling which had assisted

him greatly. He confirmed that non- payment of rent was due to his failure rather than any issue with state benefits. He confirmed that he had been employed during the whole period where the arrears had accrued.

15. The Respondent said that he had been hampered in his attempts to apply for social housing because he had not received a "Notice to Quit." It was pointed out to him that this had been emailed to him on 29 May 2024 and that the Tribunal papers had been served on him by Sheriff Officer on 25 February 2025 and that these would have contained a copy of the application and the relevant paperwork including the Notice to Leave. The Respondent conceded that he had overlooked this.

16. The Respondent said that he had offered to repay the arrears at £100/£150 per month. He said that there was already an earnings attachment on his wages and that, for the moment, this was all he could afford. He said that it would be his intention to try and increase this once his financial position was more settled.

17. The Respondent said that he has three daughters: an eighteen year old and sixteen year old twins. He said that the Property has three bedrooms and that his children stay with him on a "fifty/fifty basis."

18. The Respondent said that he was a civil servant and that, because of the individuals he dealt with in his work, it was not everywhere that would be suitable for housing.

19. Mr Caldwell said that it was to the Respondent's credit that he had started paying rent and had made approaches to him with regard to paying off the arrears. Mr Caldwell said that the Applicant had not increased the rent in four and a half years of the tenancy's existence but that he would be entitled to do so. Taking this into account with the level of rent arrears, he said that it was reasonable for the order of eviction to be granted because of the length of time that it would take for them to be paid. He said that the Respondent had told him that he had credit card debts of £7000 and that there was no certainty that the arrears could be paid in a reasonable timeframe.

20. Mr Caldwell submitted that, whilst, the tribunal may consider that determination of the application be adjourned to a Hearing, there were no disputed facts. He said that, in respect of the Applicant, there was no further evidence which could be led.

21. The Respondent said that he accepted that there are more than three months of rent arrears. He said that he had provided the tribunal with all the information he could and that he had no evidence which he would want to lead at a Hearing.

Discussion and Reasons

22. The tribunal had regard to the documentation which had been lodged by the Applicant.

23. The rent statements showed that there have been arrears of rent since November 2022.

27. The Respondent did not dispute that the eviction ground was met because he accepted the level of rent arrears stated by the Applicant.

28. The documentation lodged by the Applicant evidenced that appropriate notice had been given to the Respondent and that the appropriate intimation had been given to the local authority in terms of the Homelessness etc. (Scotland) Act 2003.

29. The tribunal considered if the requirements of Ground 12 were met. There clearly was arrears of more than three months and the Respondent had been in arrears since 2022.

30. In considering whether or not it is reasonable to grant the order of eviction sought by the Applicant, the tribunal had to carry out a balancing exercise after considering the respective positions of the parties.

31. The Applicant had not received payment of rent which it was contractually entitled to receive. Although the Respondent had resumed payment of rent in February 2025, there seemed no certainty that this would continue in any substantive manner.

32. The Respondent had experienced health and other issues and clearly required a home to enable him to accommodate his children.

33. The tribunal was required to balance the Applicant's position against that of the Respondent. It accepted that the Applicant was and is suffering financially as a result of the non-payment of rent and was entitled to recover the Property.

34. Weighing matters, the tribunal considered that it was reasonable to grant the order of eviction.

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order of eviction be granted.

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.

Martin McAllister

Legal Member

Date: 7 April 2025