



**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/24/3985

Re: Property at 28 Torridon Walk, Livingston, EH54 5AT (“the Property”)

Parties:

**Omoshlewa Aluko, Ibikunle Ayodele Aluko, 1 Carnethy Walk, Murieston,
Livingston, West Lothian, EH54 9FW (“the Applicant”)**

**Maciej Woziwda, Dominika Gruchala, 28 Torridon Walk, Livingston, EH54 5AT
 (“the Respondent”)**

Tribunal Members:

Ruth O'Hare (Legal Member) and Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) determined that the provisions of ground 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) had been met and it would be reasonable to make an eviction order on account of the facts in this case.

The tribunal therefore made an eviction order under section 51 of the 2016 Act.

Background

- 1** This is an application for an eviction order under section 51 of the 2016 Act and Rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”). The Applicants relied upon ground 12 of schedule 3 of the 2016 Act as the ground for possession, citing outstanding rent arrears.
- 2** The application was referred to a case management discussion (“CMD”) to take place by teleconference on 1 April 2025. The tribunal gave the parties notification of the CMD in terms of Rule 17(2) of the Rules. The Respondents received notification by sheriff officers on 21 February 2025.

- 3 Both parties were given the opportunity to make written representations in advance of the CMD. On 10 March 2025 Mr Woziwoda submitted a response to the application on behalf of the Respondents. On 18 March 2025 the Applicant's representative, Bannatyne Kirkwood France & Co, submitted an updated rent statement.

The CMD

- 4 The CMD took place by teleconference on 1 April 2025. Mr Jackson Dean of Bannatyne Kirkwood France & Co represented the Applicants. Mr Woziwoda represented the Respondents.
- 5 The tribunal had the following documents before it:-
- (i) Form E application form dated 27 August 2024 and paper apart;
 - (ii) Excerpt from the online landlord register confirming the Applicants' landlord registration;
 - (iii) Title sheet MID63239;
 - (iv) Private residential tenancy agreement dated 15 October 2021;
 - (v) Notice to leave dated 28 June 2024 and proof of delivery by email;
 - (vi) Rent statement up to August 2024;
 - (vii) Rent increase notice dated 3 July 2023;
 - (viii) Section 11 notice to West Lothian Council and proof of delivery by email;
 - (ix) Copy correspondence from the Applicant's letting agent to the Respondents in compliance with the rent arrears pre-action protocol;
 - (x) The Respondents' written response to the application; and
 - (xi) Rent statement up to March 2025.
- 6 The tribunal explained the purpose of the CMD and asked parties for their submissions on the application. For the avoidance of doubt the following is a summary of the key elements of the discussion relevant to the tribunal's determination of the application, and does not consist of a verbatim account.
- 7 Mr Dean moved the tribunal to make an eviction order under section 51 of the 2016 Act and ground 12 of schedule 3. He confirmed that the Respondents had been in arrears for three or more consecutive months. They had fallen into arrears in December 2023. The current balance of arrears was £5019.75. Mr Dean explained that the Applicants had sent letters to the Respondents in accordance with the rent arrears pre-action protocol. It was reasonable to make an eviction order. The local authority would be obliged to offer the Respondents emergency accommodation if an eviction order was granted. The Respondents had known about the Applicants' intentions since last June. In response to questions from the tribunal, Mr Dean confirmed that the notice to leave had been sent to the Respondents by email on 28 June 2024. The Applicants owned three other rental properties. Mr Dean was unaware of their intentions regarding the property. The Applicants had a mortgage over the property with around £13,000 outstanding.

- 8 Mr Woziwda advised that he had made a payment towards the rent account that day, which would have reduced the balance to £4016.25. He felt the Applicants' letting agent had behaved unprofessionally. He and his family had been left for six months without heating and hot water. The letting agent refused to answer emails. However, Mr Woziwda explained that the Respondents wanted to leave the property. They did not want to have any further dealings with the letting agent. Ms Gruchala suffered from depression and was unable to work. The Respondents were therefore seeking rehousing with the local authority. The local authority had told them to get in touch following the Tribunal's decision. The making of an eviction order would assist in progressing their housing application. Mr Woziwda confirmed that the property was a four bedroom property, however they were looking for a two bedroom property. The Respondents resided with their son aged 5. Mr Woziwda and his son did not have any health problems. Mr Woziwda was the sole earner in the household and was employed as a tattoo artist. He explained that it would be more beneficial to the Respondents to be rehoused by the local authority, as he would be able to pay off the rent arrears faster.
- 9 The tribunal adjourned the CMD to deliberate, at which point parties left the call, before resuming the discussion and confirming its decision.

Relevant legislation

- 10 The Tribunal considered the following provisions of the Private Housing (Tenancies) (Scotland) Act 2016:-

Private Housing (Tenancies) (Scotland) Act 2016

1 - Meaning of private residential tenancy

1) A tenancy is a private residential tenancy where—

(a) the tenancy is one under which a property is let to an individual ("the tenant") as a separate dwelling,

(b) the tenant occupies the property (or any part of it) as the tenant's only or principal home, and

(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

(2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

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.

52 Applications for eviction orders and consideration of them

(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—

(a) subsection (3), or

(b) any of sections 54 to 56 (but see subsection (4)).

(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.

(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—

(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or

(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

54 Restriction on applying during the notice period

(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.

(2) The relevant period in relation to a notice to leave—

(a) begins on the day the tenant receives the notice to leave from the landlord, and

(b) in the case of a notice served before 3 October 2020 expires on the day falling—

(i) 28 days after it begins if subsection (3) applies,

(ii) three months after it begins if subsection (3A) applies,

(iii) six months after it begins if neither subsection (3) nor (3A) applies.

(c) in the case of a notice served on or after 3 October 2020, expires on the day falling—

(i) 28 days after it begins if subsection (3B) applies,

(ii) three months after it begins if subsection (3C) applies,

(iii) six months after it begins if neither subsection (3B) nor (3C) applies

(3) This subsection applies if the only eviction ground stated in the notice to leave is that the tenant is not occupying the let property as the tenant's home. [ground 10]

(3A) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the tenant has a relevant conviction, [ground 13]

(iv) that the tenant has engaged in relevant anti-social behaviour, [ground 14]

(v) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour, [ground 15]

(vi) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(vii) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, [ground 17] or

(b) the only eviction grounds stated in the notice to leave are—

(i) the eviction ground mentioned in subsection (3), and

(ii) an eviction ground, or grounds, mentioned in paragraph (a)

(3B) This subsection applies if the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(a) that the tenant is not occupying the let property as the tenant's home, [ground 10]

(b) that the tenant has a relevant conviction, [ground 13]

(c) that the tenant has engaged in relevant anti-social behaviour, or [ground 14]

(d) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour. [ground 15]

(3C) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(iv) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or [ground 17]

(b) the only eviction grounds stated in the notice to leave are—

(i) an eviction ground, or grounds, mentioned in subsection (3B), and

(ii) an eviction ground, or grounds, mentioned in paragraph (a).

62 Meaning of notice to leave and stated eviction ground

(1) References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,

(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.

(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.

Schedule 3, Part 12

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)

(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—

(a) 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, and

(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations.

(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.

(6) Regulations under sub-paragraph (4)(b) may make provision about—

(a) information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),

(b) steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,

(c) such other matters as the Scottish Ministers consider appropriate.”

Findings in Fact

- 13.** The Applicants are the owners of the property. The Applicants are both registered landlords.
- 14.** The Applicants and Respondents entered into a tenancy agreement in respect of the property, which commenced on 18 October 2021.
- 15.** The tenancy between the parties was a private residential tenancy as defined by section 1 of the Private Housing (Tenancies) (Scotland) Act 2016.

16. In terms of Clause 8 of the said tenancy agreement the Respondents undertook to make payment of rent at the rate of £975 per calendar month.
17. The Applicants sent the Respondents a rent increase notice under section 22(1) of the 2016 Act on 3 July 2023, which increased the rent to £1004.25 per calendar month from 18 October 2023.
18. The Respondents began to accrue rent arrears in December 2023.
19. On 28 June 2024 the Applicant's letting agent sent the Respondents a notice to leave citing ground 12 of schedule 3 of the 2016 Act. The notice to leave stated that proceedings for possession would not commence any earlier than 29 July 2024. The notice to leave was sent by email to both Respondents.
20. In terms of Clause 4 of the said tenancy agreement the Respondents consented to the use of email for the delivery of notices under the 2016 Act and in relation to the tenancy agreement.
21. At the time the notice to leave was sent rent arrears in the sum of £4016.25 were outstanding.
22. On or around 27 August 2024 the Applicant's representative, Bannatyne Kirkwood France & Co, emailed West Lothian Council with a notice under section 11 of the Homelessness etc (Scotland) Act 2003 intimating that proceedings would be raised against the Respondent for recovery of the property.
23. The rent arrears are not known to be due to any failure or delay in the payment of a relevant benefit.
24. The Applicant's letting agent has written to the Respondents informing them of the arrears and their rental obligations, has offered to enter into payment plans regarding the rent and arrears, and has directed the Respondents to agencies for advice and support.
25. The Applicants have a mortgage over the property with approximately £13,000 outstanding.
26. The Respondents reside in the property with their son, aged 5.
27. The first named Respondent is employed as a tattoo artist. The second named Respondent is unable to work due to depression.
28. The Respondents have approached the local authority with a view to rehousing. The Respondents have been told that an eviction order will assist in progressing their housing application.

Reasons for Decision

29. The tribunal was satisfied it had sufficient information before it to make relevant findings in fact and reach a decision on the application having regard to the application paperwork and the submissions heard at the CMD. In terms of Rule 17(4) and Rule 18(1) of the Rules the tribunal determined that it could make a decision at the CMD as there were no issues to be resolved that would require a hearing and the tribunal was satisfied that to make a decision would not be contrary to the interests of the parties.
30. Based on the application paperwork the tribunal was satisfied that the tenancy between the parties was a private residential tenancy, and that the Respondents had both been given a notice to leave that complied with the provisions of the 2016 Act. The tribunal was also satisfied that the Applicants had given the local authority notice under section 11 of the Homelessness etc (Scotland) Act 2003. The tribunal therefore considered whether ground 12 of schedule 3 of the 2016 Act had been met in this case.
31. The tribunal was satisfied based on the rent statement produced by the Applicant, and the submissions from the parties at the CMD, that the rent account had been in arrears for three or more consecutive months. Whilst there was some dubiety over the outstanding arrears figure, Mr Woziwda had confirmed that at least £4016.25 was due. The tribunal therefore considered whether it was reasonable to make an eviction order on account of the facts in this case, which required the tribunal to identify those factors relevant to reasonableness and determine what weight to give to them.
32. The tribunal was satisfied that the Applicants had complied with the rent arrears pre-action protocol, having considered the correspondence sent from the Applicants' letting agent to the Respondents. There was no evidence before the Tribunal to suggest that the arrears were a result of any failure or delay in the payment of a relevant benefit.
33. The tribunal had regard to the history of the rent account in this case. The arrears had increased because of sporadic payments of rent by the Respondents. Whilst the tribunal noted that the Respondents had raised issues regarding disrepair that they stated had not been addressed, they had not sought to rely upon this as a defence to the application, having confirmed to the tribunal that they did not oppose an eviction order. It appeared that the property, being a four bedroom property, was simply no longer suitable, nor affordable, for the Respondent's family. The arrears were now significant, and the Applicants had ongoing mortgage commitments, which would likely have been impacted by the non-payment of rent. These were all factors to which the tribunal gave significant weight.
34. The tribunal carefully considered the Respondents' circumstances. Whilst the tribunal had concerns about the impact of eviction on the Respondents and their son, the tribunal gave most weight to the Respondents' position regarding the application. They did not oppose an eviction order because they were seeking rehousing with the local authority, and the making of an eviction order

would help them in that regard. The tribunal also took into account the advice they had received from the local authority about the impact of the eviction order, and the duties the local authority would have towards them in terms of providing assistance.

35. Taking the above into account as factors relevant to the issue of reasonableness, the tribunal concluded that the balance weighed in favour of making an eviction order in this case and that ground 12 had been met. The tribunal therefore made an eviction order.

36. The decision of the tribunal was unanimous.

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.

Ruth O'Hare

Ruth O'Hare
Legal Member

1 April 2025
Date