



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/24/4734

Re: Property at 15 Ruthvenvale Terrace, Auchterarder, PH3 1DW (“the Property”)

Parties:

Patricia MacGillivray, 9 Orchil Crescent, Auchterarder, PH3 1NA (“the Applicant”) and

Jamie McColl, 15 Ruthvenvale Terrace, Auchterarder, PH3 1DW (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application could be decided without a Hearing and issued an Eviction Order against the Respondent.

Background

1. By application, dated 14 October 2024, the Applicant sought an Order for Possession of the Property under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Ground relied on was Ground 12 of Schedule 3 to the 2016 Act, namely that the Respondent has been in rent arrears for three or more consecutive months.
2. The application was accompanied by copies of a Private Residential Tenancy Agreement between the Parties commencing on 6 May 2022 at a rent of £550 per month, a Notice to Leave, dated 6 September 2024, advising the Respondent that the Applicants were seeking an Eviction Order under Ground 12 of Schedule 3 to the 2016 Act and that an application to the Tribunal would not be made before 8 October 2024, and a Rent Statement showing arrears as at the date of the application of £1,575. Rent payments for March, June and July 2024 had not been made. The Applicant’s agents also provided a copy of a pre-action protocol email to the Respondent of 23 May 2025, which suggested working towards a payment plan and gave

details of sources of potential advice and assistance. They produced a further Rent Statement on 25 March 2025, showing arrears of £3,150. Payments for August and November 2024 and March 2025 had not been made.

3. On 3 March 2025, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 24 March 2025. The Respondent did not make any written representations to the Tribunal.
4. On 19 March 2025, the Applicant's agents made submissions as to why it would be reasonable to grant an Eviction Order. They understood that the Respondent is in full-time employment and were not aware of any disabilities or vulnerabilities. He had failed to respond to messages left for him on 7 March 2025 in connection with attempts made by Perth & Kinross Council to contact him about his housing situation and address the ongoing arrears position and for the need for a contractor to attend the Property to carry out a gas inspection. The Applicant is a commercial landlord. There is a mortgage over the Property of £43,000 with monthly repayments of £300.37. The Applicant is, therefore, making a continued financial loss on the Property, while the Respondent fails to make payments of rent or to engage with the Applicant, who is also concerned that his unwillingness to allow access to the Council or to contractors suggests that he might have sub-let the Property. In all the circumstances, it would be wholly reasonable to grant an Eviction Order.

Case Management Discussion

5. A Case Management Discussion was held by means of a telephone conference call on the afternoon of 7 May 2025. The Applicant was represented by Mr David Gray of Gilson Gray, solicitors, Edinburgh. The Respondent was not present or represented.
6. The Applicants' representative told the Tribunal that no payments had been received since the date of the Rent Statement provided on 25 March 2025 and that the arrears now stand at £4,200. The Respondent was still living in the Property on his own and was believed to be in employment. No part of his rent was being paid from Universal Credit. He had, however, refused to engage with the Applicant or with Perth & Kinross Council's Housing Support Officer to address the arrears or resume payment of the rent. The Applicant runs the Property as a commercial entity and is consistently losing money with no rent coming in.

Reasons for Decision

7. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

8. Section 51 of the 2016 Act states that the 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.
9. Ground 12 of Schedule 3 to the Act states that it is an Eviction Ground that the tenant has been in rent arrears for three or more consecutive months and that the Tribunal may find that Ground 12 applies if, at the beginning of the day on which the Tribunal first considers the application for an Eviction Order on its merits, the tenant 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 has been in in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, and the Tribunal is satisfied that it is reasonable on account of that fact to issue an Eviction Order. In deciding 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 and the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations.
10. The Tribunal was satisfied that the Respondent has been in rent arrears for three or more consecutive months and that the current arrears exceed one month's rent. No evidence had been presented to indicate that the Respondent's being in arrears might be wholly or partly a consequence of a delay or failure in the payment of a relevant benefit. The Tribunal was also satisfied that the pre-action protocol had been complied with.
11. The Tribunal noted that the Applicant is paying £300.37 in mortgage repayments and that the rent is now 8 months in arrears. The Respondent did not make any written representations to the Tribunal and did not appear or arrange to be represented at the Case Management Discussion, so did not provide details of any personal or other circumstances he would wish the Tribunal to take into account in deciding whether it would be reasonable to issue an Eviction Order against him. He had also not taken the opportunities afforded to him to engage with the Applicant or the local authority regarding his housing situation and the rent arrears.
12. Having considered carefully all the evidence before it, the Tribunal decided that it would be reasonable to issue an Eviction Order under Ground 12 of Schedule 3 to the 2016 Act.
13. The Tribunal's Decision 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.

George Clark

Legal Member/Chair

7 May 2025
Date