

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 and Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/EV/22/3986

Re: Property at 59 Hillside, Houston, PA6 7NT (“the Property”)

Parties:

Mrs Fiona Siddall, 14 Ludwig Van Beethoven, Porta D'Orba, Orba, 03790, Spain (“the Applicant”)

Mr Nigel Siddall, 14 Ludwig Van Beethoven, Porta d'Orba, Orba, Spain, 03790, Spain (“the Applicant’s Representative”)

Miss Jordan Clark, 59 Hillside, Houston, PA6 7NT (“the Respondent”)

Tribunal Members:

Ms. Susanne L. M. Tanner K.C. (Legal Member)

Ms. Elizabeth Currie (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”):

(1) was satisfied that Ground 12A in Schedule 3, Part 3 to the 2016 Act was established by the Applicant, in that on the day the tribunal considered the application for an eviction on its merits the Respondent was in substantial rent arrears exceeding an amount equivalent to six months’ rent; that rent arrears were not wholly or partly a consequence of a delay or failure in payment of a relevant benefit; that the Applicant has complied with the pre-action protocol prescribed by the Scottish Ministers; and that it was reasonable to make an order for eviction in the circumstances of the case; and made an order for eviction in terms of Section 51 of the 2016 Act;

(2) The decision of the tribunal was unanimous.

Statement of Reasons

Procedural Background

1. The Applicant's Representative made an application to the tribunal on 29 October 2022 in terms of Section 51 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act") and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules").
2. A Case Management Discussion (CMD) took place on 14 March 2023, which proceeded in the absence of the Respondent. During the Case Management Discussion, the Applicant's Representative amended the Application to proceed in the name of the Applicant, who is the registered proprietor of the Property. Notes of the Case Management Discussion were issued to both parties after the Case Management Discussion.
3. Following the CMD, the Applicant amended the Application to seek the Respondent's eviction from the Property under Section 51 of the 2016 Act on Ground 12A of Schedule 3 to the 2016 Act.
4. The Applicant provided the following documents in support of the amended Application:
 - 4.1. Private Residential Tenancy Agreement;
 - 4.2. Section 11 Notice, with proof of service;
 - 4.3. Rent statements, the most recent of which dated 9 May 2023 shows arrears to 31 May 2023;
 - 4.4. Notice to Leave for Ground 12A dated 20 March 2023, with proof of service by Sheriff Officers.
 - 4.5. Letters from Applicant to Respondent about non payment of rent.
5. The tribunal's administration obtained a copy of the Title Sheet for the Property which showed the registered proprietor from 11 October 2005 as the Applicant.
6. The tribunal sent letters of notification to all parties with the date, time and arrangements for joining the Case Management Discussion ("CMD") in relation to the Application.

Second CMD: 17 May 2023, 1000h, Teleconference

7. The Applicant's Representative attended on behalf of the Applicant.
8. The Respondent did not attend. The tribunal was satisfied that the requirements of Rule 24(1) regarding the giving of notice of a hearing have been duly complied with and proceeded with the application upon the representations of the party present, in term of Rule 29.

Applicant's submissions

9. The Applicant's Representative stated that the Applicant seeks the Respondent's eviction from the Property on the basis that she has substantial rent arrears of over nine months. The rent arrears as at today's date (17 May 2023) are £4297.00. A new Notice to Leave was served on the Respondent on 20 March 2023 seeking her eviction on that ground, together with a rent statement as at that date, which showed rent arrears in excess of six months at that date.
10. The Applicant's Representative referred to three emails he sent to the Respondent under the pre-action protocol when he sent the first Notice to leave and after he had taken advice from Scottish Association of Landlords. The emails were sent to an email address which they had previously used for tenancy matters. They included an offer for the Respondent to negotiate payment by instalments. The Respondent did not reply and the Applicant has had no feedback at all from the Respondent in relation to rent arrears. She has given access for other matters such as safety checks.
11. The Applicant's Representative stated that so far as he is aware, the Respondent is in full time employment in a dental practice in Kilmalcolm and does not receive any benefits. The Property is a one bedroomed property and she lives on her own. The Applicant's Representative has been made aware that the Respondent has failed to pay her Council Tax liability for 3 years. The Applicant's Representative submits that in all the circumstances it would be reasonable for the tribunal to evict the Respondent.

12. The tribunal makes the following findings-in-fact:

- 12.1. The Applicant is the registered proprietor of the Property.
- 12.2. There is a private residential tenancy agreement between the Applicant and the Respondent for the Property.

- 12.3. Rent is payable at the rate of £450.00 per calendar month on the 1st day of each month.
- 12.4. The Applicant's representative wrote to the Respondent about the rent arrears with pre-action options.
- 12.5. On 20 March 2023, a Notice to Leave containing ground 12A of Schedule 3 to the 2016 Act was served on the Respondent.
- 12.6. The Applicant has given the Respondent at least 28 days' notice that she requires possession.
- 12.7. The Application to the tribunal was made on 29 October 2022.
- 12.8. As at 20 March 2023, the Respondent was in arrears of rent in excess of six month's rent.
- 12.9. As at 17 May 2023, the Respondent was in arrears of rent of £4297.00, which is in excess of six month's rent.
- 12.10. The Respondent continues to reside in the Property and lives alone.
- 12.11. The rent arrears are not a consequence of delay or failure in payment to the Respondent of relevant benefits.

13. Findings in fact and law

- 13.1. The tribunal is satisfied that the facts required in paragraph 12A of Schedule 3 to the 2016 Act have been established.
- 13.2. The tribunal is satisfied that it is reasonable to make an order for eviction.

Discussion

14. The order for eviction is sought in terms of Section 51 and paragraph 12(2) of Schedule 3 to the 2016 Act. The tribunal was satisfied that the requirements of those provisions have been met.
15. In relation to reasonableness, reference is made to the tribunal's findings in fact. The tribunal was satisfied that there are rent arrears as at 17 May 2023 in the sum of £4,297.00, which amount to substantial rent arrears as defined in Ground 12A in that it equates to an amount greater than six months' rent. The Respondent has

not made any payment towards the arrears or communicated with the Applicant or her representative about them, despite the Applicant issuing three letters under the pre-action protocol and the Respondent receiving service of the Application paperwork and other correspondence from the tribunal, including the Notes of the first Case Management Discussion and the updated rent statement and request to amend the Application to seek the increased rent arrears. The Respondent has not contacted the tribunal, opposed the application, produced a defence or attended either CMD, following service of notice by sheriff officers. She lives alone in the Property. The Applicant is required to meet property outgoings in the meantime. There is no evidence that the Respondent is on any relevant benefits and the Applicant's Representative understands that she is in employment in a dental practice.

16. The tribunal was satisfied that it was reasonable to evict the Respondent in the circumstances of the case.

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.

S. L. M. Tanner

17 May 2023

**Ms. Susanne L. M. Tanner K.C.
Legal Member/Chair**