

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(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/19/3552

Re: Property at 12A Commercial Road, Strathaven, ML10 6LX (“the Property”)

Parties:

180 Advisory Solutions Limited, Suite 148, Central Chambers, 11 Bothwell Street, Glasgow, Lanarkshire, G2 6LY (“the Applicant”)

Mr James Hunter Ross, 12A Commercial Road, Strathaven, ML10 6LX (“the Respondent”)

Tribunal Members:

Eleanor Mannion (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Ground 12, Part 3, Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 has been substantiated and an order for eviction is made.

Findings of Fact

1. The Lease was entered into in respect of the Property between the Respondent and the Executor of Mr Robert Laurie on the 18 July 2018.
2. On the 14 June 2019, Sequestration was awarded by the Accountant in Bankruptcy as against the Late Robert Laurie.
3. On the 14 June 2019, Barry John Stewart of the Applicant organisation was appointed as trustee and from that date the property vested in him as the trustee.
4. As trustee, the Applicant has an obligation and duty under bankruptcy law to recover monies owing to the debtor and realise any assets.

5. A Notice to Leave, dated 11 July 2019 was served on the Respondent by Sheriff Officers on the 12 July 2019.
6. The Notice to Leave outlined that an application would not be submitted to the Tribunal before the 12 August 2019.
7. An application for eviction under Rule 109 was made by the Applicant on the 1 November 2019 citing Ground 12 of the Act as the basis for eviction.
8. The monthly rental payment due was £450.
9. At the time the Notice to Leave was served, the rent was in arrears of £1,340.
10. At the time the application was made to the Tribunal, the rent was in arrears of £2,690.
11. The rent arrears claimed date from 18 February 2019 to 11 October 2019.

Summary of Discussion and Evidence

12. The application was lodged with a copy of the lease, notice to leave and certificate of service, statement of rent account, and extract from the register of insolvency.
13. The Notice to Leave was served on the 12 July 2019, noting a date of 12 August 2019 as the date from which the Applicant could make an application to the tribunal. The Notice to Leave stated that the reason for eviction was due to rent arrears, setting out that the current rent arrears stood at £1,340.
14. Ms Hannah Brown from Addleshaw Goddard LLP addressed the Tribunal on the level of arrears at the date of the Notice to Leave following an earlier request from the Tribunal to do so. A letter setting out her position was sent to the Tribunal on 10 December 2019 and oral submissions were made on the date of the Case Management Discussion.
15. Ms Brown referred to the wording of Ground 12 of the Act, stated that there is no requirement for the rent arrears at the time of the Notice to Leave to amount to 3 months' rent. Rather, on the day when the Tribunal first considers the application for an eviction order on its merits, the rent arrears must be equal or greater to one months' rent, in this case being £450 and the arrears in rent must be for a continuous period of three or more consecutive months. She differentiated between the amount of rent arrears which are required to be present, namely one months' rent and the time period over which the arrears must relate to, being a continuous period of three or more consecutive months. She submitted that it is not necessary for the rent arrears themselves to amount to three months' rent.
16. In respect of the reason behind the arrears, she indicated that there was limited information as to why the Respondent fell into arrears. She submitted that the Applicant sought to engage with the Respondent when he was

appointed as trustee to see if a payment plan could be reached. She submitted that there was “radio silence” from the Respondent.

17. She submitted that the Respondent made some payments but the arrears were continuing. These amounts did not appear to correspond with housing benefit payments or universal credit. She submitted that there was no information available to her or the Applicant as to whether the Respondent was in receipt of benefits and whether the rent arrears were due to a delay to those benefits being paid.

18. Ms Brown submitted that the criteria for Ground 12 were met. The Respondent was in arrears of £2,690. The arrears were ongoing for more than three months. There was no information to suggest that the arrears were as a result of delay to benefit payments. She submitted that as a result the application should be granted.

19. The Respondent was not present at the Case Management Discussion. Papers from the Tribunal, including the application and all documents referred to herein were served on him by Sheriff Officers on the 31 December 2019. The Respondent did not provide any written representations and did not make contact with the Tribunal offices.

Law

Ground 12 Part 3 Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 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.

Decision and Reasons for Decision

20. Having considered the paperwork which formed part of the application and the submissions made at the Case Management Discussion on the 29 January

2020, the Tribunal, finding in favour of Ms Brown's submissions, found the Ground 12 of the Act was substantiated. It noted that the monthly rental payment was £450, the level of arrears at the date of the application was £2,690 and that at the time of the application and the hearing, the rent continued to be in arrears for a period of three or more consecutive months. Specifically, the Tribunal noted that Ground 12(2)(b)(ii) requires the tenant to be in arrears "by any amount" with the period being a continuous one of three of more consecutive months.

21. As Ground 12 is a mandatory ground, the Tribunal was required to grant the application for eviction.

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.

E Mannion

Legal Member

29/1/20

Date