

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/23/1344

Re: Property at 25 York Street, Duff Town, Keith, AB55 4AU (“the Property”)

Parties:

Sophia Elouise James, 6B Dalintart Drive, Oban, PA34 4EE (“the Applicant”)

Mr Michael Jarvis, Lorna Jarvis, 25 York Street, Duff Town, Keith, AB55 4AU (“the Respondents”)

Tribunal Members:

Fiona Watson (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondents for eviction of the Respondents from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under grounds 12 and 12A of schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

1. An application was submitted to the Tribunal under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). Said application sought a repossession order against the Respondents on the basis of there being rent arrears, and there being substantial rent arrears, accrued by the Respondents under a private residential tenancy, being Grounds 12 and 12A under Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”).
- Case Management Discussion
2. A Case Management Discussion (“CMD”) took place on 31 July 2023 by conference call. The Applicant was represented by Mr McKeown of Jackson Boyd Lawyers. The Respondents did not attend nor were they represented. The papers had been served on the Respondents by Sheriff Officer on 26 June

2023. The Tribunal, was satisfied that the Respondents had received notification of the CMD and that the CMD could proceed in their absence.

3. The Applicant's representative moved for the Order to be granted as sought. The parties had entered into a Private Residential Tenancy Agreement ("the Agreement"), which commenced 1 May 2021. A Notice to Leave had previously been served on the Respondents in November 2022 on the basis of ground 1, being that the Applicant intended to sell the Property. This had been included with the application in support of the Applicants having complied with the PARS. This Notice was then superseded by the current Notice to Leave served on 16 March 2023 on Grounds 12 and 12A, on the basis that there are substantial rent arrears. The Respondents had arrears of rent amounting to the equivalent of at least 6 months' rent at the date of service of the Notice, being £5,000. The arrears have continued to accrue and at the date of making the application, the arrears stood at £5,700, with a monthly rent of £700. The Respondents have made a number of promises to vacate the Property but have failed to do so. The last of these was on 5 June 23. There have been no adaptations to the property to suits the needs of the Respondents. It is not known whether the Respondents are in employment, nor whether they have dependants. There had been no direct payments of benefits to the landlord. No further details were known.
4. The Applicant's representative submitted that the Applicant was not a "professional landlord" and this was her only rental property. The Property was purchased from a payment received following her suffering a serious injury in 2010, with the purpose of providing her with a stable income should she be unable to continue to work due to her injury. Whilst she is currently still in employment, she is off on sick leave and is pregnant. She has a one-year-old child. She has a partner who is employed in an entry level job. The absence of rent being paid by the Respondents is having a substantial effect on the Applicant's personal and financial circumstances.
5. The following documents were lodged alongside the application:
 - (i) Copy tenancy agreement
 - (ii) Copy Notice to Leave
 - (iii) Proof of service of the Notice to Leave
 - (iv) Section 11 notification to the local authority under the Homelessness etc. (Scotland) Act 2003
 - Findings in Fact
6. The Tribunal made the following findings in fact:
 - (i) The parties entered into a Private Residential Tenancy Agreement ("the Agreement") which commenced on 1 May 2021;
 - (ii) In terms of Clause 7 of the Tenancy Agreement entered into between the parties, the Respondents are due to pay rent to the Applicant in the sum of £700 per calendar month;

- (iii) The Applicant has served a Notice to Leave on the Respondents on the basis of Grounds 12 and 12A of Schedule 3 to the 2016 Act, and which was served on 16 March 2023;
- (iv) The Respondents were in arrears of rent amounting to £5,00 at the time of serving the Notice to Leave (and no further payments have been made).

- Reasons for Decision

7. Section 51 of the 2016 Act states as follows:

51 (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.

8. Ground 12 of Schedule 3 to the 2016 Act states as follows:

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.

(3A) Sub-paragraph (3B) applies where the First-tier Tribunal is satisfied—

(a) that the eviction ground named by sub-paragraph (1) applies, and

(b) that all or part of the rent in respect of which the tenant is in arrears as mentioned in that eviction ground relates to the period during which paragraph 5 of schedule 1 of the Coronavirus (Scotland) (No.2) Act 2020 is in force.

(3B) Where this sub-paragraph applies, in considering for the purposes of sub-paragraph (3)(b) whether it is reasonable to issue an eviction order against the tenant, the First-tier Tribunal is to consider the extent to which the landlord has complied with pre-action requirements before applying for the 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.

(6) In sub-paragraph (3B), “pre-action requirements” means such requirements as the Scottish Ministers may specify in regulations.

(7) Regulations under sub-paragraph (6) may in particular make provision about—

(a) information to 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 to 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.

9. Ground 12A of Schedule 3 to the 2016 Act states as follows:

12A (1) It is an eviction ground that the tenant has substantial rent arrears.

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

(a) the tenant has accrued rent arrears under the tenancy in respect of one or more periods,

(b) the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months’ rent under the tenancy when notice to leave is given to the tenant on this ground in accordance with section 52(3), and

(c) the Tribunal is satisfied that it is reasonable to issue an eviction order.

(3) In deciding under sub-paragraph (2) whether it is reasonable to issue an eviction order, the Tribunal is to consider—

(a) whether the tenant being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit,

(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers under paragraph 12(4)(b) (and continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022).

(4) For the purpose of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the Housing Benefit Regulations 2006 (S.I. 2006/213),

(ii) a payment on account awarded under regulation 93 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.

10. The Tribunal was satisfied that a Notice to Leave had been served on the Respondents and which specified grounds 12 and 12A, in accordance with the requirements of section 52 of the 2016 Act. The Tribunal was satisfied that the terms of Grounds 12 and 12A of Schedule 3 to the 2016 Act had been met, namely that the Respondents have been in arrears of rent for three or more consecutive months and further that they have accrued arrears of rent which amounted to at least the equivalent of six months' rent at the time the Notice to Leave was served. The Tribunal was satisfied that there was no information before it to suggest that the Respondent's being in arrears of rent over that period was either wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

11. The Tribunal was satisfied that it was reasonable to grant the Order sought. The Respondents have been in arrears of rent since August 2022. No explanation had been given by them as to the reason for failing to pay rent. The Respondents have accrued substantial rent arrears. In the absence of any representations by the Respondent to the contrary, the Tribunal was satisfied that it was reasonable to grant the Order.

- Decision

12. The Tribunal granted an order against the Respondents for eviction of the Respondents from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under grounds 12 and 12A under schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

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.

Fiona Watson

Legal Member/Chair

Date: 31 July 2023