



**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/20/1309

**Re: Property at The Old Stable, Main Street, Kingskettle, Fife, KY15 7PN (“the
Property”)**

Parties:

**Ms Juliet Amy Houston or Stewart, 19 Watergum Close, Sapphire Beach, New
South Wales, 2450, Australia (“the Applicant”)**

**Mr John Barrett, Ms Debbie Anderson, The Old Stable, Main Street,
KingsKettle, Fife, KY15 7PN; The Old Stable, Main Street, KingsKettle, Fife,
KY15 7PN (“the Respondents”)**

Tribunal Members:

Valerie Bremner (Legal Member)

Decision (in absence of the Respondents)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an Eviction order under Ground 12 of the Private
Housing (Tenancies) (Scotland) Act 2016 should be granted and refused the
Application for an Eviction order under Ground 1 of the Act.**

Background

This is an application for an eviction order in terms of rule 109 of the Tribunal Rules of Procedure. The application was lodged with the Tribunal on 15 June 2020 and was accepted on 24 June 2020. A case management discussion was set down for 21st August 2020.

Case Management Discussion

The Case Management Discussion was attended by Miss Waughman solicitor of Thorntons Law LLP on behalf of the Applicant. There was no appearance by or on behalf of the two Respondents John Barrett and Debbie Anderson. Miss Waughman moved the Tribunal to proceed in their absence. The Tribunal had sight of an execution of service of the application and accompanying papers by Sheriff Officer and these had been put through the letterbox at the property on 3rd August 2020. The Tribunal considered that the requirements of notice to parties in terms of Rule 24 had been met and was prepared to proceed in the absence of the Respondents in terms of Rule 29 of the Tribunal Rules.

The Tribunal had sight of the application, a paper apart, a private residential tenancy agreement, a Notice to Leave, an e mail delivery notification, a Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003, a copy email sending the section 11 Notice to the local authority, and a statement of rent paid from property agents. There was also within the papers a letter from Thorntons Law LLP dated 1 October 2019 which appeared to confirm instructions to sell the property. The Tribunal also received an up to date rent statement on the morning of the case management discussion.

Miss Waughman requested that the Tribunal grant a possession order in terms of section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016. She was seeking a possession order in respect of Ground 1 of Schedule 3 of the 2016 Act, suggesting that the landlord intends to sell the property and Ground 12 of Schedule 3, in that the Respondents had been in rent arrears for three or more consecutive months and as at the date of first consideration of the merits by the Tribunal the rent arrears exceeded one month's rent.

Miss Waughman confirmed to the Tribunal that Applicant had entered into a tenancy agreement with the Respondents with effect from 23 November 2018 and the monthly rent is £660, payable in advance. The Applicant is the owner of the property and entitled to sell it and it was submitted that it was still her intention to sell the property. When asked about the date on the letter from Thorntons Law LLP confirming instructions to sell the property (1 October 2019) Miss Waughman indicated that it was still the applicant's intention to sell the property and it was the Covid -19 pandemic that had caused a delay. There was no further documentation submitted to support the application for eviction under Ground 1 of Schedule 3 of the Act.

As far as Ground 12 was concerned Miss Waughman pointed to the up-to-date rent statement. This confirmed that during the tenancy which had commenced in November 2018 the Respondents had been in arrears of rent from February to July 2019 and had been in continuous arrears since the end of July 2019 right up to 17 August 2020. As at the date of the application in April 2020 the arrears stood at £6630. No rent had been paid at the property since 5th August 2019. Miss Waughman had no information to suggest that the rent arrears had accrued due to failure or delay in the payment of a relevant benefit to either or both of the Respondents.

The Tribunal considered the documents served in this Application and was satisfied that the Notice to Leave was properly constituted and served by email on each of the Respondents and that the Notice under the Homelessness etc (Scotland) Act 2003 had been properly served.

The Tribunal considered that it had sufficient information upon which a decision could be made and that the procedure had been fair.

Findings in Fact

1. The Applicant entered into a Private Residential Tenancy with the Respondents on 23rd November 2018.
2. The rent for the property in terms of the agreement is £660 per month payable in advance.
3. The Respondents are in arrears of rent at the property and have been continuously in arrears since at least July 2019. No rent has been paid since 5th August 2019.
4. When the matter was first considered on its merits by the Tribunal the rent arrears exceeded one month's rent and rent has been in arrears for a continuous period of more than 3 consecutive months.
5. The rent arrears as at the date of the Application stood at £6630 and at the date of the case management discussion are in the order of approximately £9000.
6. The rent arrears have not accrued due to any delay or failure in the payment of a relevant benefit.
7. A Notice to Leave in the appropriate terms stating the eviction grounds and giving information in support of the grounds was served on the Respondents and is deemed to have been received by them on 13th November 2019.
8. A Notice in terms of Section 11 of the Homelessness etc Scotland Act 2003 was served on the local authority in respect of this application.
9. The Applicant as owner of the property is entitled to sell it.

10. On 1st October 2019 the Applicant's solicitor wrote to her acknowledging instructions regarding the sale of the property.

Reasons for Decision

The Tribunal granted the Eviction order in terms of Ground 12 as the requirements of Ground 12 (2) were met in full and in that case an Eviction Order must be granted.

As regards Ground 1 the Tribunal was not satisfied that the terms of Ground 1(2) had been met, in that whilst it was clear that the Applicant was entitled to sell the property there was not sufficient evidence in the view of the Tribunal to satisfy Ground 1 (2) (b), in that the letter produced appeared to acknowledge instructions to sell but was dated more than 10 months before the case management discussion. Whilst this delay was said to be due to the Covid 19 pandemic, more up to date evidence confirming the intention to sell for market value or at least put the property up for sale within three months of the tenant ceasing to occupy would have assisted with this matter.

Decision

The Tribunal grants an Eviction order in terms of Ground 12 (2) of the Private Housing (Tenancies) (Scotland) Act 2016 in that on the day the Tribunal first considered the merits of the Application the Respondents are in arrears of rent of an amount greater than one month's rent and have been in arrears of rent for more than three continuous months and the arrears are not in consequence of any delay or failure in respect of payment of a relevant benefit. The Tribunal refused an Eviction order under Ground 1 of the 2016 Act.

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.

Valerie Bremner

21/08/2020

Legal Member/Chair

Date