



**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/21/1297

**Re: Property at 22 Eildon View, Melrose, Scottish Borders, TD6 9RH (“the
Property”)**

Parties:

**Mr David Graham, Kalinsley, Abbotsview Drive, Galashiels, TD1 3SL (“the
Applicant”)**

**Mr David Burnett, 22 Eildon View, Melrose, Scottish Borders, TD6 9RH (“the
Respondent”)**

Tribunal Members:

Graham Harding (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the Applicant was entitled to an order for the eviction
of the Respondent from the property under Ground 12 of Schedule 3 of the
Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”).**

Background

1. By application dated 25 May 2021 the Applicant applied to the Tribunal for an order for eviction of the Respondent from the property under Ground 12 of Schedule 3 of the 2016 Act. The Applicant submitted a copy of the Tenancy Agreement, Notice to Leave and email to the Respondent, copy bank statements, Section 11 notice and email correspondence sent to the Respondent in support of the application. The Applicant subsequently provided a rent statement showing the rent due between December 2019 and June 2021.

2. By Notice of Acceptance dated 8 July 2021 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion ("CMD") was assigned.
3. Intimation of the CMD was sent to the Applicant by post and was served on the Respondent by Sheriff Officers on 16 July 2021.

The Case Management Discussion

4. A CMD was held by teleconference on 18 August 2021. The Applicant attended in person. The Respondent did not attend nor was he represented. The Tribunal being satisfied that the Respondent had been given proper intimation of the CMD determined to proceed in his absence.
5. The Applicant confirmed that the parties had entered into a Private Residential Tenancy agreement that had commenced on 13 July 2019 at a rent of 525.00 per calendar month. The Applicant explained that from December 2019 until November 2020 when he served a Notice to Leave by email on the Respondent, the Respondent had only made two payments of rent, one of £525.00 in January 2020 and another of £1800.00 in August 2020. The Applicant confirmed that as at the date of service of the Notice to leave there had been rent due of £3475.00 and there had been arrears for three consecutive months. The Applicant advised the Tribunal that as at the date of the CMD the rent due had risen to £7125.00.
6. The Applicant confirmed he had intimated these proceedings to the Scottish Borders Council by sending a Section 11 Notice to them by email on 24 May 2021.
7. The Applicant confirmed he had complied with the Scottish Government Covid-19 pre-action requirements for seeking possession by private sector landlords and referred the Tribunal to the correspondence sent to the Respondent and submitted with the application.
8. The Applicant advised the Tribunal that the Respondent had occasionally responded with apologies and had advised that he had been struggling and had said that he had taken various actions and had specifically mentioned on the last occasion in June that he would apply to the Scottish Government's Tenant Hardship Loan Fund but that thereafter there had been no contact from the Respondent
9. The Applicant went on to say that on August 14 the Respondent had sent a one-line email to the Applicant's letting Agent advising that he was giving notice of termination of the tenancy but had not specified a termination date. The Applicant was concerned that this had been a ploy on the part of the Respondent to delay his eviction.
10. The Applicant explained that he did not have any other rented properties. He had been unable to sell the property following the property crash in 2009 and

had decided to rent it instead. He explained he had not had any problems until now. The Applicant went on to say that neighbours had raised concerns about white goods being dumped in the garden as well as dog mess and as he had been unable to inspect the property because of Covid-19 restrictions he was concerned as to what state the property might be in.

11. In response to a query from the Tribunal the Applicant said that he was aware that the Respondent had a young son who stayed with him on contact visits at weekends. He had also been told that there might be three people living in the property but did not have any more details.
12. The Applicant explained that once he obtained possession of the property it was his intention to sell it although he was concerned as to what condition it might be in and that he might again be in a negative equity position.
13. The Applicant asked the Tribunal to grant an order for the eviction of the Respondent from the property.

Findings in Fact

14. The parties entered into a Private Residential Tenancy Agreement that commenced on 13 July 2019 at a rent of £525.00 per calendar month.
15. Between December 2019 and November 2020, the Respondent was in arrears of rent and owed rent of £3475.00 as at the date of service of a Notice to Leave on 17 November 2020.
16. The Applicant intimated a Section 11 Notice to Scottish Borders Council by email on 24 May 2021.
17. The Applicant complied with the Covid-19 pre-action requirements for private landlords.
18. The rent due by the Respondent as at the date of the CMD amounted to £7125.00.
19. The Respondent has communicated occasionally with the Applicant indicating he will take steps to reduce the rent due but the amount has continued to increase.
20. The Applicant wishes to sell the property once he obtains possession.
21. The Applicant has received complaints from neighbours regarding the condition of the garden at the property.
22. The Respondent has intimated to the Applicant's letting agents his intention to terminate the tenancy.

Reasons for Decision

23. The Tribunal was satisfied from the documentary and oral submissions that there was a Private Residential Tenancy Agreement in place that commenced on 13 July 2019 at a rent of £525.00 per calendar month.
24. The Tribunal was also satisfied that the Applicant had properly served a Notice to Leave on the Respondent on 17 November 2020 and had provided the correct period of notice.
25. The Tribunal was satisfied that proper intimation of these proceedings had been sent to the Scottish Borders Council by sending a Section 11 Notice by email on 24 May 2021.
26. The Tribunal was satisfied from the documentation provided by the Applicant with the application that he had complied with the Covid-19 pre-action requirement for private landlords seeking possession.
27. The Tribunal was satisfied from the documents submitted by the Applicant and his oral submissions that the rent due by the Respondent as at the date of the CMD had increased to £7125.00. There was therefore more than one month's rent due as at the date of the CMD thus satisfying the terms of Ground 12 of Schedule 3 of the 2016 Act.
28. The Tribunal was required to consider in terms of the Coronavirus (Scotland) Act 2020 whether in all the circumstances it was reasonable to grant the order sought. In reaching its decision the Tribunal took account of the fact that despite being given the opportunity to participate in the proceedings the Respondent had not submitted any written representations or attended the CMD. It also appeared that the Respondent had given some sort of intimation of his intention to terminate the tenancy to the Applicant's letting agents.
29. The Tribunal also took account of the fact that the Applicant was not a professional landlord and only had the one property which he now wanted to regain possession of as result of the Respondent running up very substantial arrears. In the absence of any explanation from the Respondent the Tribunal did not consider it reasonable that the Applicant should continue to have the arrears of rent increase. The Tribunal also took note of the Applicant's concerns with regards to the items that had been dumped in the garden and the dog mess.
30. Taking all of the circumstances into account including that the Respondent may be exercising contact with his son at the property the Tribunal was satisfied that it was reasonable to grant an order for eviction.

Decision

31. Having carefully considered the written representations submitted together with the Applicant's oral submissions and being satisfied that it had sufficient

information before it to make a decision without the need to continue the application to a hearing the Tribunal determined to make an order for the eviction of the Respondent from the property under Ground 12 of Schedule 3 of the 2016 Act.

32. The decision of the Tribunal is 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.

**Graham Harding
Legal Member/Chair**

**18 August 2021
Date**

