



**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/23/0024**

**Re: Property at 33 Wedderburn Crescent, Dunfermline, Fife, KY11 4SF (“the Property”)**

**Parties:**

**Mr Andrew Miller, Mrs Carole Miller, 14 Ptak Way, Bridge of Earn, Perth, PH2 9FT; 65 David Douglas Avenue, Scone, Perth, PH2 6QQ (“the Applicant”)**

**Mr Robert Sewielski, 33 Wedderburn Crescent, Dunfermline, Fife, KY11 4SF (“the Respondent”)**

**Tribunal Member:**

**Melanie Barbour (Legal Member) and Angus Lamont (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 12A of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.**

**Background**

1. An application had been received under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession under a private residential tenancy by the Applicant against the Respondent for the Property.
2. The application contained: -

1. the tenancy agreement,
2. the notice to leave with evidence of service
3. section 11 Notice with evidence of service
4. tenancy agreement
5. evidence of pre-action protocol
6. rent statement
7. repayment agreement SDS

3. The applicant, Carole Miller appeared. The respondent also appeared. This was a continued case management discussion on 24 August 2023. This case had been continued from an earlier case management discussion on 22 May 2023. Reference is made to the terms of that case management discussion note. Both CMDs took place by telephone. The applicant had submitted an up to date statement of rent in time for the second CMD.

4. The applicant had confirmed in her application to the tribunal that her application was made under Ground 12A. and the reference to Ground 12 in the notice to leave had been a mistake.

### Discussion

5. The applicant advised that she was seeking an order for recovery of the possession of the property under the ground 12A (substantial rent arrears). There had been 6 months' rent arrears when the notice to leave was served on the respondent. The arrears had increased since the application was made, they now totalled £14, 548.67.

6. She first moved to amend the ground for recovery to 12A. The tribunal granted the amendment. They were satisfied that the respondent had had fair notice of this motion to amend.

7. The applicant advised that she had agreed to continue the case from the last calling to allow the respondent to make payments to rent and arrears. She advised that since that date she had received universal credit but this was all. There was a shortfall in the rent payments. The benefit did not cover the full rent due.

8. She advised that the respondent had told her that he was starting a job on 3 July, however it appears that this did not happen. She had not received any further payments to rent or arrears other than benefits. He had not contacted her to update her on what had happened with his job.

9. The applicant advised that she had given the respondent a lot of chances to make payments however he had continually failed to do so. He was limited in the information that he provided to her about his situation.

10. She felt that the failure to make payments had gone on for too long. She said that the arrears had started in the first month of the tenancy, this continued as there were sporadic missing payments. The respondent

appeared to lose control of paying altogether during the covid pandemic. He would make promises to pay but then would not follow through.

11. In 2021 he had made limited payment to rent; 2022 she noted that he had paid three months' rent only; and in 2023 all payments were by universal credit and this did not cover the rent. She receives £375 in universal credit and £36 in top up for arrears. There was a monthly shortfall of £103 each month.

12. She advised that the failure to pay impacted on her property portfolio. If rent is not received this affects how she can pay for mortgages on this and other properties. It also impacts on other payments including insurances, gas servicing. It also impacts on ability to do repairs and maintenance. She part owns 35 properties with other family and friends.

13. This property is owned with her son. She advised that rental is her son's sole income and he has a family to support. She advised that she also relies on rental also though she has some pensions too.

14. She advised that while this is a business, it can only manage ongoing underpayment for so long. She advised that there is a mortgage over the property. This mortgage has monthly repayments of £244. The mortgage is for £73,350. Other costs also need to be paid for the property. She advised that while this property had a lower rate of mortgage interest, a number of her other properties were paying a higher rate. This should be taken into account. She submitted that as a landlord she had to pay for repairs even if the tenant was not paying the rent.

15. She advised in terms of earlier efforts to get repayment. They were not allowed to pursue non-payment over the covid pandemic period. Things did not improve after the pandemic. There was also limited contact from the tenant. She thought that there was a limit to how much you could contact a tenant about arrears and rent when they did not have the money, she considered that this would become harassment.

16. She also considered that the rent was in fact quite low, and it had not been increased for some time.

17. She advised that she had been applying for universal credit to be paid direct for some time. This did not happen as she had moved address. She advised the respondent had been receiving universal credit for much longer than she had been receiving payment direct of this benefit. Therefore she submitted that the tenant had not been paying her any universal credit even though he had been receiving it. The tenant had told her he was unemployed, he did not tell her he was receiving universal credit.

18. She advised that she was aware that he had previously been evicted and he has owed rent on that occasion as well.

19. The respondent advised that he accepted the rent arrears were due. He advised that he had started a job in July but he needed a lift to get to his job, the person giving the lift had stopped working, and he too had then to give up his job.

20. He advised that he had been a driver, but he was unable to get another job driving. He advised that his property was not near a place where he could find work. He could not get public transport to any place where he could start work at the correct time.

21. He advised that he is now attending job coaching and he is retraining. He asked that no order be granted as he would have nowhere else to live. He advised that it was just him and his dog who lived in the property.

22. He advised that he had been evicted. He admitted that he had owned rent but advised it was more complicated as he had withheld rent due to the condition of the property.

23. He said he had received universal credit and not paid it to the landlord as he had other things to pay for, including gas and electricity. He advised that he did not have other debt other than £100 on a credit card. He advised that there was a period when he did not get universal credit due to his immigration status. He had to get his parents to give him money at that time. He advised that he had some health concerns this also led to failure to pay rent. He agreed with the landlord that he had made some bad decisions in terms of rent payment.

24. He accepted that he could not afford the rent at present, but advised that most of his universal credit goes on rent now. He gets £700 and from that all goes to rent except for £260.

25. He advised that he had not contacted the local authority to try and find other accommodation.

26. The applicant advised that the respondent had said he was going to attend re-training in February and nothing had come of this.

27. The respondent advised that he wishes to pay all of the rent arrears back. He is currently unemployed. He has to do his retraining course and then find a job. Without a job he will not be able to afford to rent anything else. He did not want to be evicted as this would make finding a job more difficult.

### Findings in Fact

28. The Tribunal found the following facts established: -

29. There existed a private residential tenancy between the Applicant and the Respondent. It had commenced on 18 November 2018.

30. The tenant was Robert Sewielski.

31. The landlord was Carole Miller and Andrew Miller.

32. The property was 33 Wedderburn Crescent, Dunfermline.

33. The tenancy stated that rent was £525 a calendar month payable in advance.

34. There was submitted a notice to leave dated 29 November 2022, stating that an application would not be made until 30 December 2022. It sought eviction under ground 12 rent arrears. It set out that rent arrears due were £12,100.00 as at 10 November 2022.

35. The notice to leave had been emailed to the tenant. There was evidence of service.

36. A section 11 notice had been sent to the local authority advising that the landlord was seeking possession of the property. There was evidence of service.

37. There was correspondence sent to the tribunal with the application seeking to amend the application to Ground 12A - substantial rent arrears. This correspondence had also been served on the respondent by the tribunal.

38. At 24 August 2023 arrears were £14,548.67. There was a rent statement submitted showing these arrears. The respondent accepted that these arrears were due by him.

39. There was a rent statement submitted with the application on 30 December 2022 showing arrears outstanding of £12,625.

40. There was evidence that the pre-action protocol requirements had been followed.

41. There was no evidence of failure or delay in any benefit payment to the respondent.

42. The respondent had failed to pay the shortfall rent and arrears since at least 2023 when universal credit was paid direct to the landlord. The universal credit paid did not cover the rental payment due.

43. The respondent resides in the property with his dog.

44. The respondent had previously been evicted from a different property for failure to pay rent.

45. The respondent had received universal credit when not working but had not paid the rent element to the landlord.

46. The applicant owns a number of properties with family and friends which they rent out.

47. There are a number of mortgages for the rental properties which the applicant has to pay. The applicant has other outgoings to pay for in relation to renting out properties.

48. The applicant and her son rely on rental from this property as an income source.

### Reasons for Decision

49. Section 51 of the 2016 Act provides the Tribunal with a power to grant an order for eviction for a private residential tenancy, if it found that one of the grounds in schedule 3 of the Act applies.

50. The ground which the Applicant seeks eviction under is ground 12A. It is in the following terms :-

#### **“Substantial rent arrears**

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). ...

51. The applicant appeared. The respondent appeared. The applicant confirmed that she sought an order for eviction based on the fact that when the notice to leave had been served there had been at least 6 months rent arrears due to her.

52. Section 52 (5) of the 2016 Act allows the tribunal to consider if an eviction ground exists if it stated in the notice to leave or if it has been included with

the tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought. In this case, the applicant was allowed to amend the application to include Ground 12A.

53. Turning to whether Ground 12A was met. It appeared that the first part of the ground 12A was clearly met.

54. The tribunal therefore required to proceed to consider if it would be reasonable to grant the order. We took into account that there appeared to be no failure of any benefit payment due to the respondent. Further, the applicant had sent out pre-action protocol correspondence to the respondent. She did appear to have tried to engage with the respondent to enter into a repayment plan with the respondent. Her attempts had been unsuccessful.

55. We consider it is reasonable to grant the order for eviction. We place significant weight on the fact that the rent arrears are significantly high. They have increased since the last case management discussion and which was continued, at the respondent's request, as he had indicated he was going to get a job and would start making payments. It appears that not only has he not worked, he has not kept the landlord up to date about matter. Other than his dog there are no dependents in the property. He does not have enough benefit to pay for the rent or the arrears. He previously received universal credit but was unwilling to prioritise his rental payments and used the rental element for matters other than rent.

56. At present the rent arrears will continue to rise with no offer as to how this will be addressed. While the respondent indicated that he was going to be retrained, he has told the applicant this same story in February this year and he was not retrained at that time. There was a lack of evidence that this retraining would take place and what the outcome of that retraining would be.

57. We note that the applicant has a number of properties and this may be weighed as a factor against eviction, however we note that two families rely on this income, and we consider that the size of the arrears, with no suggestion as to when and how these arrears will stop accruing, mean on balance, that the applicant's rental business was not sufficient reason to refuse the order.

58. We also note that the respondent has previously been evicted, while we have not seen the decision, he did not disagree that he was evicted, and he indicated that he had not paid rent due to the condition of the property. At the very least we consider that he will understand the implications of not paying rent. In this case, he admits the debt was due. He has provided limited information as to why the arrears accrued and what he will do to pay rent and arrears.

59. We also did not fully understand his reasoning that he was not able to work as a driver due to transport issues, we assume that the Dunfermline

would be reasonably central to enable his to secure some suitable work. We place very little weight in support of the respondent's submission on this point.

60. Considering the papers before us and the oral submission by the applicant and the respondent, the tribunal was prepared to grant the order for recovery of possession, given that the first part of ground 12 A was met and in all the circumstances it appeared to us to be reasonable to grant the order.

### Decision

61. The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 12A of schedule 3 of 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.**

M. Barbour

1 September 2023

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**Legal Member/Chair**

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**Date**