



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for eviction/ possession of a Rented Property in terms of Rule 109 of the Procedure Rules.

**Chamber Ref: FTS/HPC/EV/23/0659
45 Skene Terrace, Aberdeen, AB10 1RN ("the Property")**

Parties:

Robert Kinnear residing at 35 Smiths Field, Braintree, Essex, CM77 6BX ("the Applicant(s)")

Lisa Campbell, Stonehouse Lettings, Level 1, Neo Space, Riverside Drive, Aberdeen, AB11 7LH ('The Applicant's Representative')

Ms Maureen Ngala, 45 Skene Terrace, Aberdeen, AB10 1RN ("the Respondent")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal")

Tribunal Members: Jacqui Taylor (Legal Member) and Sandra Brydon (Ordinary Member)

1. Background

1.1. The Applicant submitted an application to the Tribunal for eviction/ possession of the Rented Property under section 51(1) of the Private Housing Tenancies (Scotland) Act 2016, in terms of Rule 109 of the Procedure Rules.

1.2 The application was dated 1st March 2023. The application stated that the ground for eviction was as follows:

'Ground 12A: Substantial Rent Arrears (at least 6 months rent arrears on the date on which the notice to leave was served.

The tenancy between the applicant Mr Kinnear and the respondent Maureen Ngala commenced on the 1st of February 2021. At this point the property was managed by Geraghty Gibb – another agent in Aberdeen which has since been acquired by Stonehouse Lettings. The tenant failed to make rent payment on the 1st of June 2022 and no further payment has been received since. Prior to June 2022, Miss Ngala

always paid rent on time without issue. Stonehouse Lettings took over management on the 7th of November 2022. The rent chase log is split into two, the first of which is the chase log while the property was managed by Geraghty Gibb. The second one is while managed by Stonehouse. I also attach the PARS information which as required was given to the tenant. This was sent by Geraghty Gibb by email on the 26th August 2022, then again on the 24th October. A further PARS letter, tenant information and statement was hand delivered by Stonehouse to the property on the 12th of December 2022 without response. In December 2022, the applicant Mr Kinnear asked we serve Notice to Leave to the respondent on ground 12A as more than 6 months rent was due. Notice to Leave was served to the respondent on the 21st of December 2022. Miss Ngala failed to vacate, therefore we are applying to the First Tier Tribunal for an Eviction Order to get possession of the property for the landlord.'

1.3 Documents lodged with the Tribunal were:-

- The Tenancy Agreement dated 10th and 11th January 2021. Clause 8 of the lease states that the rent is £395 per calendar month payable in advance.
- Preaction emails addressed to the Tenant dated 26th August 2022 and 24th October 2022.
- Notice to Leave dated 21st December 2022 advising the Tenant that an application will not be submitted to the Tribunal for an eviction before 23rd January 2023.
- Email to the tenant sending Notice to Leave dated 21st December 2022.
- Rent statement dated 21st December 2022 for the period 1st June 2022 to 31st June 2022 showing rent arrears of £2765 (being seven months rent at £395 per month).
- Rent statement for the period 1st June 2022 to 1st March 2023 showing rent arrears of £3950 (being ten months rent at £395 per month).
- Section 11 Notice addressed to Aberdeen City Council and accompanying email dated 1st March 2023.

2. Case Management Discussion

This case called for a conference call Case management Discussion (CMD) at 10.00 on 28th April 2023.

The Applicant's Representative Lisa Campbell attended the CMD.

The Respondent did not attend and was not represented. She had been notified of the CMD by James Booth, Sheriff Officer on 27th March 2023. The Tribunal were content to proceed with the CMD as the requirements of Tribunal Rule 29 had been satisfied.

2.1 Ms Campbell advised the Tribunal as follows:

2.1.1 No rent payments have been made since the date of the last rent statement. The current rent arrears amount to £4345. The next rent payment is due on 1st May 2023 at which point there will be rent arrears of twelve months rent.

2.1.2 The Letting Agents spoke to the Tenant on 23rd January 2023. She confirmed that she still resided in the Property. She had not been paying rent as she had lost her

job. The Tenant also advised that they she applied for housing benefit and had also applied to the Local authority to be rehoused.

2.1.3 The Letting agents had contacted the housing benefit department who had advised that the Respondent's housing benefit application had been declined.

2.1.4 As far as she is aware the Tenant resides in the Property alone and has no vulnerabilities.

3. The Tribunal made the following findings in fact:

3.1. The Respondent is Tenant of the Property in terms of the lease between the parties.

3.2. The lease is a Private Residential Tenancy in terms of the Private Housing Tenancies (Scotland) Act 2016 ('The 2016 Act').

3.3. The Applicant is Landlord of the Property.

3.4 The Notice to Leave was dated 21st December 2022 and it was emailed to the Respondent on 21st December 2022.

3.5 Clause 4 of the lease confirms that notices may be served by email.

3.6 The Notice to Leave had been emailed to the email address of the Respondent detailed in the tenancy agreement.

3.7 The Notice to Leave stated that the tenant has substantial rent arrears (equivalent to six months worth of rent), which is Ground 12A of Schedule 3 of the Private Housing (Tenancies) Scotland Act 2016 and that the Applicants would not apply to the Tribunal for an eviction order before 23rd January 2023.

3.8 The rent arrears exceeded six months rent (£395 x 6= 2370) at 21st December 2022 (the date of the Notice to Leave), at 1st March 2023 (the date of the Application) and at today's date.

4. Decision

4.1. Requirements of Section 109 of the Procedure Rules.

4.1.1 The Tribunal confirmed that the application correctly detailed the requirements of section 109(a) of the Procedure Rules namely:-

(i) the name, address and registration number of the Landlords.

(ii) the name and address of the Landlords' representative.

(iii) the name and address of the Tenant.

(iv) the ground of eviction. The ground stated in the application is that the Tenant has substantial rent arrears, at least six months rent arrears on the date on which the notice to leave was served. The Tribunal accepted that this is Ground 12A of Schedule 3 of the 2016 Act.

4.1.2 The Tribunal confirmed that the application complied with the requirements of Section 109(b) of the Procedure Rules:

(i) evidence showing that the eviction ground or grounds had been met.

The rent statements for the period 1st June 2022 to 1st March 2023 had been provided.

(ii) a copy of the notice to leave given to the Tenant as required by section 52(3) of the 2016 Act.

The Tribunal confirmed that the Notice to Leave was in correct form as set out in Schedule 5 of the Private Residential Tenancies Notices and Forms (Scotland) Regulations 2017.

The Notice to Leave was dated 21st December 2022 and advised the Tenant that the Applicant intends to apply to the Tribunal for an eviction order in respect of the property on the basis of substantial rent arrears, exceeding 6 months rent. It also advised that an application would not be submitted to the Tribunal for an eviction order before 23rd January 2023.

The lease states that the commencement date of the tenancy was 1st February 2021. As at 21st December 2022 (the date of the Notice to Leave) the Tenant had resided in the property for more than six months and consequently the period of 28 days notice was required.

The Respondent had been given the required period of twenty eight days notice.

(iii) a copy of the notice given to the local authority as required by Section 56(1) of the 2016 Act.

The Tribunal confirmed that a copy of the required notice had been provided.

4.1.3 The Tribunal confirmed that the application form had been correctly signed and dated by the Landlords' representatives as required by Section 109(c) of the Procedure Rules.

4.2 The Tribunal found in law that Ground 12A of Schedule 3 of the 2016 Act was met. The Tribunal acknowledged that the Respondent was due to pay the Applicant rent at the rate of £395 per month. The rent payments were due in advance. At (i) the date of the Notice to Leave (ii) the date of the Application and (iii) today's date the rent arrears exceeded £2370, being the amount of six months rent.

4.3 The Tribunal found that the rent arrears were not due to a delay or failure in payment of a relevant benefit.

4.4 The Tribunal considered Ms Campbell representations as to whether it was reasonable to grant the Eviction Order.

The Tribunal were mindful of the decision of Lord Greene in the case of *Cummings v Dawson* (1942) 2 All ER 653 on matters to consider when determining reasonableness:

'In considering reasonableness... it is my opinion, perfectly clear that the duty of the judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad, common sense way as a man of the world, and to come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or more weight, others may be decisive.'

The Tribunal found that it was reasonable for the eviction order to be granted given the considerable amount of the rent arrears owing; the fact that the arrears have been ongoing since June 2022; the fact that the Letting Agents had issued two preaction letters to the Respondent; the fact that the Respondent has applied for alternative housing and also the fact that the Respondent has not provided any written representations.

4.4 The Tribunal found that the provisions of the Cost of Living (Tenant Protection)(Scotland) Act 2022 in relation to delaying evictions do not apply to this application as there are substantial rent arrears amounting to more than six months rent.

4.5 The Tribunal granted the eviction Order.

5. 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.

Jacqueline Taylor

Legal Member

28th April 2023
Date