



**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/23/1483**

**Re: Property at 2/L 12 Victoria Mansions, 12 Victoria Road, Kirkcaldy, KY1 1DU (“the Property”)**

**Parties:**

**Mr Jack MacKay, 30 West Acres Drive, Newport on Tay, Fife, DD6 8NR (“the Applicant”)**

**Ms Anna Wojtas, 2/L 12 Victoria Mansions, 12 Victoria Road, Kirkcaldy, KY1 1DU (“the Respondent”)**

**Tribunal Members:**

**Melanie Barbour (Legal Member) and Mary Lyden (Ordinary Member)**

**Decision (in absence of the Respondent)**

**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. evidence of pre-action protocol
5. rent statement
6. Evidence of landlord registration

3. This was a case management discussion on 26 September 2023. The applicant Frank MacKay appeared. The respondent did not appear. Service of the application had been made on the respondent on 21 August 2023. The tribunal was entitled to continue with the case management discussion.

4. It was noted that the property was owned by Frank Mackay. He advised that he was the owner, and he had appointed his son to be the landlord as he had been working away. Her moved to amend the application to make both himself and his son joint applicants. This was granted by the tribunal.

### Discussion

5. The applicant advised that he 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 £5,285.80 as at 1 September 2023.

6. He advised that he was also seeking a payment order for this amended sum of £5285.80.

7. He advised that there had been no further payments or reduction in the rent arrears since the last rent statement was submitted to the tribunal on 11 September 2023. He advised that he had emailed the tenant the updated rent statement on the 11 September 2023.

8. He advised that he had had difficulties contacting the tenant. She had changed her mobile number several times. He advised that he had received no payments of rent from the tenant since 1 July 2021. He advised the only payments to rent since then were what was paid by universal credit. He advised that he had tried on a number of occasions to get the tenant to discuss the rent arrears, but she would not discuss the matter with him. He had advised her, as had the DWP and also Shelter that she had to make up any shortfall in the rent which was not covered by universal credit, however she had consistently failed to do so.

9. He advised that the landlord had helped the tenant apply for universal credit in 2021. He had tried to speak to the DWP about the tenant but they would not discuss her situation with him. The amount of universal credit paid goes up and down, the most she gets is £375, and some months does not get anything from the universal credit. She does not pay the difference in rent.

10. He advised that they also helped her apply for a hardship loan, but this was not granted. He said that she is difficult to deal with as she will bury her head in the sand. She does not answer the door.

11. He received an email from the applicant a few weeks ago, she told him that she was not going to pay the rent, she could not afford to pay anything and she had received advice to pay nothing and wait to be evicted.

12. He believed that she was in her 30s. She lived in the house alone. It is a one bedroom flat. He thought that she originally worked as a care assistant in Kirkcaldy but lost that job. He understood that she now worked in a restaurant.

13. He advised that he does not rent out any other properties. This flat was bought as he needed to be able to get to his work in the hospital within 15 minutes. When he moved jobs, he kept it. He does not have a mortgage on it, however, he has ongoing costs such as insurance and maintenance costs.

14. He was unaware of any health issues affecting the tenant. He thought she had had covid in 2021. He believed she was currently working. He did not know why she had stretches of time when he was paid no rent whatsoever. He did not know if the council had offered to re-house her. She was from Poland, however, he had no idea if she would remain in Scotland if the order were granted. He advised that he does not work in Fife, and he is not from the area. He does not know anything further about the circumstances of the tenant.

### Findings in Fact

15. The Tribunal found the following facts established: -

16. There existed a private residential tenancy between the Applicant and the Respondent. It had commenced on 1 July 2020.

17. The tenant was Anna Wojtas.

18. The landlords were Frank Mackay and Jack Mackay.

19. The property was 12 Victoria Mansions, Victoria Road, Kirkcaldy.

20. The tenancy stated that rent was £400 a calendar month payable in advance.

21. There was submitted a notice to leave dated 3 November 2022, stating that an application would not be made until 4 December 2022. It sought

eviction under ground 12 and 12A rent arrears. It set out that rent arrears due were £3,912.58 as of 1 November 2022.

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

23. Rent arrears as of 5 May 2023 were £4,640.27.

24. Rent arrears as of 1 September 2023 were £5,285.80.

25. 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.

26. There were rent statements submitted showing the arrears.

27. There was evidence of correspondence between the landlord and the tenant about the rent arrears. The correspondence asked the tenant to repay the arrears.

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

29. There had been arrears on the account since January 2021.

30. There had been periods when universal credit had been paid.

### Reasons for Decision

31. 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.

32. 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). ...

33. The applicant appeared. The respondent did not appear. The applicant confirmed that he 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.

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

35. 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 correspondence to the respondent about her arrears and asking her to make payment. It did appear that the landlord had tried to engage with the respondent to enter into a repayment plan with the respondent. The attempts had been unsuccessful.

36. We note that the tenant is in her 30s, she lives in the property with no dependants. She has no known health issues. She has not paid any rent since July 2021. Any payments are from universal credit. She refuses or is unable to make up rent shortfall. She will not engage with the landlord. Her last contact was to advise that she would not make any payments to the rent.

37. The landlord only rents out this one property, he has ongoing maintenance and insurance costs for this property.

38. There are now over 13 months total rent arrears outstanding.

39. We consider it is reasonable to grant the order for eviction. We place weight on the fact that the rent arrears are high. They equate to around 13 months unpaid rent. There have been arrears since the beginning of 2021. They have increased since the notice to leave was served and also since the application was made. The tenant has had periods when she has received universal credit and so it does not appear that there has been any failure or delay in the payment of benefits. The tenant has advised the landlord that she will not be making any payments to the rent. We are unaware of any matters about the tenant which would make it unreasonable to grant the order.

40. 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

41. 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.**



**26 September 2023**

---

**Legal Member/Chair**

---

**Date**