



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/23/1592

144 Strathayr Place, Ayr, KA8 0AY ("the Property")

Parties:

Callum McConnell and Mrs Jennifer McConnell ("the Applicant(s)")

Lime Tree Estate Agents (The Applicant's Representative')

Jacinta Mary McNeil residing at 144 Strathayr Place, Ayr, KA8 0AY ("the First Respondent")

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

Tribunal Members: Jacqui Taylor (Legal Member) and Elaine Munroe (Ordinary Member)

1. Background

1.1. The Applicants 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 16th May 2023. The application stated that the ground for eviction was as follows:
'Ground 12: Tenant is in rent arrears over three consecutive months'.

1.3 Documents lodged with the Tribunal were:-

- The Tenancy Agreement dated 10th March 2021. The commencement date of the tenancy was 10th March 2021. The rent due in terms of the tenancy agreement was £425 per month payable in advance.
- A rent statement for the period 10th March 2021 to 23rd May 2023 which showed rent arrears of £1810.84 as at 23rd May 2023.

- Notice to Leave dated 4th April 2023 advising the Tenant that an application will not be submitted to the Tribunal for an eviction before 3rd May 2023.
 - Certificate of Service by Colin Wilks, Sheriff Officer, dated 4th April 2023 confirming that Notice to Leave was served on the Respondent on 4th April 2023.
 - Section 11 Notice addressed to South Ayrshire Council.
 - Copies of Pre action letters sent to the Respondent dated 6th January 2023, 13th February 2023 and 1st March 2023.
2. The Respondent did not provide any written representations.

3. Case Management Discussion

This case called for a conference call Case management Discussion (CMD) at 14.00 on 4th September 2023.

The Applicants' Representative Mrs Laurie Weir of Lime Tree Estate Agents attended the CMD.

The Respondent did not attend and was not represented. She had been notified of the CMD by Stuart Sinclair, Sheriff Officer on 2nd August 2023. The Tribunal were content to proceed with the CMD as the requirements of Tribunal Rule 29 had been satisfied.

3.1 Oral Evidence by Mrs Weir, on behalf of the Applicants.

Mrs Weir advised as follows:

3.1.1 She confirmed that an updated rent statement had been sent to the Tribunal and it showed the current rent arrears to amount to £1797.04. The credits to the rent account had been housing benefit payments of £322.20 every four weeks since 2nd January 2023. The only payment made by the Respondent since the payment of £450 on 4th November 2022 was the sum of £100 on 25th April 2023.

3.1.2 They have attempted to arrange a payment plan with the Respondent but she did not agree to it.

3.1.3 She understands that the Respondent has been on holiday and has installed new flooring in the Property. She is not prioritising the rent payments that are due.

3.1.4 They sent the Respondent weekly pre action letters in November and thereafter they were sent monthly. Copies of the letters dated 6th January 2023, 13th February 2023 and 1st March 2023 have been provided.

3.1.5 The Respondent resides in the Property on her own. She is unemployed. She paid rent for nineteen months without difficulty but stopped paying the rent due in November 2022.

3.1.6 They have struggled to contact her. She has changed her mobile number.

3.1.7 The Property has not been specially adapted for the Respondent.

3.1.8 The rent arrears have not arisen due to a delay or failure in the payment of a benefit. Housing Benefit was awarded and paid.

4. The Tribunal made the following findings in fact:

4.1. The Respondent is Tenant of the Property in terms of the lease between the parties. The start date of the Tenancy detailed in the lease was 10th March 2021.

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

4.3. The Applicants, Callum McConnell and Mrs Jennifer McConnell are Landlords of the Property. The Tribunal had a copy of the Applicants' title deeds being Land Certificate AYR11071. Section B of the Land Certificate confirmed that the Applicants purchased the Property on 12th April 2006.

4.4 The rent detailed in the tenancy agreement is £425 per calendar month, payable in advance.

4.5 The Notice to Leave was dated 4th April 2023 and it was served on the Respondent on 4th April 2023 by Sheriff Officer.

4.6 Clause 4 of the lease states that the Landlord and the Tenant agree that all communications under the act, including Notices, will be made in writing by personal delivery, recorded delivery or using the email addresses set out in the lease.

4.6 The Notice to Leave states that the Respondent was in rent arrears over three consecutive months, which is Ground 12 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 3rd May 2023.

4.7 The Rent has been in arrears since November 2022.

4.8 The Rent had been in arrears amounting to more than one months rent since 23rd December 2022.

4.8 The Tenant has been in rent arrears over more than three consecutive months since March 2023.

4.9 The Rent arrears are not due to a delay or failure in the payment of a benefit.

5. Decision

5.1 The Tribunal acknowledged that the rent statement for the period to 23rd August 2023 had not been provided to the Tribunal timeously in terms of the Tribunal Rules but they accepted the oral evidence of Mrs Weir as to the current position of the rent account, detailed above.

5.2. Requirements of Section 109 of the Procedure Rules.

5.2.1 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 Tenants.
- (iv) the ground of eviction. The ground stated in the application is that the tenant is in rent arrears over three consecutive months.

The Tribunal accepted that this is Ground 12 of Schedule 3 of the 2016 Act.

5.2.2 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 statement for the period 10th March 2021 to 23rd May 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 4th April 2023 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 Ground 12 (The Tenant is in rent arrears over three consecutive months). It also advised that an application would not be submitted to the Tribunal for an eviction order before 3rd May 2023.

The Tenancy commenced on 10th March 2021. As at 4th April 2023 (the date of the Notice to Leave) the Tenant had resided in the property for more than six months the period of 28 days notice was required.

The Notice to Leave was served on the Respondent on 4th April 2023 and consequently 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.

5.2.3 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.

5.3 The Tribunal acknowledged that the Respondent was due to pay the Applicants rent at the rate of £425 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 £1275, being the amount of three months rent.

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

5.5 The Tribunal considered the Appellant's Representative's 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.'

5.6 The Tribunal weighed the respective positions of the parties. They 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 November 2022, the fact that the Applicant had issued three preaction letters to the Respondent, which had been produced to the Tribunal, and the fact that the Respondent has not provided any written representations.

5.7 Accordingly, the Tribunal found in law that the ground in Schedule 3(12)(1) of the 2016 Act was met.

5.8 The Tribunal found that the provisions of the Cost of Living (Tenant Protection)(Scotland) Act 2022 in relation to delaying evictions apply to this application as the application was received by the Tribunal after 28th October 2022.

5.9 The Tribunal granted the eviction but the Order should not to be executed prior to 12 noon on the earlier of (a) 5th March 2024 or (b) the expiry or suspension of Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022.

6. 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.

J Taylor

Legal Member

4th September 2023

