



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 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/19/3577**

**Re: 82 Craufurdland Road, Kilmarnock, KA3 2HX ("the Property")**

**Parties:**

**Easton Property Ayrshire Ltd, 2 Newfield Drive, Dundonald, KA2 9EW ("the Applicant")**

**Miss Amy Rose Farrell, 2 Newfield Drive, Dundonald, KA2 9EW ('The Applicant's Representative')**

**Kyle Clark, 82 Craufurdland Road, Kilmarnock, KA3 2HX ("the Respondent")**

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

**Tribunal Member: Jacqui Taylor (Legal Member)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the order for possession of the Property be granted.**

## **1. Background**

1.1. The Applicant applied 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. The application was dated 5<sup>th</sup> November 2019. The application states that the grounds for eviction are as follows:  
Ground 11: The Tenant has breached a term of the tenancy agreement: Breach of Clause 7 of the tenancy agreement, consistent non payment of rent.  
Ground 12: Tenant is in rent arrears over three consecutive months:  
Rent Arrears to the sum of £1740 at 5<sup>th</sup> November 2019.

1.2 Documents lodged with the Tribunal were:-

- The Tenancy Agreement dated 10<sup>th</sup> October 2018.
- A rent statement for the period 10<sup>th</sup> October 2018 to November 2019 which showed the outstanding rent as at 5<sup>th</sup> November 2019 to be £1740.
- Notice to Leave dated 13<sup>th</sup> September 2019 advising the Tenant that an application will not be submitted to the Tribunal for an eviction before 14<sup>th</sup> October 2019.
- A copy of the email to the Tenant dated 13<sup>th</sup> September 2019 attaching the Notice to Leave.
- Section 11 Notice addressed to East Ayrshire Council.

## **2. Case Management Discussion**

This case called for a Case management Discussion (CMD) at 14.00 on 14<sup>th</sup> January 2020 at the North West Area Centre, Western Road, Kilmarnock, KA3 1NQ.

The Applicant did not attend the CMD but their representative Amy Rose Farrell, property manager with Easton Ayrshire Ltd, attended on their behalf.

The Respondent did not attend in the CMD. The Respondent had been served with notice of the CMD by James S Orr, Sheriff Officer on 11<sup>th</sup> December 2019.

No written responses had been received from the Respondent.

## **3. The Tribunal identified with the applicant's representative the following agreed facts:**

3.1. The Respondent is Tenant of the Property in terms of the lease between the parties. The start date of the Tenancy was 10<sup>th</sup> October 2018.

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. The Tribunal had a copy of the Applicants' title deeds being Land Certificate AYR33332. Section B of the Land Certificate confirmed that the Applicant purchased the Property on 30<sup>th</sup> March 2016.

3.4 The rent due in terms of the tenancy was £435 per month.

3.5 The Tenant had not paid a deposit.

3.6 The outstanding rent as at 5<sup>th</sup> November 2019 amounted to £1740.

3.7 The Tenant did not pay any rent for the months of July, August, September and October 2019.

#### **4. Oral Evidence**

Amy Rose Farrell advised the Tribunal that as far as she was aware the Respondent still resided in the Property. They had only received one further payment to the rent and that was a payment from DWP of £272.40. They had submitted form UC47 to DWP in November 2019. They had sent DWP a copy of the rent arrears statement together with the UC47 application. Usually they would receive any further payments that were due the following month. No further payments had been received. No further response or correspondence had been received from DWP. Consequently she is of the view that no further DWP payments are due. The current arrears as at 14<sup>th</sup> January 2020 amount to £2772.60

#### **5. Requirements of Section 109 of the Procedure Rules.**

(a) 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 Landlord.

(ii) the name and address of the Landlord's representative.

(iii) the name and address of the Tenants.

(iv) the ground of eviction. The grounds stated are that the Tenant has breached a term of the tenancy agreement regarding payment of the rent that is due and also that the Tenant is in rent arrears over three consecutive months. The Tribunal accepted that these are grounds Grounds 11 and 12 of Schedule 3 of the 2016 Act.

(b) The Tribunal confirmed that the application correctly detailed the requirements of Section 109(b) of the Procedure Rules:

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

The said rent statement had been produced.

(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 2017 Regulations').

The Notice to Leave was dated 13<sup>th</sup> September 2019 and advised the Tenant that an application would not be submitted to the Tribunal for an eviction order before 14<sup>th</sup> October 2019.

The Tenancy commenced on 10<sup>th</sup> October 2018. As at 13<sup>th</sup> September 2019 (the date of the Notice to Leave) the Tenant had resided in the Property for more than six months and the application for eviction was based on the fault ground 12 of Schedule 3 of the 2016 Act and therefore 28 days notice was required. The Landlord emailed the Notice to Leave to the Tenant on 13<sup>th</sup> September 2019. Clause 3 of the Lease permits Notices to be sent by email.

In terms of section 54(2) of the 2016 Act the Notice begins on the day the Tenant received the Notice and expires on the day falling 28 days after it begins. The date it expired was 11<sup>th</sup> October 2019. The Notice to Leave correctly gave the Tenants a minimum of the required 28 days notice.

Evidence of delivery of the Notice to Leave to the Tenant had been produced to the Tribunal.

(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.

(c) 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.

## **6. Decision**

The Tribunal found that the Applicant had met the requirements of Grounds 11 and 12 of Schedule 3 The Private Housing Tenancies (Scotland) Act 2016 for the following reasons:

6.1 The outstanding rent due by the Respondent at the date of the CMD was £2772.60

being more than one months rent. The Tenant had failed to comply with the obligation to pay rent in terms of the lease, the arrears are substantial and the Tribunal consider it to be reasonable to grant the eviction order on this ground.

6.2 Only one payment of £272.40 has been made since 11<sup>th</sup> June 2019 and consequently the Respondent had been in arrears of rent for a continuous period of three or more consecutive months.

6.3 The Tribunal accepted the evidence of Amy Rose Farrell to the effect that no further payments from DWP were due and therefore they were satisfied that the rent arrears was not due to a delay or failure in paying a relevant benefit.

Consequently the Tribunal determined that the order for possession of the Property be granted as Grounds 11 and 12 of Schedule 3 of the 2016 Act have been met.

## **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.**

  
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Legal Member

14<sup>th</sup> January 2020