



**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/23/0638**

**117 Dickson Drive, Irvine, KA12 9AQ ("the Property")**

**Parties:**

**Steven Easton Residential Limited, 2 Newfield Drive, Dundonald, Kilmarnock, KA2 9EW ("the Applicant(s)")**

**Aynsley Barclay, Easton Holding Limited, 2 Newfield Drive, Dundonald, Kilmarnock, KA2 9EW (The Applicant's Representative')**

**Nicole Hutchison residing at 117 Dickson Drive, Irvine, KA12 9AQ ("the Respondent")**

**Alister Meek, CHAP, 71 Princes Street, Ardrossan, KA22 8DG ("the Respondent's Representative")**

**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 28th February 2023. The application stated that the ground for eviction was as follows:

'Ground 12: tenant is in rent arrears of over three consecutive months. Over three consecutive months of rent is unpaid by the tenant, with total rent arrears amounting to the sum of £8365.45 as at 28<sup>th</sup> February 2023.

1.3 Documents lodged with the Tribunal were:-

- The Tenancy Agreement dated 12<sup>th</sup> December 2018. The commencement date of the tenancy was 12<sup>th</sup> December 2018. The rent due under the tenancy was £500 per calendar month payable in advance.
- A rent statement for the period 12<sup>th</sup> February 2019 to 7<sup>th</sup> March 2023 which showed rent arrears of £8365.45 as at 7<sup>th</sup> March 2023.
- Notice to Leave dated 21<sup>st</sup> October 2022 advising the Tenant that an application will not be submitted to the Tribunal for an eviction before 21<sup>st</sup> November 2022.
- Email from the Applicant's representative to the Respondent dated 21<sup>st</sup> October 2022 sending her the Notice to Leave and Pre action requirement letter.
- Section 11 Notice addressed to North Ayrshire Council and email to North Ayrshire Council dated 28<sup>th</sup> February 2023 sending them the section 11 Notice.

2. No Written Representations were lodged on behalf of the Respondent.

3. The Applicants' Representative lodged an updated rent statement on 21<sup>st</sup> April 2023 for the period 1<sup>st</sup> February 2019 to 1<sup>st</sup> April 2023 which showed rent arrears of £8650.26 as at 1<sup>st</sup> April 2023.

#### **4. First Case Management Discussion**

This case called for a conference call Case management Discussion (CMD) at 14.00 on 28<sup>th</sup> April 2023.

The Applicant's Representative and the Respondent's Representative attended the CMD.

4.1 The Respondent's Representative advised that he accepted that there had been rent arrears over three consecutive months. He confirmed that he had received the updated rent statement that had been lodged by the Applicants' Representative on 21<sup>st</sup> April 2023 and he had discussed the updated rent statement with his client. He also explained that his client has applied to the Local Authority to be rehoused and she expects to be rehoused once the eviction order is granted.

4.2 The Applicants' Representative requested to amend the application to Ground 12A of the 2016 Act.

4.3 Outcome of the First Case Management Discussion.

The Tribunal determined that the application should proceed to a continued Case Management Discussion to allow time for the Applicants' Representative to:-

- (i) Make an application to amend their application for eviction to refer to Ground 12A of the 2016 Act and
- (ii) To provide written representations to the Tribunal explaining why it would be reasonable for the Tribunal to grant the eviction order on the basis of Ground 12A even though the Notice to Leave states that the eviction will be sought on the basis

that the Respondent is in rent arrears over three consecutive months (Ground 12).

#### 5. Second Case Management Discussion

This case called for a second conference call Case management Discussion (CMD) at 14.00 on 12<sup>th</sup> July 2023.

The Applicant's Representative and the Respondent's Representative attended the CMD.

5.1 The Applicants' Representative apologised for not lodging the amended application. She advised that the current rent arrears amounted to £10,240.26. She considered it was reasonable for the Tribunal to grant the eviction order given the amount of the rent arrears. She confirmed that preaction letters had been sent to the Respondent dated 29<sup>th</sup> July 2022, 23<sup>rd</sup> August 2022, 21<sup>st</sup> October 2022 and 3<sup>rd</sup> November 2022. As far as she is aware the property is a three bedroom house and the Respondent lives in the property with her children. She confirmed that the property had not been adapted.

5.2 The Respondent's Representative advised that the application was not opposed. The amount of the rent arrears was agreed. His client's application to the Local Authority for rehousing was on hold pending the outcome of this application.

#### 6. The Tribunal made the following findings in fact:

6.1. 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 12<sup>th</sup> December 2018.

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

6.3. The Applicants are Landlords of the Property. The Tribunal had a copy of the Applicants' title deeds being Land Certificate AYR103625. Section B of the Land Certificate confirmed that the Applicants purchased the Property on 23<sup>rd</sup> October 2015

6.4 The rent detailed in the tenancy agreement was £500 per calendar month, payable in advance.

6.5 The Notice to Leave was dated 21<sup>st</sup> October 2022 and it was emailed to the Respondent on 21<sup>st</sup> October 2022.

6.6 The Rent arrears exceeded three months rent at the date the Notice to Leave had been sent to the Respondent and thereafter.

6.7 Clause 3 of the lease states that the Landlord and the Tenant agree that all communications under the act, including Notices, will be made in writing using the email addresses set out in the lease.

6.8 The Notice to Leave stated 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 21<sup>st</sup> November 2022.

## **7. Decision**

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

**7.1.1** 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 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.

**7.1.2** 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 statement for the period 1<sup>st</sup> February 2019 to 1<sup>st</sup> April 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 21<sup>st</sup> October 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 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 21<sup>st</sup> November 2022.

The Tenancy commenced on 12th December 2018. As at 21<sup>st</sup> October 2022 (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 sent to the Respondent by email on 21<sup>st</sup> October 2022 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.

**7.1.3** 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.

7.2 The Tribunal acknowledged that the Respondents were due to pay the Applicants rent in terms of the lease at the rate of £500 per month. The rent payments were due in advance. The Rent statement showed that the rent payments had increased to £510 on 1<sup>st</sup> April 2021 and £530 on 1<sup>st</sup> May 2022 but written agreement regarding the rent increases had not been provided.

At (i) the date of the Notice to Leave (ii) the date of the Application and (iii) today's date the rent arrears exceeded both £1500, being the amount of three months rent in terms of the lease and £1590 being three months rent in terms of the rent statement.

7.3 The Tribunal found that the rent arrears were not due to a delay or failure in payment of a relevant benefit as the Respondent's Representative advised that the amount of the rent arrears was agreed.

7.4 The Tribunal considered the parties 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.'*

7.5 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 February 2019, the fact that the Applicants had issued three preaction letters to the Respondent, the fact that the Respondent is not opposed to the eviction application and the fact that the Respondent has applied to the Local Authority for rehousing.

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

7.7 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 28<sup>th</sup> October 2022.

7.8 The Tribunal granted the eviction but the Order should not to be executed prior to 12 noon on the earlier of (a) 13<sup>th</sup> January 2024, or (b) the expiry or suspension of Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022.

## **8. 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**

**12<sup>th</sup> July 2023**