



Decision 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/23/2231

Re: Property at 105 Martin Avenue, Irvine, KA12 9NT (“the Property”)

Parties:

Erchi Limited, 1 Springfield Gardens, Irvine, KA11 2DD (“the Applicant”)

Miss Jacqueline Kerr, 105 Martin Avenue, Irvine, KA12 9NT (“the Respondent”)

Tribunal Members:

Karen Kirk (Legal Member) and Jane Heppenstall (Ordinary Member)

This was a Case Management Discussion to consider an application for an Eviction Order in respect of a Private Residential Tenancy under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The discussion took place by teleconference. The purpose of the hearing being to explore how the parties dispute may be efficiently resolved. This was explained to parties at the outset.

1. Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Eviction Order against the Respondent.

2. Attendance and Representation

The Applicant was not present and was represented by Martha Thomson, Taylor & Henderson, 51 Hamilton street, Saltcoats, KA21 5DX.

The Respondent was not present. She was represented Alistair Meek , Advice and Information Department, CHAP, Michael Lynch Centre for Enterprise, 71 Princes Street, Ardrossan, KA22 8DG

3. Preliminary Matters

The Respondent's representative submitted that the Respondent was not opposed to the application on the Grounds sought and reasonableness. She accepted liability for the rent arrears due as at the date of the application which were £11,616.80.

There were no other preliminary matters raised.

4. Case Management Discussion

For the Applicant

The Applicant's representative proceeded on the basis that she sought an Eviction Order on the basis of Ground 12A, substantial rent arrears. She submitted the arrears had been persistent for some time and were well over 6 months of rent. The Applicant's representative confirmed that the rent arrears were now as at the date of the hearing, £13,616.80. As at the date of the application the arrears of rent due by the Respondent in terms of the Private Residential Tenancy between parties were £11,616.80. The monthly contractual instalment is £400 per calendar month. The Respondent is in receipt of a benefit contribution to her rent but this has a shortfall and arrears have continued to accrue despite this eligibility.

The Applicant's representative set out that an order was reasonable, in particular in light of no opposition to it from the Respondent. The arrears are substantial. She referred to in discussion 2022 dated pre-action protocol letters sent to the Respondent.

For the Respondent

The Respondent's representative set out that the Respondent lives with her son, who is 24 years of age and is an adult student. The Respondent no longer feels the tenancy is affordable. She has been on sick leave for periods due to mental ill health which has caused difficulties in her ability to engage with help. The Respondent cannot support the tenancy. The Respondent is in receipt of universal credit but had also been making attempts to get back to work causing delays in benefits but also sporadic payments. She has access to a complex debt service and support to obtain a new tenancy. She accepts that Ground 12A is met and that an order would be reasonable.

5. Findings in Fact

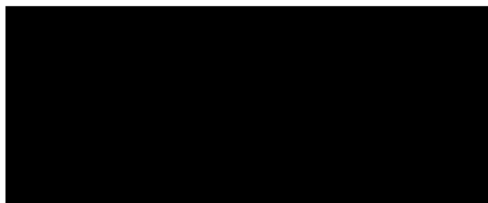
- 1. The Tribunal was satisfied that a decision could be made at the Case Management Discussion and that to do so would not be contrary to the interests of the parties having regard to the Overriding objective. The Respondent was represented and all material matters were not in dispute.**
- 2. The Applicant sought an Order for Eviction on Ground 12A, substantial rent arrears.**
- 3. The Tribunal was satisfied that the Applicant's were the heritable proprietor of the Property as a copy title was lodged with the Application.**
- 4. There was a PRT in place between parties which commenced on 1st October 2018. This was not in dispute.**
- 5. A Notice to Leave was sent to the Respondent on 26th May 2023. Rent per calendar month due is £400.**
- 6. The Tribunal was satisfied on balance that the Respondent was in terms of Schedule 3, Part 3 Ground 12A of the 2016 Act was in substantial rent arrears. As at the date of the application the Respondent owed rent arrears to the Applicant of the sum of £11,616.80. As at the date of the hearing the Respondent owed rent arrears of £13,616.80. Completed rent statements were lodged. The Respondent accepted liability for the rent arrears due.**
- 7. Further the Tribunal was satisfied that in terms of Section 52 of the 2016 Act a valid Notice to Leave had been given to the Respondent by valid means and the Application had been raised after the correct notice period.**
- 8. The Tribunal noted the Local Authority under the Homelessness etc (Scotland) Act 2003 Act had been notified.**
- 9. On the information given to the Tribunal by the Applicant the Respondent resided at the property with her adult son. She did not wish to maintain the tenancy. She had struggled financially due to mental ill health. The Tribunal found an Order was reasonable in terms of the Coronavirus (Scotland) Act 2020.**
- 10. Accordingly, in terms of Section 51 of the 2016 Act the Tribunal granted an Eviction order against the Respondent. The Application will not be affected by the Cost of Living (Protection for Tenants)(Scotland) Act 2022. However the Tribunal considered they had to apply the overriding objective and weigh the interests of both parties and in the interest of natural justice due to the fact of the Respondent's mental health the Tribunal decided to delay enforcement of the order until on or after 15th January 2024. The Tribunal delayed execution of the order until 15th January 2024, in terms of Regulation 16A of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Amendment Regulations 2018.**

6. Reasons for Decision

The Tribunal had before it sufficient evidence showing substantial rent arrears including rent statements and pre-action letters in terms of the rent protocol. The Respondent's representative confirmed the Respondent was not opposed to the application. The Tribunal was satisfied that Ground 12A was met and proceeded to grant an order.

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.



24/11/2023

Legal Member/Chair

Date