



**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/23/2176**

**Re: Property at 3/L 223 Hilltown, Dundee, DD3 7AG (“the Property”)**

**Parties:**

**RAM Property Investing Limited, 5 South Charlotte Street, Edinburgh, EH2 4AN (“the Applicant”)**

**Mr John Edens, Mr Callum McDonagh, 3/L 223 Hilltown, Dundee, DD3 7AG; 3/L 223 Hilltown, Dundee, DD3 7AG (“the Respondents”)**

**Tribunal Members:**

**Lesley Ward (Legal Member) and Melanie Booth (Ordinary Member)**

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

## **1. Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for the eviction of the Respondent from the property at 3/L 223 Hilltown, Dundee, DD3 7AG be made, on ground 12 (rent arrears) and it is reasonable in all of the circumstances that the eviction be granted.**

## **Background**

**2. This was a case management discussion (‘CMD’) in connection with an Application for eviction in terms of rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Procedure Regulations 2016, (‘the rules’) on ground 12 (rent arrears) of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016’ the Act’. The Applicant was represented by Miss Gillian Matthew solicitor. The**

Respondents did not attend and were not represented. There was a second Application before the Tribunal for rent arrears.

3. The Tribunal had before it the following copy documents:

- Application dated 29 June 2023.
- Land certificate.
- Landlord registration details.
- Private Residential Tenancy Agreement dated 12 March 2021.
- Pre-action requirements letters dated 23 November 2021 to 7 June 2023.
- Notice to leave dated 23 May 2023.
- Emails serving notice to leave dated 23 May 2023.
- Rent statement.
- S11 notice and proof of service.
- Execution of service by sheriff officers dated 25 August 2023.

#### **4. Preliminary matters**

The Respondents did not attend the CMD and were not represented. The Tribunal had sight of the execution of service by sheriff officers dated 25 August 2023 serving the papers on each Respondent by depositing. The first Respondent contacted the Tribunal by email on 5 October 2023 stating he had received an email from the Applicant (seeking to increase the amount sought in the rent arrears Application). His email also stated that he was not residing in the property and had not received any of the papers from the Tribunal. The email also stated that he was challenging the rent arrears on the basis of the condition of the property and was seeking to make a counter claim. He also stated that he was unable to attend the CMD due to work commitments. Miss Matthew advised the Tribunal that she had spoken to Mr Edens on the telephone on 4 October 2023. He stated that his relationship with Mr McDonagh came to an end in November 2022. He left the property and Mr McDonagh had changed the locks. He was unable to gain access. She stated that Mr Edens first contacted Your Move in August 2023 to notify that he was no longer residing in the property. She was unaware of the exact date. The Tribunal noted the Sheriff Officers had served the papers on 25 August 2023. The Tribunal was satisfied that the second Respondent had received fair notice of the Application in terms of rule 24. The Tribunal considered it was possible that the first Respondent had not received his papers for the hearing but he was aware a CMD was taking place. The Tribunal was satisfied that it was fair to proceed with the CMD in the absence of both Respondents in accordance with rule 29 and the overriding objective.

#### **5. Discussion**

The rent arrears had increased to £3360 which was 7 months of arrears. Miss Matthew was not seeking to amend the Application to ground 12A and was seeking an eviction order on ground 12. Miss Matthew invited the Tribunal to grant the eviction and allow

the arrears application to be continued. This would enable the first Respondent to participate and lodge any papers regarding his counterclaim. She submitted that there was no prejudice to him as he was no longer living in the property. Regarding the second Respondent's circumstances Miss Matthew submitted that has not been in contact with the Applicant's Letting Agent. When the tenancy commenced the first Respondent was in employment. There are no children residing in the property and no known health conditions. The Applicant was not aware of the benefits position of the second Respondent.

## **6. Findings in fact**

- The Applicant is the owner and registered landlord of the property.
- The parties entered into a private residential tenancy for let of the property on 12 March 2021 for let of the property.
- The agreed monthly rent was £480.
- Rent arrears began to accrue in November 2021.
- The Respondents were sent a pre-action notification letter on 23 November 2021 and periodically thereafter until 7 June 2023.
- The Applicant served each of the Respondents with a valid notice to leave by email on 23 May 2023.
- The notice to leave expired on 23 June 2023.
- The rent arrears on 23 May 2023 were £1440.
- The rent arrears as at 6 October 2023 are £3360. .
- The rent arrears are not due to a delay or failure in payment of a relevant benefit.

## **Reasons**

7. This is an undefended eviction Application. The Respondents were each served with a valid notice to leave on 23 May 2023 to the email addresses given in the tenancy agreement. The Tribunal was satisfied that the Respondents had received a valid notice to leave.

8. The first Respondent is still using the same email address. The Tribunal has had no communication with the second Respondent. The first Respondent may not have received the papers from the Sheriff Officers but he is aware of the Applications and his opposition is in the relation to the rent arrears Application rather than the eviction Application. He is therefore not prejudiced by the eviction being granted. Indeed it is arguable that it is in his interests that the eviction is granted as he has a joint and several liability to pay the rent for the property. The rent arrears Application will be continued to a new CMD to enable the first Respondent to participate if he wishes.

9. The Applicant has complied with the pre-action requirements as several letters have been sent since November 2021 when the arrears first began to accrue. There was no evidence before the Tribunal that there has ever been any eligibility for housing benefit or Universal Credit for either Respondent. The first Respondent was working when the tenancy was signed and the second Respondent's income position was unknown. The Tribunal was satisfied on the balance of probability that the rent arrears

are not wholly or partly due to a delay in the payment of a relevant benefit. Although this is a ground 12 application and not ground 12A, the rent arrears are now substantial and over 6 months of rent is due. The Tribunal was satisfied that it is reasonable in all of the circumstances to grant the eviction.

### **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.**



**Lesley Anne Ward**

**6 October 2023**

---

**Legal Member**

---

**Date**