



**Decision with Statement of Reasons 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/22/4016**

**Re: Property at 12 Ailsa Court, Hamilton, ML3 8XJ (“the Property”)**

**Parties:**

**Anchor Properties Residential LTD, Beechfield House, Melkle Earnock Road, Hamilton, ML3 8RN (“the Applicant”)**

**Mr Martin Collins, 12 Ailsa Court, Hamilton, ML3 8XJ (“the Respondent”)**

**Tribunal Members:**

**Gillian Buchanan (Legal Member) and Ahsan Khan (Ordinary Member)**

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

At the Case Management Discussion (“CMD”), which took place by telephone conference on 19 September 2023, the Applicant was not in attendance but was represented by Ms Angelina Franchitti of Property Angels Letting & Management Limited. The Respondent was neither present nor represented.

The tribunal was satisfied that the requirements of Rule 24(1) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”) had been satisfied relative to the Respondent having received notice of the CMD and determined to proceed in the absence of the Respondent in terms of Rule 29.

The CMD was in respect of this matter and the related case bearing reference FTS/HPC/CV/22/4017.

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:-**

**Background**

The Tribunal noted the following background:-

- i. The Applicant leased the Property to the Respondent in terms of a Private Residential Tenancy Agreement (“the PRT”) that commenced on 10 December 2019.

- ii. The rent payable in terms of the PRT was agreed to be £375 per calendar month payable in advance on the tenth day of each month.
- iii. A deposit of £375 was also agreed to be payable.
- iv. By email dated 9 June 2022 the Applicant per its agent served on South Lanarkshire Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.

### **The Case Management Discussion**

At the CMD the First Applicant made the following representations in respect of this application and the associated application FTS/HPC/CV/22/4017:-

- i. The deposit paid by the Respondent is still held in a Tenancy Deposit Scheme.
- ii. The rent arrears outstanding and due by the Respondent are £9,167.50 as at the CMD.
- iii. The last payment made by the Respondent was £60 on 2 December 2022.
- iv. Two grant payments were received towards the rent arrears, being £2880 on 28 March 2022 and £2240 on 4 November 2022.
- v. The Respondent is still in occupation of the Property. He has no dependents living with him.
- vi. The Respondent previously worked in a warehouse. His current employment situation is not known.
- vii. It is not known if the Respondent is in receipt of state benefits.
- viii. The last contact with the Respondent was in September 2022 when the Respondent indicated that he was waiting for an eviction order to be granted by the Tribunal in order to get another house.
- ix. The Applicant seeks an eviction order.

### **Notices to Leave**

The Tribunal asked for further detail on the Notices to Leave.

In particular the Tribunal had initially been provided with a Notice to Leave dated 9 June 2022 which seeks, in Part 2, the Respondent's removal based upon his breach of a term of the PRT. However, Part 3 of the Notice to Leave referred to "*frequent non payment or short payment of rent*" and referred to attaching a Rent Account (a copy of which had not been lodged).

The Tribunal had also been provided with a receipt relative to an email to the Respondent dated 9 June 2022 timed at 17:33 with the Subject "Notice – 12 Ailsa Court Hamilton" and a Post Office Certificate of Posting dated 10 June 2022.

During the sift stage of the application the Tribunal Casework Officer by letter dated 6 February 2023 queried, amongst other things, the Notice to Leave not making reference to Ground 12, being the relevant Ground where an eviction order is sought based on non-payment of rent over 3 consecutive months. The Casework Officer asked whether any other Notice to Leave had been served that makes reference to Ground 12 and, if so, the Applicant's representative was asked to provide a copy with evidence of service.

By email dated 31 March 2023 the Applicant's representative provided a copy of a Notice to Leave dated 9 June 2022 in almost exactly the same terms as the Notice to Leave previously lodged, the only difference being that in Part 2 the box ticked refers to the ground of removal being "*You are in rent arrears over three consecutive months*". A further copy of the email receipt dated 9 June 2022 was also provided.

The Applicant's representative explained:-

- i. That there had been an "ongoing saga" with the Respondent for many years.
- ii. Several Notices to Leave had been served, mainly due to rent arrears.
- iii. The Applicant had received two payments from the "Right There" COVID grant fund to allow the Respondent to stay in the Property provided he recommenced payments of rent. He failed to do so.
- iv. She said there had been some anti-social behaviour.
- v. She said the first Notice to Leave lodged with the Tribunal (the one which referred to a breach of a tenancy term) was "not served" in that it was sent by recorded delivery but never collected. She could only verify receipt of the second Notice to Leave (the one that refers to removal based on rent arrears) which was sent by email. She said the Post Office receipt ought not to have been lodged.
- vi. As at 10 June 2022 the arrears were £6,114.08.
- vii. She said a full Rent Statement would have been sent with the Notice to Leave despite that not having been produced to the Tribunal.

### **"Right There" Local Authority COVID Economic Recovery Fund**

The Tribunal asked what conditions were attached to the COVID grant payments made in March and November 2022. No paperwork relative thereto had been lodged with the Tribunal.

The Applicant's representative stated:-

- i. That the conditions attached to the payments were that the Landlord did not seek an eviction order in respect of those arrears being paid.
- ii. Previous Notices to Leave had been issued and were therefore retracted.
- iii. A new Notice to Leave was issued being the 9 June 2022 Notice to Leave.
- iv. The payment made on 4 November 2022 was in respect of a grant awarded in September 2022. The Tribunal noted the eviction application is dated 2 November 2022.
- v. The Applicant's representative agreed that the purpose of COVID grant payments is to keep a tenant in occupation of a property. The Respondent agreed to make the grant applications as a way to reduce the arrears and the Applicant agreed to accept the payments if the Respondent paid the ongoing rent but he didn't do so.

### **Pre Action Protocols**

The Tribunal had no evidence of the pre action protocols having been complied with.

The Applicant's representative stated that pre action protocol letters had been sent on 9 June 2022 with the Notice to Leave, and in October and December 2022. She said that these had been sent by email with read receipts having been obtained.

### **Adjournment**

The Tribunal adjourned the CMD and asked the Applicant's representative to produce the following documentation, upon review of which the Tribunal would make a decision on whether or not to grant the application.

- i. Copies of the pre action protocol letters sent by the Applicant's representative to the Respondent in June, October and December 2022 with evidence of intimation thereof; and
- ii. Copies of the COVID grant award letters showing the conditions attached to the March and November 2022 payments.

Subsequent to the CMD and by email dated 19 September 2023 a colleague of the Applicant's representative forwarded to the Tribunal "Pre action protocol notices" dated 28 October 2022 and 30 December 2022, the latter being dated after this application had been lodged. The Tribunal did not receive the pre action protocol communication said to have been issued on 9 June 2022 nor the emails evidencing any of the foregoing communications having been sent.

Subsequent to the CMD and by emails dated 19 September 2023 a colleague of the Applicant's representative also forwarded to the Tribunal the COVID grant payment conditions relative to the payment of £2,880 made in March 2022 and an incomplete set of COVID grant conditions understood to be relative to the payment of £2,240 made in November 2022.

### **Direction**

Having not received the complete documentation requested at the CMD, by Direction dated 23 September 2023 the Tribunal asked for the following by 5pm on 27 September 2023:-

1. The pre action protocol communication sent by the Applicant or the Applicant's representative to the Respondent on 9 June 2022; and
2. Copies of the emails sending to the Respondent the pre action protocol communications sent by the Applicant or the Applicant's representative to the Respondent on 9 June, 28<sup>th</sup> October and 30<sup>th</sup> December 2022 with delivery and/or read receipts therefore;

No further paperwork was forthcoming and no further communication from the Applicant's representative explaining the absence of the documents was received.

### **Reasons for Decision**

The Respondent did not submit any representations to the Tribunal and did not attend the CMD. The factual background narrated by the Applicant within the application papers and by the Applicant's representative orally at the CMD was not therefore challenged by the Respondent.

However, the Tribunal was not satisfied with the position as presented and narrated for the following reasons:-

- i. It was difficult to make sense of the position relative to the two almost identical Notices to Leave. On the basis of the Applicant's representative's submissions the Notice to Leave initially lodged and making reference to a breach of a tenancy term was issued by post on 10 June 2022, one day after the Notice to Leave correctly referring to the rent arrears ground was issued by email. The Tribunal did not have sight of the Rent Account stated to have been issued with each Notice to Leave and therefore was not in possession of a complete Notice to Leave as served which was very unsatisfactory.
- ii. Despite its request the tribunal was not provided with the complete documentation showing the full set of conditions relative to the "Right There" Local Authority COVID Economic Recovery Fund payment of £2240 made in November 2022. The tribunal could not therefore determine the extent to which that payment might impact upon the rent arrears forming the basis for this application. This is wholly unsatisfactory and the Applicant's representative did not provide any explanation.
- iii. With regard to the conditions relative to the "Right There" Local Authority COVID Economic Recovery Fund payment of £2880 made in March 2022 the tribunal could

not reconcile those conditions with the rent statement relative to this application. In particular the conditions state:-

- That the payment is based on arrears "*accrued for a reason related to the covid-19 pandemic between March 23<sup>rd</sup> 2020 and August 9<sup>th</sup> 2021.*"
- That the "*Grant must not be used as payment for rent arrears which accrued before 23 March 2020 or after 9 August 2021.*"
- That "*The Landlord must not seek or obtain an eviction order on grounds of rent arrears that accrued between 23 March 2020 and 9 August 2021.*"

The Rent Statement produced by the Applicant's representative simply showed the grant payment offset against the running total of arrears from time to time. That is not in accordance with the conditions of payment of the grant to which the parties agreed in order for the Applicant to receive the funds. Insofar as the Tribunal could ascertain the Rent Statement included rent arrears between 23 March 2020 and 9 August 2021 and the Tribunal was not addressed thereon.

- iv. The pre action protocol documentation was not adequate. The letter stated to have been sent with the Notice to Leave on 9 June 2022 was not produced. There was no evidence of the October pre action protocol letter having been issued. The letter said to have been issued on 30 December 2022 was after the application had been raised and does not therefor constitute a "pre action" protocol letter. In any event no evidence of intimation of that letter was produced either. The wording of the pre action letters produced are of doubtful adequacy in terms of their content. However, in the absence of evidence of service of the notices the Tribunal did not require to reach a view on that.

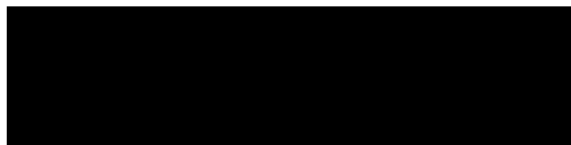
Whilst the Tribunal accepted there to be rent arrears accrued over three consecutive months the Tribunal did not consider it would be reasonable to grant an eviction order given the absence of a complete Notice to Leave, the apparent non-compliance with the conditions relative to the March 2022 COVID grant payment, and the absence of evidence of service of sufficient pre action protocol letters.

### **Decision**

The Tribunal refused the application.

### **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/Chair**

**5 October 2023**  
**Date**