



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016.**

**Chamber Ref: FTS/HPC/EV/23/2985**

**Re: Property at 29 Clare Crescent, Larkhall, ML9 1ES (“the Property”)**

**Parties:**

**Andrew Newman Limited, 14 West Mains Crofts, West Calder, EH55 9FL (“the Applicant”)**

**Mr John McGuire, Miss Kylie Henderson, 321 Glasgow Road, Hamilton, ML3 0QZ; 29 Clare Crescent, Larkhall, ML9 1ES (“the Respondent”)**

**Tribunal Members:**

**Karen Kirk (Legal Member) and Mary Lyden (Ordinary Member)**

## **Introduction**

This Hearing was a Case Management Discussion fixed in terms of Rule 17 of the Procedure Rules and concerned an Application for an Eviction Order under 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016. The purpose of the Hearing being to explore how the parties dispute may be efficiently resolved.

## **Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Eviction Order against the Respondent under section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016, and**

## **Attendance**

**Andrew Newman attended for the Applicants. He explained that it was his company and he was the sole director of same.**

**The Respondent Ms Henderson was in attendance. She explained the Respondent, Mr Guire was never in residence at the tenancy.**

## **Preliminary Matters**

The Respondent wanted to note at the outset that she herself remained concerned she was still residing at the property but she had nowhere else to go. She had been advised to remain in the property and this was to her continuing financial detriment.

Mr Newman explained that his Letting agent dealt with all the notices and the first Notice to Leave had the incorrect date. The Respondent agreed with this and the fact a new Notice to Leave was issued and relied upon.

There were no other preliminary issues raised.

## **Summary of Discussion**

### *For the Applicant*

Mr Newman set out that she sought an Eviction Order on behalf of the Applicant who are the heritable creditor of the property. He set out that he sought an Eviction Order in terms of Schedule 3, Part 3, Ground 12 of the Private Housing (Tenancies) (Scotland) Act 2016. He referred to the rent statements lodged. He confirmed as at the 1<sup>st</sup> January 2024 rent arrears for the property were £3663.26. Mr Newman said he obtained an order for civil payment against the Respondent on 29<sup>th</sup> December 2023 for the sum of £2180.10.

Mr Newman advised he and his letting agents had made all attempts they could to assist the Respondent. Since May 2023 his letting agent has received £475 direct and £29.21 towards the arrears from the Respondent's benefit income. There had been no further payments made in addition since 29<sup>th</sup> March 2023. The property is a 2 bedroom house and the company has 33 properties. There is a mortgage and the intention would be to re-let same.

### *For the Respondent*

The Respondent explained she is a fully qualified hairdresser and is 24 years of age. She has a 1 year old and a 2 and a half year old. She is a single parent. She has applied and been granted discretionary housing benefit but she cannot afford the property. She fell pregnant after entering the tenancy and has been unable to resume work. When she received the Notice to Leave she contacted South Lanarkshire Council and was told that until she received an eviction order she would not be considered as homeless. She said she cannot afford the property but has nowhere else to go and the local authority are not willing to accommodate her without an eviction order. She was not opposed to the application. She said further that she cannot afford the rent and she sought alternative accommodation.

## **Reasons for Decision and 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. There was no material facts in dispute. The Tribunal had the benefit of all necessary information and evidence before it. The Application was not opposed.

2. The Applicant sought an Order for Eviction in terms of Schedule 3, Part 3, Ground 12 of the Private Housing (Tenancies) (Scotland) Act 2016 that the Respondent has been in rent arrears for at least 3 consecutive months.
3. Parties entered into a Private Residential Tenancy for the property on 28<sup>th</sup> March 2022. Rent per calendar month due by the Respondent to the Applicants is £850.
4. As at the date of the application per rent statement dated 30<sup>th</sup> August 2023 rent due by the Respondent to the Applicants was £2180. 10. This was not in dispute.
5. As at the date of the rent statement lodged dated 16<sup>th</sup> November 2023 rent due by the Respondent to the Applicants was £2921.68 This was not in dispute.
6. As at 1<sup>st</sup> January 2024 rent due by the Respondent to the Applicant £3663.26. This was not in dispute.
7. The Applicant and their letting agency had lodged significant email correspondence between parties showing evidence of compliance with the pre-action protocol and steps taken to try to resolve matters. On 7<sup>th</sup> March 2023 a pre-action protocol email was sent tot the Respondent. The Respondent also has taken steps to maximise her income but she is unable to meet her full contractual liability despite this.
8. The Tribunal was satisfied that under Schedule 3, Part 3, Ground 12 of the Private Housing (Tenancies) (Scotland) Act 2016 the Respondent has been in rent arrears for three or more consecutive months. The Tribunal further found that at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the Respondent was in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day, and has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months.
9. The Tribunal was satisfied that the Respondent being in arrears of rent over that period was not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit
10. 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 (email) on 15<sup>th</sup> September 2023 and the Application had been raised after the correct notice period. This was not in dispute.
11. The Tribunal noted the Local Authority under the 2016 Act had been notified.
12. The Tribunal considered reasonableness. The Respondent was clear she was unable to afford the tenancy due to a material change in circumstances. She had explored her income maximisation and as a single parent is unable to work until nursery placements can be funded and arranged in connection with her benefit income. She has a 1 year old child and a 2 year old child. She is 24 years of age. She seeks alternative

accommodation and has been advised by the local authority that she cannot be accommodated until an eviction order is granted. She was not opposed to the application and had continued to try and maximise her income but could not afford the monthly rent. The Applicant set out that that rent arrears continue and he seeks to re-let the property to meet the contractual rent. He said there was a mortgage on the property. The Applicant's have 33 rental properties. On balance the Tribunal found that an Order was reasonable in terms of the Coronavirus (Scotland) Act 2020.

13. Accordingly, in terms of Section 51 of the 2016 Act the Tribunal granted an Eviction order against the Respondents.

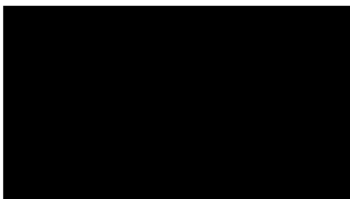
14. The Application will be affected by the Cost of Living (Protection for Tenants)(Scotland) Act 2022.

### **Reasons for Decision**

The Tribunal found that an Order was reasonable in terms of the Coronavirus (Scotland) Act 2020. Accordingly, in terms of Section 51 of the 2016 Act the Tribunal granted an Eviction order against the Respondents. The rent arrears were not in dispute and it was accepted that the Respondent who had previously been working was now unable to afford the rent payments. The Application will be affected by the Cost of Living (Protection for Tenants)(Scotland) Act 2022. The Tribunal took into account the presence of 2 young children in the property but also the fact the Respondent sought an order and did not dispute 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.



23<sup>rd</sup> January 2024

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Legal Member/Chair

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Date

