



**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/23/3371**

**Property : 44A Galloway Street, Dumfries DG2 7TH (“Property”)**

**Parties:**

**Astrid Chari McKie and Terence Robert Kerr McKie, Deanspark, Irongray Road, Dumfries DG2 0HS (“Applicant”)**

**Gillespie Gifford & Brown LLP, 135 King Street, Castle Douglas DG7 1NA (“Applicant’s Representative”)**

**James Pool, 44A Galloway Street, Dumfries DG2 7TH (“Respondent”)**

**Tribunal Members:**

**Joan Devine (Legal Member) and Elizabeth Williams (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined that an order for possession of the Property should be made.**

**Background**

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: a Private Residential Tenancy Agreement dated 24 August 2020; Notice to Leave addressed to the Respondent under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 ("Act") dated 6 July 2023 ("Notice to Leave") in which the ground for eviction was ground 12A; Post Office certificate of posting dated 6 July 2023; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 26 September 2023 and rent statement. The Tribunal had sight of a certificate of service by sheriff officer evidencing service of the Application on the Respondent on 15 December 2023

## **Case Management Discussion**

A CMD took place before the Tribunal on 7 February 2024 by teleconference. The Applicant was represented by Adam Turnbull of the Applicant's Representative. There was no appearance by either Respondent.

Mr Turnbull told the Tribunal that the rent was now 13 months in arrears. He said that the Respondent lives in the Property alone. He said that the Applicant and an individual who assist the Applicant with tenant liaison had made numerous attempts to contact the Respondent by text message and by knocking on the door of the Property without success. He said that for a period the Respondent was in prison. Mr Turnbull said that the Respondent left the Property in November 2023 and left the keys with a neighbour but returned in December 2023, he presumed after being told he had made himself intentionally homeless.

## **Findings in Fact**

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent entered into a Tenancy Agreement dated 24 August 2020 ("Tenancy Agreement").
2. The Notice to Leave was served by recorded delivery post on 6 July 2023.
3. The Notice to Leave stated that an application for an eviction order would not be submitted to the Tribunal before 7 August 2023.
4. At the date of service of the Notice to Leave the cumulative amount of rent arrears equated to or exceeded an amount that is the equivalent of 6 months' rent under the Tenancy Agreement.
5. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 26 September 2023.

## **Reasons for the Decision**

The Tribunal determined to make an Order for possession of the Property in terms of Section 51 of the Act. In terms of section 51 of the Act, the First-tier Tribunal may issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies. In the Application the Applicant stated that they sought recovery of possession of the Property on the basis set out in Ground 12A which states :

- (1) *It is an eviction ground that the tenant has substantial rent arrears.*

- (2) *The First-tier Tribunal that the ground named in paragraph 1 applies if –*
- (a) *the tenant has accrued rent arrears under the tenancy agreement in respect of one or more periods,*
  - (b) *the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy agreement when notice to leave is given to the tenant on this ground in accordance with section 52(3), and*
  - (c) *the tribunal is satisfied that it is reasonable to issue an eviction order*

The Tribunal considered the statement of rent arrears provided and determined that the ground for eviction had been established. In the absence of any submission by the Respondent that it would not be reasonable to grant an order for eviction, and in light of the submission made by the Applicant's Representative, the Tribunal determined that it was reasonable to issue an eviction order.

### **Decision**

The Tribunal grants an order for possession of the Property.

### **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.**

**Legal Member:**

**Joan Devine**

**Date : 7 February 2024**