

**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/23/3839**

**Re: Property at Flat 6, St Mary's Walk, Kirkcudbright, DG6 4DS (“the Property”)**

**Parties:**

**Mrs Catherine Robertson, Mr William Johnston, Zetland Court, Keswick Drive,  
Southernness, DG2 8AZ (“the Applicant”)**

**Mr Andrew May, Flat 6, St Mary's Walk, Kirkcudbright, DG6 4DS (“the  
Respondent”)**

**Tribunal Members:**

**Alison Kelly (Legal Member) and Elaine Munroe (Ordinary Member)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that the order for eviction should be granted.**

**Background**

1. On 27<sup>th</sup> October 2023 the Applicant lodged an Application with the Tribunal under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondent from the property under Grounds 1, 12 and 14 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.
2. Lodged with the application were: -
  - i. Copy Private Residential Tenancy Agreement showing a commencement date of 17<sup>th</sup> December 2018 and a rent of £350.06 per month;
  - ii. Copy Notice to Leave dated 10<sup>th</sup> March 2023;
  - iii. Copy recorded delivery proof of delivery dated 11<sup>th</sup> March 2023 serving the Notice to Leave;
  - iv. Section 11 Notice and proof of service;

- v. Letter from Braidwoods Solicitors dated 10<sup>th</sup> March 2023 confirming they are instructed to market the property for sale
  - vi. Rent Statement
  - vii. Letter from Dumfries and Galloway Council dated 17<sup>th</sup> November 2022 in relation to alleged anti social behaviour
3. The Application was served on the Respondent by Sheriff Officers on 3<sup>rd</sup> January 2024.

## **Case Management Discussion**

- 4. The Case Management Discussion ("CMD") took place by teleconference. The Applicant was represented by Miss McNiven of Harper McLeod, Solicitors. There was no attendance by the Respondents or any representative on her behalf.
- 5. The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. The Chairperson explained that the Applicant needed to provide sufficient evidence to establish the ground of eviction, and that it was reasonable for the Tribunal to grant the order.
- 6. Miss McNiven sought an order for eviction in terms of grounds 1, 12 and 14 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.
- 7. In relation to Ground 1 Miss McNiven said that the Applicants intended to sell the property, or at least put it up for sale, within three months of the Respondent vacating it. She made reference to the letter from Braidwoods, Solicitors which had been lodged with the application confirming that they were instructed in a sale of the property.
- 8. In relation to ground 12 she referred to the rent statement and said that the current rent arrears were £9801.75, which were substantial. There had been no contact from the Respondent and no offer to sort out the arrears. He had not paid any rent since March 2022, and had been in arrears since 2020. The arrears had not been accrued due to a delay in the payment of benefits.
- 9. In relation to ground 14 Miss McNiven conceded that there was no specification in the letter from Dumfries and Galloway Council regarding the alleged anti social behaviour, and she withdrew that ground.
- 10. The Tribunal were satisfied that grounds 1 and 12 had been established, and asked Miss McNiven to address the Tribunal on reasonableness.
- 11. Miss McNiven said that the Respondent was a single man. She was not aware of him having any dependents, any disabilities or any employment. The arrears were very significant. She said that the Applicants wished to sell as they had lost their appetite to be landlords due to the non payment of rent.

## Findings in Fact

- a. The parties entered into a Short Assured Tenancy for the property which is deemed to be Private Residential Tenancy due to its commencement date;
- b. The tenancy commenced on 17<sup>th</sup> December 2018;
- c. The rent was £350.06 per month;
- d. A Notice To Leave, dated 10<sup>th</sup> March 2023, was served timeously and correctly;
- e. A section 11 notice was served on the local authority;
- f. The Application was served on the Respondent by Sheriff Officer on 3<sup>rd</sup> January 2024;
- g. The Applicant intends to sell or market for sale the property within three months of the Respondent vacating;
- h. The Respondent has not paid rent since March 2022;
- i. The current arrears are £9801.75;
- j. The Respondent is not known to have any dependents or any disabilities.

## Reasons for Decision

12. It is usually mandatory to grant an application under Grounds 1 and 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 provided that notices have been served correctly. However, Section 43 of Coronavirus (Recovery and Reform) (Scotland) Act 2022 amended the legislation as follows:

### **Private residential tenancies: discretionary eviction grounds**

*(1)The Private Housing (Tenancies) (Scotland) Act 2016 is modified as follows.*

*(2)In section 51(2) (First-tier Tribunal's power to issue an eviction order), the words "or must" are repealed.*

*(3)In schedule 3 (eviction grounds)—*

*(a)in paragraph 1(2) (landlord intends to sell)—*

*(i)in the opening words, for "must" substitute "may",*

*(ii)after paragraph (a), the word "and" is repealed,*

*(iii)after paragraph (b) insert " , and*

*"(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.",*

*(b)in paragraph 2(2) (property to be sold by lender)—*

*(i)in the opening words, for "must" substitute "may",*

*(ii)after paragraph (b), the word "and" is repealed,*

*(iii)after paragraph (c) insert " , and*

*"(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.",*

*(c)in paragraph 3(2) (landlord intends to refurbish)—*

*(i)in the opening words, for “must” substitute “may”,*

*(ii)after paragraph (b), the word “and” is repealed,*

*(iii)after paragraph (c) insert “, and*

*“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*

*(d)in paragraph 4(2) (landlord intends to live in property)—*

*(i)for “must” substitute “may”,*

*(ii)the words from “the landlord” to “3 months” become paragraph (a),*

*(iii)after paragraph (a) insert “, and*

*“(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,*

*(e)in paragraph 6(2) (landlord intends to use for non-residential purpose)—*

*(i)for “must” substitute “may”,*

*(ii)the words from “the landlord” to “home” become paragraph (a),*

*(iii)after paragraph (a) insert “, and*

*“(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,*

*(f)in paragraph 7(2) (property required for religious purpose)—*

*(i)in the opening words, for “must” substitute “may”,*

*(ii)after paragraph (b), the word “and” is repealed,*

*(iii)after paragraph (c) insert “, and*

*“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*

*(g)in paragraph 8 (not an employee)—*

*(i)in the opening words of sub-paragraph (2), for “must” substitute “may”,*

*(ii)for sub-paragraph (2)(c) substitute—*

*“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*

*(iii)sub-paragraph (3) is repealed,*

*(iv)in sub-paragraph (4), for “sub-paragraphs (2) and (3)” substitute “sub-paragraph (2)”,*

*(h)in paragraph 10(2) (not occupying let property)—*

*(i)in the opening words, for “must” substitute “may”,*

*(ii)after paragraph (a), the word “and” is repealed,*

*(iii)after paragraph (b) insert “, and*

*“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*

*(i)in paragraph 12 (rent arrears), sub-paragraph (2) is repealed,*

*(j)in paragraph 13(2) (criminal behaviour)—*

*(i)in the opening words, for “must” substitute “may”,*

*(ii)after paragraph (a), the word “and” is repealed,*

*(iii)after paragraph (b) insert “, and*

*“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*

*(k)in paragraph 14(2) (anti-social behaviour), after paragraph (b), for “and” substitute—*

*“(ba)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact, and”.*

13. The Tribunal now has to decide if it is reasonable to grant the eviction order.

14. The Tribunal were of the view in this case that the Applicant had established Ground 1 by provision of the letter from Braidwoods and the submissions by the solicitor. Ground 12 was also established as the rent had been in arrears since 2020 the arrears were substantial. The Tribunal therefore had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order. The Tribunal considered that the level of arrears in and of itself, being well over two years' worth of payments made it reasonable to grant the 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.**

  
**Legal Member/Chair**

**19 February 2024**  
**Date**