



**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/23/2484**

**Re: Property at 65 Rosemount Crescent, Carstairs, ML11 8QN (“the Property”)**

**Parties:**

**Volante Properties, 74 Beaumont Drive, Wishaw, ML2 7BL (“the Applicant”)**

**Mr James Wilson, 65 Rosemount Crescent, Carstairs, ML11 8QN (“the Respondent”)**

**Tribunal Members:**

**Ms H Forbes (Legal Member) and Mr D MacIver (Ordinary Member)**

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

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

**Background**

1. This is an application for an eviction order made in the period between 25<sup>th</sup> July and 13<sup>th</sup> October 2023 in terms of Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”), and under ground 12 of Schedule 3 of the Act. The Applicant representative lodged a copy of the private residential tenancy agreement between the parties, which commenced on 18<sup>th</sup> November 2022 with a monthly rent of £595, a rent statement, section 11 notice with evidence of service, copy notice to leave with evidence of service, and pre-action requirement correspondence.
2. Notification of the application and the forthcoming Case Management Discussion upon the Respondent was carried out by Sheriff Officers on 29<sup>th</sup> November 2023.
3. A Case Management Discussion (“CMD”) took place by telephone conference on 26<sup>th</sup> January 2024. Ms Lee Rossi, Letting Agent and Applicant representative was in attendance. Mr David Henderson, Director, attended on behalf of the Applicant. The Respondent was not in attendance. Following a

full discussion during which it was considered there was a lack of clarity over the current arrears and whether payments to rent or arrears had been made, the CMD was continued to allow the Applicant to lodge an up-to-date rent statement.

4. By email dated 26<sup>th</sup> January 2024, an up-to-date rent statement showing arrears in the sum of £7,430 was lodged by the Applicant representative.
5. Notification of the forthcoming CMD was made upon parties on 29<sup>th</sup> February 2024.
6. By email dated 3<sup>rd</sup> April 2024, the Applicant representative lodged an up-to-date rent statement showing arrears in the sum of £8,620.

### **The Case Management Discussion**

7. A Case Management Discussion (“CMD”) took place by telephone conference on 26<sup>th</sup> January 2024. Ms Lee Rossi, Letting Agent and Applicant representative was in attendance. Mr David Henderson, Director, attended on behalf of the Applicant. The Respondent was not in attendance.
8. The Tribunal considered the terms of Rule 29. The Tribunal determined that the requirements of Rule 17(2) had been satisfied, and it was appropriate to proceed with the application in the absence of the Respondent.
9. The Tribunal raised a preliminary point concerning the matter of service of the Notice to Leave, which had been served by email and ordinary post rather than by the method agreed within the tenancy agreement, which was hard copy by personal delivery or recorded delivery. Mr Henderson explained that the Respondent was refusing to engage by any means, and the lack of communication had been the reason for using email for service of the Notice to Leave.
10. There was some discussion regarding submissions made at the previous CMD, where the Tribunal had been informed that the Respondent is 39 years old and has lost his job. He occasionally has a daughter to stay with him. He has no disabilities, and there is no eligibility for benefit. Ms Rossi said the Respondent now has another job, but there has been no contact or communication since the last CMD. No payments have been made to rent or arrears, and the arrears are now £8620.

### **Findings in Fact and Law**

11.
  - (i) Parties entered into a private residential tenancy agreement in respect of the Property that commenced on 18<sup>th</sup> November 2022 with a monthly rent of £595.

- (ii) The Respondent has been in rent arrears for three or more consecutive months.
- (i) The Respondent's rent arrears are not due to a delay or failure in the payment of a relevant benefit.
- (ii) The Applicant has complied with the pre-action protocol.
- (iii) It is reasonable to grant an eviction order.

### **Reasons for Decision**

12. Ground 12 of Schedule 3 of the Act provides that it is an eviction ground if the tenant has been in rent arrears for three or more consecutive months. The Tribunal may find that this applies if for three or more consecutive months the tenant has been in rent arrears and the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order. In deciding whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenant's being in arrears of rent over that period is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit and the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations.
13. The Tribunal is satisfied that Ground 12 has been established.
14. The Tribunal is satisfied that the necessary Notice to Leave has been issued to the Respondent in terms of the Act.
15. The Tribunal is satisfied that the arrears are not due to a delay or failure in the payment of a relevant benefit.
16. In considering whether it was reasonable to grant the eviction order, the Tribunal considered the circumstances of both parties. The Respondent has been a tenant since November 2022 and fell into arrears in December 2022. No rent has been paid since a partial payment of rent was made in June 2023. The Tribunal took into account that a considerable time has passed in which the Respondent has failed to engage with the Applicant in respect of the rent arrears, despite the Applicant having complied with the pre-action protocol and having made the Respondent aware of sources of advice. The Respondent did not attend either CMD to put forward any argument in respect of reasonableness.
17. The Applicant is entitled to rent lawfully due in terms of the tenancy agreement. The sum outstanding is significant. Given the passage of time and the lack of engagement, there appears to be no real prospect of the Respondent paying their ongoing rent or addressing the arrears. The Applicant has complied with the pre-action protocol.

18. In all the circumstances, the Tribunal considered it reasonable to grant the order sought.

### **Decision**

19. An eviction order in respect of the Property is granted. The order is not to be executed prior to 12 noon on 8<sup>th</sup> May 2024.

### **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.**

# H Forbes

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Legal Member/Chair

5<sup>th</sup> April 2024  
Date