



**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/18/1734**

**Re: Property at 35e Kinghorn Road, Kirkcaldy, KY1 1SU (“the Property”)**

**Parties:**

**Mr Jim Gay, C/O Remax First, 1A Whytescauseway, Kirkcaldy, KY1 1XF (“the Applicant”)**

**Miss Kimberley Paterson, 35e Kinghorn Road, Kirkcaldy, KY1 1SU (“the Respondent”)**

**Tribunal Members:**

**Graham Harding (Legal Member) and Jane Heppenstall (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for possession of the property and the eviction of the Respondent from the property.**

**Background**

1. By Application dated 9 July 2018 the Applicant applied to the Tribunal for an order to evict the Respondent from the property on the basis that the Respondent had rent arrears over three consecutive months this being a ground for eviction as set out in Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016. In support of the Application the Applicant’s representatives Remax Ltd, Kirkcaldy, provided the Tribunal with copies of the Notice to leave, rent statement, Section 11 Notice and the Applicant’s letter of authority.
2. By Notice of Acceptance dated 25 July 2018 a legal member with delegated powers accepted the application and referred the case to a Tribunal.

3. A Case Management Discussion was fixed to take place on 14 September 2018. Intimation was given to the parties. The Respondent did not attend the Case Management Discussion but submitted written representations. The Case Management Discussion proceeded in the absence of the Respondent and was attended by Mr Bruce Napier on behalf of the Applicant.
4. At the end of the Case Management Discussion, in light of the representations made by the Respondent and as it appeared that the Respondent may be about to be rehoused by Fife Council the Tribunal continued the case to a hearing assigned to take place at Fife Voluntary Action, 16 East Fergus Place Kirkcaldy on 30 October 2018.

### **The Hearing**

5. The hearing was attended by Mr Bruce Napier of Remax Ltd on behalf of the Applicant. There was no appearance by the Respondent. The Respondent sent an email to the Tribunal on the morning of the Hearing to explain she was unable to attend because of personal issues. She further explained that her new accommodation was being treated for woodworm but she hope to move into it by the end of the month.
6. The Tribunal determined to proceed with the hearing in the absence of the Respondent in accordance with Rule 29 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.
7. Mr Napier confirmed that the parties had entered into a private residential tenancy agreement on 21 December 2017 and produced a copy of the agreement. He confirmed that the monthly rent was£560.00. He advised the Tribunal that since August the Applicant was receiving payment of rent by way of Housing benefit in the sum of £213.72 per month. The tenant was not making any payment towards the rent herself. The total amount of rent outstanding was now £2878.97. There were no further Housing Benefit applications pending.
8. Mr Napier said that the Notice to Leave had been served on the Respondent by personal service and the Respondent had acknowledged receipt. She had been in communication with the Tribunal and with Fife Council. He understood she had accepted the tenancy of a new property from Fife Council. The grounds for eviction had been established.

### **Findings in Fact**

9. The parties entered into a Private Residential Tenancy Agreement.
10. The Respondent had three consecutive months of arrears when the Notice to Leave was served on her.
11. The current arrears amount to £2878.97

12. The Respondent has accepted the offer of a tenancy from Fife Council and hopes to vacate the property at the end of this month.

13. There is no application for Housing Benefit pending. The Respondent is in receipt of housing benefit of £213.72 per month that is currently being paid directly to the Applicant.

### Reasons for Decision

14. The Tribunal was satisfied that the grounds for eviction in terms of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 had been met by the Applicant. The Respondent was in rent arrears for three or more consecutive months and at the beginning of the day on which the Tribunal first considered the application for an eviction order on its merits the Respondent was in arrears 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 the Tribunal is satisfied that the Respondent's failure is not wholly or partly due to a delay or failure in the payment of a relevant benefit.. There was accordingly a mandatory ground for eviction.

15. The Tribunal was satisfied that the Applicant had complied with the legislative requirements in respect of the Application.

### Decision

16. The Tribunal being satisfied that the Respondent is in breach of ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 finds the Applicant entitled to an order for the eviction of the Respondent from 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.

Graham Harding

Legal Member/Chair

Date

30 October 2014