



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

**Chamber Ref: FTS/HPC/EV/20/1470**

**Re: Property at 83 Norham Street, Flat 1/2, Glasgow, G41 3XP (“the Property”)**

**Parties:**

**Mr John Heraghty, 16 Tanfield Avenue, London, NW2 7RX (“the Applicant”)**

**Mr David Alexander Morgan, 83 Norham Street, Flat 1/2, Glasgow, G41 3XP (“the Respondent”)**

**Tribunal Members:**

**Josephine Bonnar (Legal 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 against the Respondent in favour of the Applicant.**

**Background**

1. By application received on 26 June 2020 the Applicant seeks an eviction order in terms of section 51 Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). A copy tenancy agreement, Notice to Leave with Sheriff Officer certificate of service, rent statement and Notice in terms of Section 11 Homelessness etc (Scotland) Act 2003 were lodged in support of the application. The application is based on ground 12 of schedule 3, rent arrears over three consecutive months.
2. A copy of the application and supporting documents were served on the Respondent by Sheriff Officer on 27 August 2020. Both parties were advised that a Case Management Discussion (“CMD”) would take place on 21 September 2020. The case called for a CMD on that date. The Applicant was

represented by Ms Gaughan, solicitor The Respondent participated in person. The Respondent requested an adjournment to obtain legal advice. This was not opposed and the CMD was adjourned to allow the Respondent to obtain legal representation. The Respondent was directed by the Legal Member to take immediate steps to obtain legal advice. On 1 October 2020 parties were notified that a further CMD would take place by telephone case conference on 5 November 2020 at 2pm. They were provided with a telephone number and passcode. On 21 October 2020, the Applicant submitted an amended statement of claim and updated rent statement. On 3 November 2020, the Respondent requested a postponement of the CMD. He indicated that the CMD was due to take place on 4 November 2020 and that he was waiting "for the DWP to confirm to my lawyer that I am on universal credit". The request was refused, and parties were advised that the CMD would proceed as scheduled at 2pm on 5 November 2020.

3. The application called for a CMD at 2pm on 5 November 2020. The Applicant was represented by Ms Gaughan, solicitor. The Respondent did not participate and was not represented.

### **Case Management Discussion**

4. Ms Gaughan advised the Legal Member that the Respondent is still in occupation of the property. The Applicant has been attempting to get access to the property for repairs. However, the Respondent fails to answer the door when tradesmen attend. The Applicant has had no contact from the Respondent. Ms Gaughan confirmed that the Applicant seeks an eviction order
5. The Legal Member proceeded to discuss the amended rent statement submitted with the application. In the application, the Applicant states that although the tenancy agreement specifies rent of £600, the parties verbally agreed to increase this to £650 in May 2018. Ms Gaughan said that this is evidenced by the payments of £650 paid in September and October 2019. However, the Applicant has provided no additional evidence of an alleged agreement to increase the rent. Ms Gaughan advised the Legal Member that it remains the Applicant's position that the increased figure had been agreed. However, the Applicant does not seek additional time to provide further evidence. If the Tribunal is not persuaded that the agreed rent was £650, the Applicant's alternative position is that application should be determined based on the figure specified in the tenancy agreement, namely £600. The rent statement shows a balance due of £10,300. If an adjustment must be made to reflect the lower rent figure, Ms Gaughan confirmed that the total rent currently due is £8800. However, the adjustment would not alter the fact that the arrears started in May 2018, when there was a shortfall in the rent due for that month. Since November 2019, there have been no payments to the rent account.
6. In response to questions regarding the impact of benefit issues on the rent payments, Ms Gaughan advised the Legal Member that the arrears issues started in May 2018 and that the Respondent has had over 2 years to resolve

any problems with relevant benefits. She confirmed that the Applicant became aware in 2019 that the Respondent was in receipt of universal credit. He attempted to arrange direct payments from the DWP but was unsuccessful. He thinks that the Respondent may subsequently have started work. He does not know the current position and has no information which would indicate that a delay or failure in the payment of benefit has led or contributed to the rent arrears.

### **Findings in Fact**

7. The Applicant is the owner and landlord of the property.
8. The Respondent is the tenant of the property in terms of a tenancy agreement dated 10 May 2018.
9. The Respondent is due to pay rent at the rate of £600 per month.
10. The Respondent has been in arrears of rent since 10 May 2018.
11. The Respondent owes the sum of £8800 in unpaid rent to the Applicant.
12. The Applicant served a Notice to leave on the respondent on 24 February 2020

### **Reasons for Decision**

13. The application was submitted with a Notice to Leave dated 20 February 2020, together with a Sheriff Officer certificate of service which establishes that the Notice was served personally on the Respondent on 24 February 2020. The Notice states that an application to the Tribunal is to be made on ground 12, rent arrears over three consecutive months. Part 4 of the notice indicates that the earliest date that an application to the Tribunal can be made is 24 March 2020. The application to the Tribunal was made after expiry of the notice period. The Legal member is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a copy of the Section 11 Notice and evidence that it was sent to the Local Authority by email. The Legal Member is satisfied that the Applicant has complied with Section 56 of the 2016 Act.
14. Section 51(1) of the 2016 Act states, “ The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.” Ground 12 states “(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. (2) The First-tier Tribunal must find that the ground named in sub- paragraph (1) applies if – (a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant – (i) is 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 (ii) has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more continuous months, and (b) the Tribunal is satisfied that the tenants being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.”

15. The Legal Member is not satisfied that the Applicant has established that the rent due by the Respondent was increased to £650 by agreement. No evidence of this agreement has been provided. The only document submitted, the one page tenancy agreement, states £600. Furthermore, the payment history does not establish that the Respondent agreed to a higher figure. The payments on the account are erratic. There are higher payments recorded for some months, but these could relate to the rent arrears which had accrued, rather than the current rent due for those months. The Legal member is satisfied that the rent due in terms of the tenancy agreement is £600 per month.
16. The Legal Member is satisfied, from the rent account lodged with the application, and the information provided at the CMD, that the Respondent now owes the sum of £8800 in unpaid rent. He has been in arrears of rent since the tenancy began in May 2018, when there was a shortfall of £50. He has therefore been in arrears for three or more consecutive months, both at the date of service of the Notice to leave (when the arrears were £2600) and the date of the CMD. The sum currently owed is more than one month's instalment of rent. No information has been provided by the Respondents to suggest that the arrears of rent are due to a delay or failure in the payment of a relevant benefit. He has indicated, in an email to the Tribunal, that he is currently in receipt of universal credit. However, no further information has been provided. The Legal Member therefore concludes that the eviction ground has been established.
17. As the Applicant has complied with the requirements of the 2016 Act, and as the eviction ground has been established, the Legal Member determines that an eviction order should be granted.

## **Decision**

18. The Legal Member determines that an eviction order should be granted against the Respondent.

## **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.

# J Bonnar

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Josephine Bonnar, Legal Member

5 November 2020