



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/EV/19/1904**

**Re: Property at 1F Drumclair Place, Airdrie, ML6 7AP (“the Property”)**

**Parties:**

**Mr Anders Fauerskov, 40 Norman Macleod Crescent, Bearsden, G61 3BF (“the Applicant”)**

**Mr Frank Shields, 1F Drumclair Place, Airdrie, ML6 7AP (“the Respondent”)**

**Tribunal Members:**

**Andrew Upton (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.**

**FINDINGS IN FACT**

1. The Applicant, as owner of the property, was the landlord, and the Respondent the tenant, of the property under and in terms of a succession of tenancy agreements during the period 4 March 2010 until 7 January 2020 (“the Tenancy Period”).
2. Lee-Anne Fauerskov and Peter Carroll were, at various times throughout the Tenancy Period, acting as agents for an undisclosed principal, subsequently disclosed as the Applicant.
3. The tenancy agreement in force as at 7 January 2020 was a Private Residential Tenancy pursuant to a PRT Agreement between Peter Carroll and the Respondent dated 4 and 28 May 2018, in terms of which the monthly rent was £425.

4. As at 28 March 2019, the Respondent had been in rent arrears for a period in excess of three consecutive months.
5. As at 7 January 2020, the rent arrears owed by the Respondent to the Applicant were at least £18,916.16, which is a sum in excess of one month's rent.

## **FINDINGS IN FACT AND LAW**

1. The Applicant having given valid Notice to Leave to the Respondent on 28 March 2019 specifying Ground 12 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 as the basis for eviction, the Respondent having been in continuous rent arrears for a period in excess of three calendar months immediately prior to the service of such Notice to Leave and since then, and the Respondent owing a sum in excess of one month's rent to the Applicant as at 7 January 2020, the Tribunal must grant an eviction order.

## **STATEMENT OF REASONS**

1. This application called before me for a Case Management Discussion on 7 January 2020 together with the grouped application CV/19/1907. The Applicant was represented by Miss Gaughan, solicitor. The Respondent was neither present nor represented.
2. These applications have a sorry procedural history, which includes two previous Case Management Discussions. It is regrettable that it has taken so long for them to be properly determined; particularly where the Respondent has never sought to enter process.
3. The applications were raised in the name of Peter Carroll. At an earlier CMD, it was noted that Mr Carroll was not the owner of the property, nor the registered landlord of the property, though he was named as landlord on the tenancy agreement. It was explained by Miss Gaughan that the property is owned by Anders Fauerskov. The registered landlord is his wife, Lee-Ann Fauerskov. Peter Carroll is the father of Lee-Ann Fauerskov. Mrs Fauerskov has been managing the property, but due to the tenancy situation becoming heated she and her husband agreed that Mr Carroll would take over the management of the property. Against that background, I was moved to amend the application by substituting Anders Fauerskov as Applicant in place of Peter Carroll. That motion was anticipated at the previous CMD, referred to in the CMD Note, and proposed in an email to the Tribunal during the course of December 2019. In the circumstances, I granted that motion.
4. Thereafter, I was invited to grant an eviction order. The Application asserted that the tenancy agreement in force between the parties was a Private Residential Tenancy Agreement which superseded previous Short Assured Tenancy Agreements. The monthly contractual rent was £425. Significant rent arrears had accrued. A Notice to Leave was served on the Respondent on 28 March 2019 specifying Ground 12 as a basis for eviction, which was that rent

had been outstanding for a period in excess of three calendar months. The Respondent has been afforded multiple opportunities to oppose the grant of the order sought and has failed to avail himself of those (unusually large number of) opportunities. I treated the assertions made in the application as unopposed.

5. As at the date of the CMD, the sum due by the Respondent to the Applicant in rent arrears was £18,916.16, which was a sum in excess of one month's rent. In terms of the Private Housing (Tenancies) (Scotland) Act 2016:-

**“51 First-tier Tribunal's power to issue an eviction order**

- (1) The First-tier Tribunal is to 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.
- (2) The provisions of schedule 3 stating the circumstances in which the Tribunal may or must find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.
- (3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.
- (4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

...

**Schedule 3, Paragraph 12 Rent arrears**

- (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 by 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 consecutive months, and

- (b) the Tribunal is satisfied that the tenant's 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.
- (3) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—
  - (a) for three or more consecutive months the tenant has been in arrears of rent, and
  - (b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.
- (4) In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
- (5) For the purposes of this paragraph—
  - (a) references to a relevant benefit are to—
    - (i) a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971),
    - (ii) a payment on account awarded under regulation 91 of those Regulations,
    - (iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,
    - (iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,
  - (b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.”

6. I was satisfied that the requirements of Ground 12(a) applied. That is a mandatory ground. The Tribunal has no discretion whether to grant the order or not where Ground 12(a) applies. I therefore granted the eviction 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.

Andrew Upton  
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Legal Member/Chair

7 JANUARY 2020  
\_\_\_\_\_  
Date