



**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**

**Chamber Ref: FTS/HPC/EV/20/0250**

**Re: Property at 35 Maitland Hogg Lane, Kirkliston, EH29 9DU (“the Property”)**

**Parties:**

**Mr Connor Lindsay, Thorncroft, Blainslie, Galashiels, TD1 2PR (“the Applicant”)**

**Mr Thomas William Clark, Mrs Rachel Clark, Mrs Essie Little, 35 Maitland Hogg Lane, Kirkliston, EH29 9DU; 35 Maitland Hogg Lane, Kirkliston, EH29 9DU; 35 Maitland Hogg Lane, Kirkliston, EH29 9DU (“the Respondents”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member)  
Elaine Munroe (Ordinary Member)**

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

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

**Background**

1. By application received on 23 January 2020 the Applicant seeks an eviction order in terms of Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). A copy tenancy agreement, Notice to leave with Sheriff Officer certificates of service and copy Section 11 Notice to the Local Authority were lodged with the application. The Applicant also submitted bank statements and a rent account showing a balance due of £8910. The eviction ground stated in both the application and the Notice to leave is ground 12, rent arrears over three consecutive months.
2. The application and supporting documents were served on the Respondents by Sheriff Officer on 26 February 2020. Both parties were advised that a Case

Management Discussion (“CMD”) would take place on 30 March 2020. As a result of Government restrictions due to coronavirus, the CMD was postponed. On 15 June parties were advised that the CMD would now take place by conference call on 13 July 2020 at 2pm. Parties were provided with a telephone number and passcode. The Respondents were notified by recorded delivery post which was successfully delivered by Royal Mail.

3. Prior to the CMD the Second Respondent made a request for a postponement. The request was opposed by the Applicant. The request was refused.
4. The application called for a CMD on 13 July 2020 at 2.15pm. A related application under Chamber reference FTS/HPC/CV/20/251 also called. The Applicant participated. None of the Respondents participated. They did not contact the Tribunal in advance of the CMD to advise that they would not be participating, or lodge written submissions regarding the application. The Tribunal administration attempted to contact the second Respondent on the phone number she had provided but was unsuccessful.
5. Following the CMD the Legal Member granted an eviction order against the Respondents. A written decision with statement of reasons was issued to the parties. On 6 August 2020, the Second Respondent made a request for recall of the decision. On 23 August 2020, the Legal Member issued a direction requiring the Second Respondent to provide additional information and documentation. The Second Respondent provided a response to part of the direction. On 9 September 2020, the Legal Member recalled the decision. A copy of the decision with statement of reasons were issued to the parties. Parties were also advised that the Legal Member had determined that the application should now proceed to a hearing.
6. On 22 September 2020, all parties were advised that a hearing would take place by telephone conference call on 21 October 2020 at 10am, and that they were required to participate. They were provided with a telephone number and passcode.
7. On 13 October 2020, the Second Respondent emailed the Tribunal to ask for the hearing to be postponed to the afternoon. She provided a copy of her prescription and stated that her medication caused drowsiness. The Tribunal considered the matter and concluded that the hearing should start at 10am, as previously scheduled, given the late notice. The Tribunal also noted that it was important to allow sufficient time for the case to be heard. However, parties were advised that the Tribunal would accommodate frequent breaks, should this be required.
8. The application called for a hearing at 10.25am on the 21 October 2020. The Applicant participated. The hearing started late to allow additional time for the Respondents to join the conference call, as they had not dialled in. The Tribunal attempted to contact the Second Respondent on the telephone number she had provided, however the number was not recognised. The Respondents did not contact the Tribunal, by telephone or email, to advise

that they were unable to participate in the call.

### **The submissions.**

9. On 10 July 2020 the Second Respondent sent an email to the Tribunal in relation to the request for a postponement of the CMD. The reasons provided for the request related to the Respondents health. The Second Respondent also stated, " Please note I am also awaiting bank statements for proof of payment to arrive which will then be sent directly to the tribunal members as evidence on my part as all rental payments come from my own personal bank account. These were requested on Thursday 2 July 2020". On 6 August 2020, in the request for recall, the Second Respondent stated, "In December 2018 I had a fall at this address which put me in the hospital with a brain haemorrhage. Because of this, the rent was a week late in January. Mr Lyndsay came to this address to discuss the one month late rental. After some discussion, he asked if cash payments would be better so as to avoid any late banking payments in the future. At the time it made complete sense, as the payments came from my bank account and I didn't know if I may or may not end up back in hospital in care of the neuro consultants, and I agreed. I have attached the notes I made of payments. Anything of importance is always noted down as my memory has been made worse by the haemorrhage. I would also like to address two other issues. Mr Lindsay stated during CMD that he had been in touch with the DWP and said he "thinks he was advised that no relevant benefits were in payment" Another lie. The DWP would never under any circumstance discuss details of any claimant with a landlord they have assured me of that. During his several visits to this address, I asked him about the repair work that needed to be carried out. I was always met with a "more than likely next week" answer. I have attached all notes made and a copy of the email I sent to council enforcement officers. I also asked why I was served with an eviction notice by Sheriff Officers. He told me simply that it was a mistake and nothing to worry about." The Second respondent submitted a sheet of paper which lists payments of £810 each month on 1 May 2019 until 1 July 2020, inclusive. Each entry is initialled. The Second Respondent also provided a list of dates and repair issues. On 6 September 2020, in response to the direction from the Tribunal the Second Respondent stated that - the date but not the time of the rent payments had been noted, the payments were made to the Applicant at the property address and that he did not provide a receipt so she "signed each payment period" herself. She confirmed that the Third Respondent had not witnessed these payments, as she avoided contact with the Applicant, but that a neighbour had witnessed at least four payments. The neighbour was away but due back on 18 September. In relation to the Tribunal's request for the bank statements, referred to in the email of 10 July 2020, the second Respondent stated "Bank statements are useless in this regard as the rent is paid by three people at the rate of £270 each; rent is collected by each party at different times of the month before it is paid on the 1<sup>st</sup> of the month".

**10.** In response, the Applicant denied that rent had been paid to him in cash and stated that this would have been unworkable as he lived some distance from the property and a visit to collect rent would have entailed a three hour round trip and that one of the dates referred to by the Second Respondent was New Years Day. The Applicant also stated that the only reason he was seeking an eviction order was non payment of rent.

## Hearing

**11.** The Applicant advised the Tribunal that the tenancy started on 23 October 2020. The first rent payment of £810 was paid in cash, when the Respondents moved into the property. Thereafter, the rent was paid into his bank account. He referred the Tribunal to the bank statements lodged with the application which show payments on 23 November 2018 of £795, 7 January 2019 of £825 and 4 February 2019 of 810. The reference on the statement for each is "R Clark Rental". These payments equate to the rent due under the tenancy agreement for 23 November, 23 December, and 23 January 2019. The Applicant confirmed that the payment on 4 February 2019 was the last payment received. The current sum outstanding is £16,180. The Applicant confirmed that the Respondents remain in occupation of the property and that an eviction order is sought.

**12.** In response to questions from the Tribunal, the Applicant confirmed that he visited the Respondents at the property in January or February 2019. The purpose of the visit was to fit smoke alarms, but he took the opportunity to discuss the late rent. He saw all three Respondents. During the discussion he offered to assist the Respondents to contact the Council and sort out any issues with benefits, but they declined. They did not discuss changing the method of payment to cash. The Applicant advised the Tribunal that he always insists on rent being paid into his bank account as he is too busy to have to visit to collect rent, especially when this would involve a long journey. He further advised that this is the last time he visited the property. The last contact with the Respondents was a text message on 29 March 2019, when the Second Respondent notified him that her father had died, that the funeral was due to take place and that the rent would be a couple of weeks late as a result. No further payments were received and no contact from any of the Respondents.

**13.** The Applicant advised the Tribunal that the Respondents have not notified him of any repairs issues at the property or indicated that rent was being withheld. He confirmed that he could have carried out any repairs himself, had he been notified of any issues, and at minimal expense and inconvenience. However, no reports or complaints were received.

**14.** In response to questions from the Tribunal the applicant advised that he had asked an employee to contact the DWP. The purpose of the call was to notify the DWP that the rent was not being paid in case the Respondents were claiming benefits for their rent but not passing it on. It is his recollection that the employee told him that she was advised that no benefits were in place.

This may have been in the context of an enquiry about benefits being paid direct to the landlord because of the rent arrears.

15. At the conclusion of the Applicant's evidence, the Tribunal advised the Applicant that the hearing would be adjourned. A further attempt would be made to contact the Respondents by email, to afford them the opportunity to participate in the hearing. If they responded the hearing would be re-convened at 12.30pm. The Applicant confirmed that he had no objection to this proposal. The Tribunal issued an email to the Second Respondents email address, being the address, which had been provided by her. No response was received.

### **Findings in Fact**

16. The Applicant is the owner and landlord of the property.

17. The Respondents are the tenants of the property in terms of a private residential tenancy agreement dated 23 October 2018.

18. The Respondents are due to pay rent at the rate of £810 per month

19. The Respondents have incurred rent arrears of £16180.

20. A Notice to Leave was given to the Respondents on 19 December 2019.

21. The Respondents remain in occupation of the property.

### **Reasons for Decision**

22. The Tribunal proceeded to consider the application, the documents lodged, the submissions by the parties and the information provided at the hearing by the Applicant. The tenancy is a private residential tenancy which commenced on 23 October 2018. The rent due in terms of the tenancy agreement is £810 per calendar month. The Applicant states that the Respondents have made no payments of rent since 4 February 2019 and that the sum of £16180 is now owed. In the submissions the Second Respondent refers to repairs issues at the property but does not claim that rent has been withheld because of the outstanding repairs. The Second Respondent also states that the rent due for the property for the months of May 2019 until July 2020 has been paid in full, and in cash. This is disputed by the Applicant. The Tribunal has been provided with no information from the Respondents regarding the rent due for 23 February, 23 March, and 23 April. Furthermore, the Respondents have not stated that the rent due for the months of August and September 2020 has been paid.

- 23.** The Tribunal found the evidence of the Applicant at the hearing to be credible and reliable. The information provided regarding the rent payments is supported by the bank statements submitted, which show payments into his account by the Second Respondent in November 2018, January, and February 2019. His explanation for insisting upon payments to his bank account appeared to be reasonable and logical. On the other hand, the Respondents have failed to provide any information or explanation for the rent due for the months of February, March and April 2019, as the payment received on 4 February was for rent due on 23 January and the payment received in January 2019, was the payment due under the tenancy agreement for 23 December 2019. In addition, no information is provided in relation to payments due for the months of August and September 2020. Furthermore, although the Second Respondent states in the submissions that rent was paid from 1 May 2019 to 1 July 2020, in cash, no evidence was led at the hearing regarding this claim. The Tribunal also notes that the statement regarding cash payments contradicts the Second Respondents earlier statement in an email to the Tribunal on 10 July 2020, that she intended to lodge copy bank statements to evidence the payments of rent as these payments had been made from her personal bank account. The Tribunal is therefore satisfied that the Respondents have failed to pay rent for the months of February, March and April 2019 and August and September 2020. Furthermore, on the basis of the information provided, and the evidence at the hearing, the Tribunal is satisfied that the Respondents have failed to pay rent for the period May 2019 to July 2020 and that and that the current sum due is £16,180.
- 24.** On 19 December 2019, Sheriff Officers (on behalf of the Applicant) delivered a Notice to Leave to each of the Respondents at the property. The Notice to Leave stated that the ground for eviction was that the tenants were in rent arrears over 3 consecutive months. The Notice advised that an application would not be submitted to the Tribunal until 17 January 2020. The Applicant also sent a Section 11 Notice to the Local authority notifying them of the intention to lodge an application with the Tribunal. The arrears of rent at the time of lodging the application were £8910. These have increased to £16,180, with no payments toward the rent account having been made since 4 February 2019. The Tribunal is satisfied that the Applicant has complied with the requirements of Section 52(3) of the 2016 Act (to submit a copy of the Notice to Leave given to the tenant with the application) and Section 54 which requires a landlord to give 28 days notice when an eviction order is sought on ground 12, rent arrears over three consecutive months. The Applicant has also complied with Section 56 of the 2016 Act, requiring a landlord to submit a copy of the Notice to the Local Authority in terms of section 11 Homelessness etc (Scotland) Act 2003 with the application.
- 25.** 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 an application by the landlord, it finds that one of the eviction grounds named in Schedule 3 applies. Paragraph 12 of Schedule 3, “(1) it is an eviction ground that the tenant has been in rent arrears for three or more consecutive months” (12)(2) states that the Tribunal must find that the ground names in 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 months 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 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”.

**26.** The Tribunal considered the submissions made by the Second Respondent in relation to the DWP and the Applicant’s evidence at the hearing. No information or evidence has been provided which suggests or establishes that the non payment of rent is related to housing benefit or universal benefit delays or failures. The Tribunal is therefore satisfied that Schedule 3, ground 12(2)(b) does not apply.

**27.** On the basis of the documentation submitted with the application and the evidence provided by the Applicant at the hearing, the Tribunal is satisfied that ground 12 has been established and that the Tribunal must grant an eviction order. The Tribunal also notes that, had the Respondents established that the rent had been paid between May 2019 and July 2020, ground 12 would still have been established by virtue of the five missed rent payments which are not covered by the Respondents submissions.

## **Decision**

**28.** The Tribunal determines that an order for eviction against the Respondents is to be granted on ground 12 of Schedule 3, rent arrears over three or more consecutive months

## **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.**

Josephine Bonnar

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**Josephine Bonnar, Legal Member**

**21 October 2020**