



**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/21/3199**

**Re: Property at 133 Strawberry Bank Parade, Aberdeen, AB11 6UW (“the Property”)**

**Parties:**

**Mrs Carol Moreton, 2 Aitken Den, Arbroath, Angus, DD11 4QS (“the Applicant”)**

**Ms Lauren Baird, 133 Strawberry Bank Parade, Aberdeen, AB11 6UW (“the Respondent”)**

**Tribunal Members:**

**Lesley Ward (Legal Member) and Sandra Brydon (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that and order for the eviction of the respondent from the property be made on the basis that the respondent has been in rent arrears for three or more consecutive months in terms of ground 12 of schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 and it is reasonable in all of the circumstances that the eviction order be granted.**

- 2. This was a second case management discussion ‘CMD’ in connection with an application for eviction in terms of s52 of the Private Housing (Tenancies)(Scotland) Act 2016 and Rule 109 of the First-tier Tribunal for Scotland (Procedure) Regulations 2017 ‘the rules. There was a second application before the tribunal for recovery of rent arrears. The applicant was represented by Ms Lesley Black, Leasing Manager of Caroline Walker Leasing Ltd. The respondent did not attend and was not represented. A first CMD on 17 March 2022 was adjourned to today and the tribunal made directions.**

3. The respondent did not attend the first CMD and the tribunal, having sight of the sheriff officer's execution of service on that date, proceeded in her absence in terms of rule 24 and 29 of the tribunal rules. The respondent received intimation of today's adjourned CMD via email and the tribunal was satisfied that the respondent was aware of the CMD. The tribunal accordingly proceeded in her absence.

4. The tribunal had before it the following copy documents: -

- (1) Application dated 22 December 2021.
- (2) Private Residential Tenancy Agreement 'PRT' between Gardenstream and the respondent dated 6 July 2020.
- (3) Notice to leave erroneously dated 6 October 2021.
- (4) Email with notice to leave dated 6 April 2021.
- (5) Land Certificate.
- (6) Rent statement.
- (7) S11 notice.
- (8) Companies House documentation regarding Gardenstream Ltd.
- (9) Mandate signed by Carol Moreton.
- (10) Email from Aberdeen City Council Housing Advice to Caroline Walker Property Leasing Ltd dated 8 October 2021.
- (11) Emails from Caroline Walker Property Leasing Ltd to respondent regarding rent arrears from January 2021- September 2021.
- (12) Undated emails.
- (13) Email from Nicholas Duthie dated 7 November 2021.
- (14) Email from Myrtle Baird to Caroline Walker Property Leasing Ltd dated 9 December 2020.
- (15) Letter from Tribunal to Caroline Walker Property Leasing Ltd dated 11 January 2022.
- (16) Email from Caroline Walker Property Leasing Ltd to the Tribunal dated 12 January 2022.

### **Preliminary matters**

5. The tribunal made the following directions at the CMD on 17 March 2022:

The applicant shall lodge the following no later than 5 pm on 7 April 2022:

- (1) Evidence that the pre action requirements were complied with (if any).

- (2) Evidence that the notice to leave was sent to the email address in the Private Residential Tenancy Agreement, namely [myrtlebaird@yahoo.com](mailto:myrtlebaird@yahoo.com).
  - (3) Evidence that the respondent received the notice to leave (if any).
  - (4) Evidence that would assist the tribunal in determining the reasonableness in granting the eviction.
  - (5) An up to date rent statement.
6. The first matter to be clarified was in relation to the landlord. The tribunal noted at the first CMD that that the applicant is the owner of the property, and she is the registered landlord, but she is not the landlord named on the PRT. In terms of s51 and 52 of the Act the applicant for eviction proceedings should be the landlord. The applicant appears to be a shareholder of Gardenstream Ltd. It was not clear to the tribunal what authority Gardenstream Ltd had to grant the PRT and be landlords of the property. In any event, the application was not in the name of the landlord.
7. The applicant's representatives wrote to the tribunal on 6 April 2022 in response to the above directions. They stated that the reference to 'Gardenstream' in the PRT was 'a clerical error on their part as they manage over 90 properties on behalf of Moreton/ Gardenstream Ltd family'. They also stated that they had sought legal advice and were advised that they had provided enough evidence to confirm that Carol Moreton is the owner and landlord of the property.
8. Ms Black stated that the PRT had been negotiated by the respondent's mother and Caroline Walker Leasing Ltd as the letting agent for the applicant. The error regarding the PRT was not discovered until around April 2021 when the notice to leave was being considered. No communication was sent to the respondent to draw her attention to the error or to point out that Mrs Moreton was in fact the landlord. It was their position that Mrs Moreton is the landlord as she is registered as such and is the owner of the property. The respondent has only ever dealt with Caroline Walker Leasing Ltd and not Ms Moreton. The tribunal considered this point carefully. The tribunal was mindful that the application should be made by the landlord in terms of s51 and S52 of the Act. The tribunal was also aware that the applicant is the owner of the property, she is the registered landlord and is to all intents and purposes the landlord. The tribunal also noted the terms of s s45 of the Act which states that:
- "When ownership of a property is let under a private residential tenancy is transferred, the landlord's interest under the tenancy transfers with it".
9. This provision means that, had Mrs Moreton become the owner of the property after the PRT was drawn up, she would have become the landlord by virtue of being the owner, irrespective of the terms of the PRT. The tribunal was satisfied that given that provision, it is logical that Parliament would have intended that the landlord would also have a remedy in this situation where there is an error in the PRT. The tribunal was therefore satisfied that the applicant is the owner and landlord of the property, despite the error in the PRT naming Gardenstream and

concluded that Mrs Moreton, as owner and registered landlord of the property is therefore entitled to seek both an order for rent arrears and indeed eviction.

10. The tribunal sought to ascertain if the directions had been complied with. The tribunal had asked for proof that the pre action requirements had been complied with. The applicant has lodged a timeline of contact between the respondent and Ms Angela O'Sullivan Housing Options Officer of Aberdeen City Council from October 2021 until December 2021. Ms Black stated that her company had been corresponding with the respondent since the rent arrears began to accrue in October 2020 and that every possible help had been given to her. The council had also offered her help with the Tenant Hardship fund and temporary accommodation. The tribunal however noted that the formal pre-action requirements had not been complied with in their entirety by the applicant.
11. Regarding the notice to leave, the applicant's representatives had lodged a copy of the email dated 6 April 2021 sent to the address in the PRT, namely [myrtlebaired@yahoo.com](mailto:myrtlebaired@yahoo.com). The tribunal also noted that the timeline prepared by Ms Angela O'Sullivan had an entry dated 8 October 2021 which stated:

'phone call to Lauren as she had completed her housing options on Aberdeen City Council's website. She had received a notice to quit'.

12. Given the notice to leave served on 6 April 2021 erroneously gave 9 October 2021 for the respondent to leave the property, the entry on the timeline suggested that the respondent had received the notice to leave.
13. Ms Black gave further information to the tribunal regarding the reasonableness of the eviction. It was her submission that the respondent and her husband reside in the property. The property was originally leased for the respondent alone and the respondent's mother has made reference to a difficult domestic situation between the respondent and her husband in her correspondence with Caroline Walker Leasing Ltd. The timeline from Ms O'Sullivan also refers to advice given regarding Grampian Women's Aid. It is her understanding that the respondent's two children do not reside in the property and that the respondent's mother has a residence order. She submitted that in addition to the rent arrears, the property has been damaged. The applicant has incurred the cost of replacing the front door which was damaged in what was believed to be a drug related incident. On another occasion Ms Black and another member of staff from Caroline Walker Leasing Ltd came to inspect the property and discovered blood on the wall and a possible domestic abuse incident taking place and called the police. The respondent was due to attend for an appointment this week at Caroline Walker Leasing Ltd to discuss the application and she failed to attend. It is her submission that the respondent is in receipt of Universal Credit but the benefits are paid to her directly and not to the landlord. It was her submission that the respondent had failed to avail herself of the help available from Caroline Walker Leasing Ltd and the council.

She had failed to make any application to for the Tenant Hardship Fund and she has declined to engage with the council despite the considerable efforts of Ms O'Sullivan to contact her.

#### **14. Findings in fact**

- The applicant is the owner and landlord of the property.
- The parties entered into a PRT for let of the property in July 2020.
- The agreed monthly rent was £425 per month.
- Rent arrears began to accrue in October 2020.
- The rent arrears in April 2021 were £1425.
- The rent arrears in April 2022 were £2723.
- The respondent is in more than one month's rent arrears and has been in rent arrears for a continuous period of more than three months.
- The arrears of rent are not wholly or partly due to a delay or failure in payment of a relevant benefit.

#### **Reasons**

- 15.** This was an undefended application for eviction. The tribunal was satisfied that it was fair to proceed in the respondent's absence. The tribunal was satisfied that the application was valid, and the applicant was entitled to seek eviction as landlord for the reasons already given at paragraph 9 above.
- 16.** As has been identified, there were errors in the notice to leave. It should have been dated 6 April 2021 and was dated 6 October 2021 in error. The notice to leave was served on 6 April 2021 and stated that the respondent should leave the property by 9 October 2021. The correct notice period should have been 6 months rather than three months however the application was not made until 22 December 2021, 6 months after service of the notice to leave. In terms of paragraph 10 of schedule 1 of the Coronavirus (Scotland) Act 2020 (which provisions expired on 22 March 2022 but which were in force at the date of service of the notice to quit) the notice is not invalid by reason of the error. The respondent has not been prejudiced as the application was not made until the expiry of the notice period. The tribunal was satisfied that the notice to leave was therefore valid.
- 17.** The respondent has had rent arrears in excess of one month's rent since November 2020, a period in excess of 3 months. There was no evidence before the tribunal to suggest the rent arrears had accrued due to a failure in payment of a relevant benefit. The information presented was the respondent was in receipt of a relevant benefit and she had not used the benefit to pay her rent or the arrears. The tribunal was satisfied that the eviction ground was met.
- 18.** The pre- action requirements have not been complied with however the applicant's letting agents Caroline Walker Leasing Ltd have had detailed correspondence with the respondent and her and her mother via email since January 2021 in an effort

to come to an arrangement regarding the arrears. They have also liaised closely with the council who have advised the respondent regarding the Tenant Hardship Fund and have given the respondent debt advice.

19. Regarding the reasonableness of making the order, the tribunal noted that the rent arrears are substantial. The respondent has made a payment in February 2022 and March 2022 and the arrears have reduced slightly since February 2022 when they were £3275. Despite not formally complying with the pre-action requirements the applicant has made attempts via her agents Caroline Walker Leasing Ltd to come to an arrangement regarding the arrears and they have corresponded with the council to this end. The respondent has failed to communicate with the applicant's agents, or the council and she has failed to apply to the Tenant Hardship Fund. The property has been damaged and the applicant has incurred the cost of replacing the front door. The tribunal decided it was reasonable in all of the circumstances that the eviction order be granted.

## **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.**

Lesley ward

**Legal Member: Lesley Ward**

**Date: 26 April 2022**