



**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 (“The Act”)**

**Chamber Ref: FTS/HPC/EV/21/2661**

**Re: Property at 58 Woodmarket, Kelso, Roxburghshire, TD5 7AX (“the Property”)**

**Parties:**

**Miss Hannah Thomson, Quarry Bank, Hume, Kelso, TD5 7TR (“the Applicant”)**

**Ms Patricia Stuart, 58 Woodmarket, Kelso, Roxburghshire, TD5 7AX (“the Respondent”)**

**Tribunal Members:**

**Andrew McLaughlin (Legal Member) and Jane Heppenstall (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:**

**Background**

The Applicant seeks an Eviction Order based on Grounds 12 of Schedule 3 of the Act in that it is said that the Respondent owes rent arrears greater than one month’s worth of rent and has been in arrears for a period of in excess of three months and that the appropriate statutory notices were validly served. The Application is accompanied by a copy of the relevant tenancy agreement, a copy of the Notice to Leave served on the Respondent together with the Notice intimated to the Local Authority under s 11 of the Homelessness Etc. (Scotland) Act 2003. Various rent statements were also produced. The Respondent had also submitted representations of her own together with various documents which had all been considered carefully by the Tribunal.

## **The Case Management Discussion**

The Application called for a Case Management Discussion (CMD) by conference call at 10 am on 9 February 2022. The Application called alongside a related Application in respect of a Payment Order. The Applicant was represented by Ms Wooley of Bannatyne Kirkwood and France & Co. The Respondent was personally present.

The Tribunal noted that the Respondent appeared to challenge the manner in which the Applicant had calculated the rent arrears claimed. The Respondent's logic however would have required the Tribunal to unpick a previous decision made by the Tribunal to make a Payment Order in November 2020 which had comprehensively addressed the issues of rent arrears due at that time.

The Tribunal informed the Respondent that, as this determination had been made and had not been appealed, The Tribunal would not revisit those matters that had been determined at that Tribunal. That having been confirmed, the Respondent seemed to have no basis for challenging the sums of rent arrears claimed by the Applicants which were supported by up-to-date rent statements. The Respondent herself acknowledged that she had rent arrears and had not been in a position to pay the full contractual monthly rent for a considerable period of time.

When the Tribunal took the Respondent through the figures, it seemed apparent that the Respondent could raise no valid objection to the arithmetic.

The Tribunal took time to explore the reasonableness or otherwise of making an Eviction Order. The Respondent lives alone, works part-time and is rapidly accruing rent arrears. The Respondent herself also latterly indicated that she was happy for an Eviction Order to be made as it meant she would not be considered "*intentionally homeless*" by the local authority that would be legally required to address the Respondent's housing concerns. The Tribunal could not identify any issue that made the granting of an Eviction Order appear unreasonable.

Having considered all the documentation produced and having heard from parties, the Tribunal made the following findings in fact.

### **Findings in Fact**

- I. *The parties entered into a tenancy of the Property which commenced on 1 June 2019. The landlords in the tenancy were narrated as the Applicant's parents who were acting on her behalf. The Applicant owns the Property.*

- II. *The contractual monthly rent due was £350.00;*
- III. *The Respondent has fallen into rent arrears;*
- IV. *As at today's date the sum claimed by the Applicant as rent arrears of £2,299.80 is lawfully due by the Respondent to the Applicant but remains unpaid;*
- V. *On 12 April 2021, the Applicant validly served a Notice to Leave on the Respondent based on Ground 12 of Schedule 3 of the Act;*
- VI. *The Notice to Leave provided the Respondent with the correct period of notice to vacate the Property by 13 October 2021;*
- VII. *The Respondent has not vacated the Property;*
- VIII. *The Respondent had rent arrears of a sum in excess of one month's rent arrears and had been in such arrears for a period of at least three months when that notice was served. This also applies as at today's date;*
- IX. *The Applicant has complied with the terms of The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020;*
- X. *The terms of Ground 12 of Schedule 3 to the Act are engaged as at today's date and when the Notice to Leave was served;*
- XI. *It is reasonable to grant an Eviction Order.*

## **Reasons for Decision**

Having made the above findings in fact, the Tribunal granted the Application and makes an 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 McLaughlin

09/02/2022

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Legal Member/Chair

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Date