



**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/21/3099**

**Re: Property at 28 St Kilda Bank, Broomlands, Irvine, KA11 1HS (“the Property”)**

**Parties:**

**Mrs Tasleem Jabbar, Mr Abdul Jabbar, 108 Mountcastle Wynd, Kilwinning, KA12 6DH (“the Applicants”)**

**Miss Kelly Clark, 28 St Kilda Bank, Broomlands, Irvine, KA11 1HS (“the Respondent”)**

**Tribunal Members:**

**Ms H Forbes (Legal Member) and Mrs E Currie (Ordinary Member)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted against the Respondent**

**Background**

1. This is an application dated 13<sup>th</sup> December 2021, made in terms of Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Rules”). The Applicants are seeking an eviction order under ground 12 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) in respect of the Property which is the subject of a tenancy agreement between the parties commencing on 1<sup>st</sup> August 2020 at a monthly rent of £495.
2. The Applicants’ representative lodged a copy of the tenancy agreement, copy section 11 notice, notice to leave dated 27<sup>th</sup> May 2021, with proof of delivery, rent schedule, and pre-action letters dated 27<sup>th</sup> May, 28<sup>th</sup> June and 26<sup>th</sup> July 2021.
3. Intimation of the application and Case Management Discussion was made upon the Respondent by Sheriff Officers on 28<sup>th</sup> February 2022.

## **Case Management Discussion**

4. A Case Management Discussion (“CMD”) took place by telephone conference on 11<sup>th</sup> April 2022. The Applicants were not in attendance and were represented by Ms Saddiq, Solicitor. The Respondent was not in attendance.
5. The Tribunal considered the terms of Rule 29. The Tribunal determined that the Respondent had been given reasonable notice of the time and date of the CMD and that the requirements of Rule 17(2) had been satisfied and it was appropriate to proceed with the application in the absence of the Respondent.
6. Ms Saddiq moved the Tribunal to grant an eviction order as ground 12 was met. The Respondent has been in arrears for a considerable time. No rent has been paid since the application was lodged, therefore the outstanding sum of £7990 has increased each month by the monthly rent of £495. Efforts have been made to set up payment arrangements, to no avail.
7. In response to questions from the Tribunal as to reasonableness, Ms Saddiq said the Respondent was known to the Applicants. She had come from a troubled household and required urgent accommodation. The Applicants had set the rent at a low level to reflect the Respondent’s ability to pay. The Applicants are reliant on pension income from letting the Property.
8. The Respondent is on Universal Credit and Ms Saddiq was not aware of any delay in the payment of benefits that would have led to the arrears. There is no direct payment of the housing related portion of Universal Credit to the Applicants because the Respondent would not agree to this. The Respondent has made no attempt to address the arrears. The Respondent lives alone and has no dependants. About four weeks ago, there was some text correspondence between the parties whereby the Respondent indicated she would not leave the Property without an eviction order. The Respondent also indicated she was taking advice from the CAB.

## **Findings in Fact and Law**

9.
  - (i) The parties entered into a private residential tenancy agreement in respect of the Property commencing on 1<sup>st</sup> August 2020 at a monthly rent of £495.
  - (ii) The Respondent have been in arrears of rent for three or more consecutive months.
  - (iii) Notice to Leave has been served upon the Respondent.
  - (iv) At the date of the CMD, the Respondent was in arrears of rent by an amount greater than the amount payable as one month’s rent.

- (v) The Respondent's rent arrears are not due to a delay or failure in the payment of a relevant benefit.
- (vi) The pre-action requirements for private residential tenancies have been met.
- (vii) It is reasonable to grant an eviction order.

### **Reasons for Decision**

10. Ground 12 of Schedule 3 of the Act provides that it is an eviction ground if the tenant has been in rent arrears for three or more consecutive months. The Tribunal must find that this applies if (1) at the beginning of the day on which the Tribunal first considers the application for an eviction order, the tenant 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; (2) the tenant 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 (3) 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.
11. The Tribunal is satisfied that the necessary Notice to Leave has been correctly issued to the Respondent in terms of the Act.
12. The Tribunal is satisfied that Ground 12 has been established.
13. No evidence was provided to the Tribunal to show that the arrears were due to a delay or failure in the payment of a relevant benefit. The pre-action requirements were met.
14. In considering whether it was reasonable to grant the eviction order, the Tribunal considered the fact that the arrears were considerable, and that a *prima facie* case in respect of reasonableness had been made out on behalf of the Applicants.
15. Unfortunately, the Respondent was not in attendance to put forward any reasons why it would not be reasonable to grant the order, despite having been notified of the application and the CMD.
16. The Tribunal took into account the representations made regarding the circumstances of both parties. In all the circumstances, the Tribunal considered it reasonable to grant the order sought.

### **Decision**

17. An eviction order in respect of the Property is 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.**

**Legal Member: Helen Forbes**

**Date: 11<sup>th</sup> April 2022**