



**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/22/0159**

**Re: Property at 12 Lesmurdie House, Elgin, Moray, IV30 4JF (“the Property”)**

**Parties:**

**Mr Alistair Ross, 23 Hay Street, Elgin, Moray, IV30 1NH (“the Applicant”)**

**Mr Steven Kelly, 12 Lesmurdie House, Elgin, Moray, IV30 4JF (“the Respondent”)**

**Tribunal Members:**

**Ms H Forbes (Legal Member) and Mrs M Lyden (Ordinary 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**

**Background**

1. This is an application dated 18<sup>th</sup> January 2022, 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 Applicant was seeking an eviction order under grounds 11 and 12 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) in respect of the Property which is the subject of a Private Residential Tenancy agreement between the parties commencing on 1<sup>st</sup> December 2018 at a monthly rent of £550.
2. The Applicant’s representative lodged a copy of the tenancy agreement, copy section 11 notice, notice to leave dated 23<sup>rd</sup> June 2021, with proof of service, and rent statement.
3. By email dated 8<sup>th</sup> February 2020, the Applicant’s representative lodged written submissions on reasonableness, and pre-action correspondence.
4. Intimation of the application and Case Management Discussion was made upon the Respondent by Sheriff Officers on 2<sup>nd</sup> March 2022.

## **Case Management Discussion**

5. A Case Management Discussion (“CMD”) took place by telephone conference on 14<sup>th</sup> April 2022. The Applicant was not in attendance and was represented by Mr Peter Brash, Solicitor. The Respondent was not in attendance.
6. 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.
7. Mr Brash moved the Tribunal to grant an eviction order as the grounds were met. Letters had been lodged to show the pre-action requirements had been complied with. The Respondent has been in arrears for a considerable time. The rent arrears at the time of lodging the application were £9,825, and no rent has been paid since. Mr Brash referred to the written representations on reasonableness.
8. Responding to questions from the Tribunal regarding the Respondent’s personal circumstances, Mr Brash said he had no knowledge of whether the Respondent lived alone, had any dependants or was in employment. It was his understanding that the Respondent was no longer living at the Property. This was the reason for founding upon ground 11, as the Respondent had breached the terms of the tenancy agreement, in particular clauses 7 and 16, by failing to occupy the Property as his home and failing to inform the Applicant if he was to be absent from the Property for a period of more than 14 days.
9. Responding to questions from the Tribunal regarding the issue of whether or not the Respondent resides at the Property, Mr Brash said it was believed he was in a relationship at some point and living at a different address. Attempts had been made on behalf of the Applicant to get further information from the Respondent in this regard but he did not engage.
10. The Tribunal noted that there was mention of a payment plan in correspondence which involved paying the arrears in the sum of £150 per month. The rent statement showed that £150 had been paid for a few months in 2020, but the rent did not appear to have been paid at that time. Mr Brash said there had been face to face discussions in the past with the Respondent. Asked whether there was any correlation between the Respondent’s failure to pay rent and the national lockdown, Mr Brash said he was unaware of whether there had been any change in the Respondent’s circumstances that caused difficulties paying rent.

## **Findings in Fact and Law**

11.
  - (i) The parties entered into a private residential tenancy agreement in respect of the Property commencing on 1<sup>st</sup> December 2018 at a monthly rent of £550.

- (ii) The Respondent has 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**

12. The Tribunal was satisfied that the necessary Notice to Leave had been correctly issued to the Respondent in terms of the Act.
13. The Tribunal was satisfied that the pre-action requirements had been met.
14. The Tribunal did not find that ground 11 was met. There was an insufficiency of evidence before the Tribunal to show that the Respondent had breached the terms of the tenancy agreement. The Tribunal was aware that personal service of the application was made upon the Respondent by Sheriff Officers on 2<sup>nd</sup> March 2022 at the Property, which suggests it has not been abandoned, and that the Respondent continues to occupy the Property, at least on occasion.
15. The Tribunal was satisfied that ground 12 was met. The Respondent 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. The Respondent has been in arrears of rent for a continuous period, up to and including the date of the CMD, of three or more consecutive months; and the Tribunal was satisfied that the Respondent'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.
16. 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 Applicant.
17. 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.

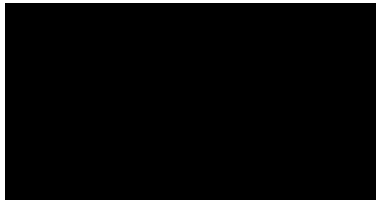
18. The Tribunal took into account the representations made regarding the circumstances of both parties. In all the circumstances, the Tribunal considered it reasonable to grant the order sought.

### **Decision**

19. 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/Chair**

14 April 2022

**Date**