



**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/22/3268**

**Re: Property at 11 Scotsmill Crescent, Blackburn, Aberdeenshire, AB21 0JG (“the Property”)**

**Parties:**

**Ms Adalheidur Holmegeirsdottir, Heidarbraut 19, 230 Kefiavik, Iceland (“the Applicant”)**

**Mr Darren Bell, Ms Kim Downie, 11 Scotsmill Crescent, Blackburn, Aberdeenshire, AB21 0JG (“the Respondents”)**

**Tribunal Members:**

**Neil Kinnear (Legal Member) and Mary Lyden (Ordinary Member)**

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

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

**Background**

This was an application for an eviction order dated 6<sup>th</sup> September 2022 and brought in terms of Rule 109 (Application for an eviction order) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant sought an eviction order in relation to the Property against the Respondents, and provided with her application copies of the private residential tenancy agreement, notices to leave and proof of service, section 11 notices and proof of service, rent arrears statement, and various pre-action correspondence.

All of these documents and forms had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016*, the *Coronavirus (Scotland) Act 2020*, and the *Coronavirus (Scotland) Act 2020 (Eviction*

from *Dwelling-houses)(Notice Periods) Modification Regulations 2020*, and the procedures set out in those Acts and that Regulation appeared to have been correctly followed and applied.

The Respondents had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 20<sup>th</sup> December 2022 and 20<sup>th</sup> January 2023, and the Tribunal was provided with the executions of service.

## **Case Management Discussion**

A Case Management Discussion was held at 14:00 on 20<sup>th</sup> February 2023 by Tele-Conference. The Applicant did not participate, but was represented by Mrs Wilson, letting agent. The Respondents did not participate, nor were they represented. The Respondents had not responded to this application at any stage either in writing or by any other form of communication.

The Tribunal was satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

Mrs Wilson confirmed that rent arrears at the time the notices to leave were served were £4,296.00, and as at the date hereof were £16,300.00. There were further late payment fees due in terms of the lease agreement of £860.00. The Applicant had instructed Ellon & Aberdeen, estate agents, to market the Property, but until the Property was vacant the estate agent could not progress matters.

The Tribunal was invited by Mrs Wilson with reference to the application and papers to grant the order sought on grounds 1 and 12 of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*.

Mrs Wilson, under reference to the pre-action correspondence, advised the Tribunal of various attempts to contact the Respondents asking them to make contact with the Applicant in order to discuss options to assist them with their rent arrears, and advising them about where they might obtain advice.

The notices to leave dated 2<sup>nd</sup> February 2022 relied on grounds 1 and 12 of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*. Rental of £1,100.00 per month was payable in advance in terms of clause 8 of the private residential tenancy agreement. The Respondents had been in arrears since October 2021 as at the date of the notices to leave, and they had been in arrears of rent for a continuous period of more than three consecutive months.

## **Statement of Reasons**

In terms of Section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* ("the Act") as amended by the *Coronavirus (Scotland) Act 2020*, the 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.

Para 12 of Schedule 3 to the Act provides that it is an eviction ground that the tenant has been in rent arrears for three or more consecutive months, and that the Tribunal may find that the ground applies if it is satisfied that it is reasonable on account of that fact to issue an eviction order. In deciding whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

The Tribunal was satisfied that ground 12 had been established. The tenant was in substantial arrears of rent and had been in arrears for a continuous period in excess of three months.

The Tribunal was further satisfied that the tenant being in arrears was not wholly or partly due to any delay or failure in the payment of a relevant benefit. There was no evidence to establish any such reason for rent arrears.

The Tribunal was satisfied that the Applicant had complied with the pre-action requirements under the *Rent Arrears Pre-action Requirements (Coronavirus) (Scotland) Regulations 2020*.

Para 1 of Schedule 3 to the Act provides that it is an eviction ground that the landlord intends to sell the let property. The Tribunal may find that this ground applies if the landlord (1) is entitled to sell the let property, (2) intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, and (3) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.

The Tribunal was satisfied that ground 1 had been established. The landlord was entitled to sell the Property, and intended to sell it.

The Tribunal was satisfied that it was reasonable to issue an eviction order. The arrears of rent are substantial. The Respondents have failed to respond or engage with the Applicant to agree a reasonable plan to make payments to the landlord. The Applicant resides in Iceland and intends to sell the Property.

In the case of *City of Glasgow District Council v Erhaiganoma* 1993 SCLR 592, The Inner House of the Court of Session stated at page 594 that "Where prima facie reasonableness has been made out, we think that it is then for the tenant to put circumstances before the court to show otherwise."

In this application, the Respondents had not responded to this application advancing any arguments that it was not reasonable to issue an eviction order, and had not participated in the Case Management Discussion. The Respondents had put forward no circumstances to show that it would not be reasonable for the Tribunal to issue an eviction order.

In those circumstances, having considered the whole circumstances, the Tribunal was satisfied that it was reasonable to issue an eviction order.

### **Decision**

In these circumstances, the Tribunal made an eviction order against the Respondents in this application.

### **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.**

# Neil Kinnear

20th February 2023

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Legal Member/Chair

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Date