



**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/23/0519**

**Re: Property at Muir Cottage, Ballogie, Aboyne, AB34 5DH (“the Property”)**

**Parties:**

**Ms Alice Nicol, Ms Abigail Nicol and Ms Jennifer Nicol, c/o Ballogie Estate Office, Home Farm Bothy, Ballogie, Aboyne, AB34 5DT (“the Applicants”)**

**Ms Sarah Jane Preston and Mr Sean Gray, Muir Cottage, Ballogie, Aboyne, AB34 5DH (“the Respondents”)**

**Tribunal Members:**

**Shirley Evans (Legal Member) and Gordon Laurie (Ordinary Member)**

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

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondents for possession of the Property at Muir Cottage, Ballogie, Aboyne, AB34 5DH under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicants after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondents. The order will include a power to Officers of Court to eject the Respondents and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth and from the Property and to make the same void and redd that the Applicants or others in their name may enter thereon and peaceably possess and enjoy the same.

**Background**

1. By application dated 17 February 2023, the Applicants applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for repossession under Rule 109 of the First-tier Tribunal for

Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).

2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the parties dated 16 October 2020, a Notice to Leave dated 12 January 2023 with proof of delivery dated 14 January 2023, a rent statement, various emails between the parties from 5 May 2022 to 6 October 2022, an email dated 13 January 2023 addressed to Aberdeenshire Council and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Aberdeenshire Council dated 9 February 2023.
3. On 12 April 2023, the Tribunal accepted the application under Rule 9 of the Regulations 2017.
4. On 21 April 2023 the Tribunal enclosed a copy of the application and invited the Respondents to make written representations to the application by 12 May 2023. The Tribunal advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 1 June 2023. This paperwork was served on the Respondents by James Booth, Sheriff Officer on 26 April 2023 and the Execution of Service was received by the Tribunal administration.
5. The Respondents did not lodge any written representations by 12 May 2023.

### **Case Management Discussion**

6. The Tribunal proceeded with a CMD on 1 June 2023 by way of teleconference. Abigail and Jennifer Nicol appeared with Ms Abigail Nicol speaking on behalf of the Applicants. Denise Smith, the Applicants’ Head of Financial Management was also in attendance. There was no appearance by or on behalf of the Respondents despite the teleconference starting 5 minutes late to allow the Respondents plenty of time to join. The Tribunal was satisfied the Respondents had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in their absence. The case was heard with a conjoined action for rent arrears under case reference number FTS/HPC/CV/23/0521
7. The Tribunal had before it the Private Residential Tenancy Agreement between the parties dated 16 October 2020, a Notice to Leave dated 12 January 2023 with proof of delivery dated 14 January 2023, a rent statement, various emails between the parties from 5 May 2022 to 6 October 2022, an email dated 13 January 2023 addressed to Aberdeenshire Council and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Aberdeenshire Council dated 9 February 2023. The Tribunal considered these documents.
8. Ms Nicol moved the Tribunal to grant an order of eviction. With reference to the rents statement she explained that when the arrears in this case

amounted to over six months the Applicants felt they had no choice but to raise the current action. She referred to the emails between the parties and that following a meeting with Mr Gray on 26 May 2023 he agreed to make monthly payments of £1312.50. The Tribunal noted that in terms of Clause 8 of the tenancy agreement the monthly rent was £1000. Ms Nicol advised the first and second payments were made but the Respondents defaulted on this agreement by August 2022. The September 2022 payment was paid late. No payment was made in October 2022 and £800 was received on 14 November 2022. With reference to the rent statement the Tribunal noted the arrears were shown as £8012.50 to February 2023 and enquired what the current arrears were. Ms Nicol explained the arrears remained at £8012.50 and that Mr Gray's mother had paid £3000 on 20 February 2023.

9. Ms Nicol went on to explain that when the Notice to Leave was served there was a lot of communication between the parties. Miss Preston had advised that Mr Gray was about to start a new job and that they would make regular payments. That did not happen. In April 2023, Ms Nicol was contacted by Aberdeenshire Council as Miss Preston had applied for rehousing, but under her previous address. There was a live application for rehousing. The Respondents had three children of primary and pre school ages. The decision to proceed with eviction was not taken lightly, hence she had written to the Council on 13 January 2023 to advise they were taking action. They had given the Respondents the benefit of the doubt. Ms Nicol was not aware of any issues with any benefits and understood that the Respondents received benefits direct.
10. The Tribunal noted the Notice to Leave proceeded on both Ground 12 (three months' rent arrears) and Ground 12A (substantial rent arrears) of Schedule 3 of the 2016 Act. Ms Nicol explained that they were aware of the legislation and were relying on Ground 12A as the Respondents were over 6 months in arrears.

### **Findings In Fact**

11. The Applicants and the Respondents agreed by way of Clause 8 of a Private Residential Tenancy Agreement commencing 16 October 2020 in relation to the Property that the Respondents would pay the Applicants a monthly rent for the Property of £1000.
12. The Respondents have fallen into arrears of rent and are in breach of Clause 8 of the tenancy agreement.
13. On 26 May 2022, the Applicants agreed to the Respondents entering into a repayment plan in terms of which the Respondents would pay £1312.50 per month. Payments of £1312.50 were made by the Respondents in June and July 2022. The payment due in August 2022 was missed. The September

2022 payment was paid late. No payment was made in October 2022. £800 was received on 14 November 2022.

14. By December 2022, the Respondents were in substantial arrears of £6012.50.
15. On 12 January 2023 the Applicants served a Notice to Leave on the Respondents by Recorded Delivery. This was signed for on 14 January 2023. The said Notice requested that the Respondents remove from the Property by 14 February 2023.
16. The Notice to Leave proceeded on Grounds 12 and 12A of Schedule 3 of the 2016 Act. The arrears were £6012.50 at the time of serving the Notice to Leave. The Respondents had been in arrears of rent for more than three consecutive months with the level of arrears greater than the one month's rent under the tenancy. The arrears were also substantial, being over six months.
17. Mr Gray's mother paid £3000 on 20 February 2023. Current arrears have increased to £8012.50.
18. There are no outstanding benefits issues that will have any impact on the arrears.
19. The Respondents have three children of primary and pre-school age.
20. A Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 was served on Aberdeenshire Council on 9 February 2023.

### **Reasons for Decision**

21. The Tribunal considered the issues set out in the application together with the documents lodged in support. The Tribunal also considered the following legislation in its determination -
  - Private Housing (Tenancies) (Scotland) Act 2016
  - The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.
  - The Cost of Living (Tenant Protection) (Scotland) Act 2022.
22. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on Ground 12A (substantial rent arrears) as introduced by the Cost of Living (Tenant Protection) (Scotland) Act 2022. This is a discretionary ground of eviction. As well as being satisfied

the facts have been established to support the ground, the Tribunal has to be satisfied that it is reasonable to evict.

23. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.
24. In terms of Section 54 of the 2016 Act a landlord may not make an application to the Tribunal for an eviction order against a tenant until the expiry of the relevant period in relation to that Notice. The relevant period begins on the day the tenant receives the Notice which in the case of Grounds 12A of Schedule 3 is 28 days.
25. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states the Respondents is in three months' rent arrears and substantial arrears at Part 2 of the Notice. The Notice to Leave specifies the date the Applicants as landlord expects to become entitled to make an application for an eviction order namely 14 February 2023. In terms of Section 62(4) of the 2016 Act, the Notice to Leave must specify the day falling after the day on which the notice period defined in section 54(2) will expire. In this case the Notice to Leave was received by the Respondents on 14 January 2023. In the circumstances the Tribunal is satisfied the Respondents has been given sufficient notice of 28 days. Accordingly, the Notice to Leave complies with Section 62.
26. The Tribunal is also satisfied the Notice to Leave complies with Section 52(5) of the 2016 Act and that the application proceeds on an eviction ground stated in the Notice to Leave, namely Ground 12A of Schedule 3.
27. Paragraph 1(1) and (2) of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 ("the 2022 Act") introduced certain restrictions on residential evictions. Paragraph 1(5) provides that where an eviction order relates to a private residential tenancy under the 2016 Act the restrictions do not apply where an order for eviction is granted on various grounds including Ground 12A.
28. Paragraph 5 (a) of Schedule 2 of the 2022 Act introduced additional grounds of repossession and amended Schedule 3 of the 2016 Act, including the introduction of a new Ground 12 A. Ground 12 A (Substantial rent arrears) provides –  
*"(1) It is an eviction ground that the tenant has substantial rent arrears.  
(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—  
(a) the tenant has accrued rent arrears under the tenancy in respect of one or more periods,*

*(b) the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy when notice to leave is given to the tenant on this ground in accordance with section 52(3), and*

*(c) the Tribunal is satisfied that it is reasonable to issue an eviction order.*

*(3) In deciding under sub-paragraph (2) whether it is reasonable to issue an eviction order, the Tribunal is to consider—*

*(a) whether the tenant being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit,*

*(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers under paragraph 12(4)(b) (and continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022).*

*(4) For the purpose of this paragraph—*

*(a) references to a relevant benefit are to—*

*(i) a rent allowance or rent rebate under the Housing Benefit Regulations 2006 (S.I.2006/213),*

*(ii) a payment on account awarded under regulation 93 of those Regulations,*

*(iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,*

*(iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,*

*(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.”*

29. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the submissions made by Ms Nicol and in particular that they were proceeding on Ground 12A. The Tribunal considered that the Respondents had not disputed the basis for the application, namely that they were in substantial arrears amounting to eight months of arrears. The Respondents were in arrears of over six months when the Notice to Leave was served. The arrears were continuing to increase despite Mr Gray's mother making a substantial payment of £3000. The Respondents themselves have not paid anything towards the rent or arrears since 14 November 2022. There are no outstanding benefits issues. The Tribunal was satisfied on the basis of the documents lodged, together with submissions made by Ms Nicol, that the factual basis of the application had been established. The Tribunal was satisfied the Respondents were in substantial rent arrears. A case under Ground 12A of Schedule 3 of the 2016 Act as amended by the 2022 Act was accordingly met. The Tribunal noted that notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Aberdeenshire Council had been served.

30. In determining whether it is reasonable to grant the order, the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal was

satisfied on the basis of the submissions of Ms Nicol that the Respondents had entered into a repayment plan, but had failed to adhere to it. This and further correspondence with the Respondence was evidenced by the emails lodged with the application. The Applicants had complied with the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. The Respondents had not engaged with the Tribunal process. There were no outstanding benefits issues. The arrears were increasing by the month and had reached such a level that there was very little choice but for the Tribunal to grant the order. The Tribunal were mindful that the Respondents had three young children. However, the Tribunal also noted that Miss Preston had a live housing application with Aberdeenshire Council and would likely be rehoused by them in terms of their homelessness duties. It would not be reasonable to expect the Applicants to continue to bear that level of substantial arrears with no engagement at all from the Respondents. The balance of reasonableness in this case weighted towards the Applicants. The Tribunal find it would be reasonable to grant the order.

31. In the circumstances the Tribunal considered that in terms of Ground 12A of Schedule 3 the Respondents are in substantial rent arrears of over six months and that it is reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

### **Decision**

32. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

### **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.**

**Shirley Evans**

**5 June 2023**

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**Legal Chair**

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**Date**