

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**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) (“The Act”)**

**Chamber Ref: FTS/HPC/EV/23/1803**

**Re: Property at 21 Alva Crescent, Fraserburgh, AB43 9RW (“the Property”)**

**Parties:**

**Mr David Charles Scothern, 14 Houghton Close, Asfordby Hill, Melton Mowbray, Leicestershire, LE14 3QL (“the Applicant”)**

**Mr Robert Cumming, 21 Alva Crescent, Fraserburgh, AB43 9RW (“the Respondent”)**

**Tribunal Members:**

**Andrew McLaughlin (Legal Member) and Elizabeth Williams (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted the Application and made an Eviction Order.**

**Background**

[1] The Applicant seeks an Order under Ground 12A in that the Respondent is alleged to have accrued significant rent arrears of at least six month’s worth of rent arrears. The Application is accompanied by a copy of the tenancy agreement, the notice to leave relied on with proof of service, evidence of compliance with The Rent Arrears Pre-Action Requirement (Coronavirus) (Scotland) Regulations 2020 and the Homelessness (Etc) (Scotland) Act 2003.

**The Case Management Discussion**

[2] The Application called for a Case Management Discussion by conference call at 10 am on 18 September 2023. The Applicant was represented by Ms Brechany of TC Young Solicitors. The Respondent was personally present.

[3] The Respondent accepted that the rent arrears currently unpaid were in the sum of £11,050.00. The Respondent made reference to historic problems with the heating and

the locks on the doors to the Property. These had long since been resolved. The Respondent accepted that he had not paid any rent beyond the first month and including well beyond any repairing issues being resolved. The Respondent explained that he didn't feel obliged to pay for a service he wasn't receiving. There was no explanation provided about how this might justify the non-payment of rent even after the issues had been resolved. The Tribunal carefully considered the circumstances of both parties.

[4] Having heard from parties and having considered the full circumstances of the Application, the Tribunal made the following findings in fact.

### **Findings in Fact**

- I. The parties entered into a tenancy agreement which commenced on 18 March 2022 and in terms of which the Applicant let the Property to the Respondent under a Private Residential Tenancy;*
- II. The contractual monthly rent was £650.00;*
- III. The Respondent paid the first month's rent and has made no payment of any further amount whatsoever since;*
- IV. The Property had some repairing issues which commenced around Summer 2022 and which were resolved by the latest, at around February 2023. These issues included problems with the doors and the heating;*
- V. There is no explanation for the non-payment of rent before or since these months and nothing to explain why absolutely zero rent might possibly be lawfully due even during the currency of these issues;*
- VI. The Applicant served a valid Notice to Leave under Ground 12A of Schedule 3 of the Act on 17 April 2023. This notice was competently served on the Respondent who nevertheless remains in occupation of the Property;*
- VII. The Applicant has complied with The Rent Arrears Pre-Action Requirement (Coronavirus) (Scotland) Regulations 2020 and the Homelessness (Etc) (Scotland) Act 2003;*
- VIII. The Applicant has a mortgage over the Property which is causing the Applicant extreme financial pressures in the absence of any rent payments at all being received;*
- IX. The Respondent lives alone in the Property with his four children;*
- X. During the CMD the Respondent studiously avoided confirming any intentions to start paying the rent going forward;*

XI. *Ground 12A is established as at today's date and was established at the date of service of the Notice to Leave. It is reasonable to make an Eviction Order.*

### **Reasons for Decision**

[5] Having made the above findings in fact, the Tribunal granted the Application and made 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.**



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**Legal Member/Chair**

**18 September 2023**  
**Date**