



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)
Act 2016**

Chamber Ref: Chamber Ref: FTS/HPC/EV/19/1498

Re: Property at 118 High Street, Montrose, DD10 8JD (“the Property”)

Parties:

**Mr Paul Bertolotto and Mrs Gemma Bertolotto, 17 Scotston Farmhouse,
Laurencekirk, Aberdeenshire, AB30 1DN (“the Applicant”)**

**Mr Douglas Dick-Reid, Dick Watson Construction, Fasque Estate, Fettercairn
AB30 1DN (“the Applicant’s representative”)**

Mr Gavin Ramsay, 118 High Street, Montrose, DD10 8JD (“the Respondent”)

Tribunal Member:

Aileen Devanny (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that order for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) should be granted and the eviction ground which applies is ground 12 of Schedule 3 the Act (rent arrears).

Background

1. On 15 May 2019 the Applicant lodged an application under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure. The application was for an order for eviction of the Respondent from the above named Property. The application when accepted by a legal member on 16 December 2019 included the following attachments:
 - Private Residential Tenancy Agreement
 - Copy notice to local authority under Section 56 (1) of the Act
 - Copy of the notice to leave given to the Respondent

- Miscellaneous documents such as an EICR, Energy Performance certificate, bank statements and statement of rent payments, communication about tenancy deposit, information about sale of the property and new landlord sent to the Respondent, and confirmation of service of the notice to leave on the Respondent.
2. On 31 July 2019 the application was amended for it to proceed in the name of Mrs Gemma Bertolotto as well as Mr Paul Bertolotto.
 3. No written representations were received from the Respondent in response to notification of the application in terms of Rule 9 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017.
 4. This case called for a first case management discussion (CMD) on 19 March 2020 before the Tribunal. The proceedings were conducted by teleconference and the Applicant's representative participated as did the Respondent. The case management discussion note completed by the legal member who sat discloses that the Respondent stated that he accepted there were rent arrears of £1150.00 and discloses no challenge to the proceedings by either party. The parties came to a payment arrangement to clear the arrears and the case management discussion was continued to a future date and intimation was given by the Applicant that if the arrears were cleared, the application would be withdrawn.
 5. The case called at a second CMD held by teleconference on 24 August 2020. The Respondent did not attend but the Applicant's representative was present and confirmed the sum sought had reduced to £550 and a further CMD was sought to allow the Respondent an opportunity to clear the sum claimed.
 6. Notification of the third CMD due to take place on 26 February 2021 at 10am by teleconference was carried out by e-mail on the Respondent on 22 January 2021. The Applicant's representative was similarly notified by e-mail of this date.
 7. A direction was issued to the Applicant in advance of the third CMD seeking that the Applicant provide to the tribunal an up to date statement of rental payments made by the Respondent towards the sum claimed and showing the sum alleged to be still outstanding.

The Applicant complied with this direction and a copy of the statement was issued to the Respondent.

8. A direction was issued to the Respondent in advance of the third CMD seeking that he provide to the tribunal a written submission confirming

(1) if he intends to argue in terms of Schedule 3 Ground 12 of the Private Housing (Tenancies) (Scotland) Act 2016 that the arrears of rent over the period in question are wholly or partly a consequence of a delay or failure in the payment of any of the following relevant benefits -

(i) a rent allowance or rent rebate under the [Housing Benefit \(General\) Regulations 1987 \(S.I. 1987/1971\)](#),

(ii) a payment on account awarded under regulation 91 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,

(2) If (1) above applies, further details will require to be provided to the tribunal and, if available, supporting documentation.

The Respondent did not produce any written submission to the Tribunal in response.

The Third Case Management Discussion held on 26 February 2021

9. The Respondent did not attend the CMD. An unsuccessful attempt was made by the tribunal clerk to contact him by telephone to check if he intended to participate in the CMD. The CMD proceeded with the participation only of the Applicant's representative via teleconference call. Written notification had been given to parties in advance that the Tribunal could decide the matter at a CMD if satisfied it had sufficient evidence and it was fair to do so.

10. The Legal Member explained the procedure for the CMD at the start of the proceedings and the current rent arrears of £450 were confirmed by the Applicant's representative. The Applicant's representative confirmed that eviction and payment orders were sought. He stated that the Respondent had not maintained the instalment payment arrangement. He confirmed that the notice to leave was served on the Respondent on 10 April 2019. The Applicant's representative stated that the Respondent had not challenged the sum was due to be paid.

11. Findings in Fact

- A tenancy agreement is in place for the Property. The Landlords are the Applicant. The tenant is the Respondent.
- The Respondent is due to pay the Applicant rent at the rate of £400 per calendar month in advance.
- At the date of the first CMD the rent arrears due for the period from 8 September 2018 until 7 February 2019 were £1150.00. By the date of the third CMD the rent arrears had reduced to £450.00 but no payments towards the arrears had been made by the Respondent since 5 October 2020.
- At the first CMD held on 19 March 2020, when the application for an eviction order was first considered on its merits, the Respondent was in arrears of rent by an amount greater than the monthly rent of £400 and he had been in arrears of rent (by any amount) for a continuous period up to and including that date for three or more consecutive months.

- The Respondent has provided no submission that he is in receipt of a relevant benefit.
- The Respondent has not challenged the eviction procedure or tribunal proceedings.

12. Reasons for Decision

Having been satisfied that the amount of £450.00 is due by the Respondent to the Applicant for the rent for the Property, a payment order for that sum was made.

The Tribunal considered the ground specified for eviction contained in Schedule 3 Ground 12 of the Private Housing (Tenancies)(Scotland) Act 2016 applies. That ground is specified as follows:

Rent arrears

12(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—

(a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant—

(i) 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, and

(ii) 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

(b) 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.

(3) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) for three or more consecutive months the tenant has been in arrears of rent, and

(b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.

(4) In deciding under sub-paragraph (3) 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.

(5) For the purposes of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the [Housing Benefit \(General\) Regulations 1987 \(S.I. 1987/1971\)](#),

(ii) a payment on account awarded under regulation 91 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.

The Tribunal is satisfied that subsections (1) and (2) of ground 12 applies and, accordingly, an eviction order must be made. The Tribunal is satisfied that the reason for the Applicant's rent arrears over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

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.

Aileen Devanny

**Mrs A Devanny
Legal Member
Date: 26/02/2021**