



**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/20/1008**

**Re: Property at 189 Netherton Road, Wishaw, ML2 0BS (“the Property”)**

**Parties:**

**Mr Ebenezer Phillips and Mrs Eugena Phillips, 40 Phoenix Road, Lordswood, Chatham, ME5 8TB (“the Applicant”)**

**Mr Gary Hugh Maxwell and Ms Natalie Kilmurray, 189 Netherton Road, Wishaw, ML2 0BS and Mr Hugh Murray (“the Respondent”)**

**Tribunal Members:**

**George Clark (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and issued an Eviction Order against the Respondent.**

**Background**

By application, received by the Tribunal on 1 April 2020, the Applicant sought an Eviction Order against the Respondent in terms of Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”). The Ground relied on was Ground 12 of Schedule 3 to the Act, namely that the Respondent had been in rent arrears for three or more consecutive months.

The application was accompanied by copies of a Private Residential Tenancy Agreement between the Parties, commencing on 17 June 2019 at a rent of £450 per month, a Rent Statement showing arrears as at 17 April 2020 of £2,700, the last payment of rent having been made on 17 October 2019, and a Notice to Leave dated 10 February 2020, advising the Respondent that the Applicant intended to apply to the Tribunal for an Eviction Order under Ground 12 and that the application would not be made before 20 March 2020.

On 2 July 2020, the Tribunal advised the Parties of the date and time of a Case Management Discussion and the Respondent was invited to make written representations by 23 July 2020. The Respondent did not make any written representations.

### **Case Management Discussion**

A Case Management Discussion was held by way of a telephone conference call on the morning of 5 August 2020. The Applicant, Mr and Mrs Phillips, participated in the conference call. The Respondent did not participate and was not represented. The Applicant confirmed that no rent had been paid since the date of the application and asked the Tribunal to issue an Eviction Order without a Hearing.

### **Reasons for Decision**

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required and that it could decide the application without a Hearing.

Section 51 of the Act provides that 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 to the Act applies.

The application was based on Ground 12 of Schedule 3 to the Act which states that it is an Eviction Ground that the tenant has been in rent arrears for three or more consecutive months and that, in terms of Ground 12(1) the Tribunal **must** find that Ground 12 applies if, at the beginning of the day on which the Tribunal first considers the application for an Eviction Order on its merits, the tenant 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 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 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.

The Tribunal was satisfied that the requirements of Ground 12 of Schedule 3 to the Act had been met. The rent was currently more than one month in arrears and that the rent had been in arrears for more than three consecutive months prior to the date of the Case Management Discussion. No evidence had been presented to suggest that the arrears were wholly or partly a consequence of delay or failure in the payment of a relevant benefit. Accordingly, the Tribunal was bound to issue an Eviction Order in terms of Section 51 of the Act.

### **Decision**

The Tribunal determined that the application should be decided without a Hearing and issued an Eviction Order 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.

George Clark

05/08/20

---

Legal Member/Chair

---

Date