



**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) Act 2016**

**Chamber Ref: FTS/HPC/EV/21/1886**

**Re: Property at 3/1 78 Barrland Street, Glasgow, G41 1RA (“the Property”)**

**Parties:**

**Lowther Homes Limited, 25 Cochrane Street, Glasgow, G1 1HL (“the Applicant”)**

**Mr Kenneth Wright, 3/1 78 Barrland Street, Glasgow, G41 1RA (“the Respondent”)**

**Tribunal Members:**

**Ms H Forbes (Legal Member) and Mrs F Wood (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that no eviction order should be granted.**

**Background**

1. This is an application dated 6<sup>th</sup> August 2021 for an eviction order made in terms of Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”) seeking an eviction order under ground 12 of the Private Rented Housing (Tenancies) (Scotland) Act 2016 (“the Act”).
2. The Applicant’s representative lodged a private residential tenancy agreement between the parties which commenced on 22<sup>nd</sup> May 2018, copy Notice to Leave, rent statement, section 11 notice, pre-action requirement letter dated 19<sup>th</sup> November 2020, rent increase letter and employment contract for the Respondent.
3. Case Management Discussions (“CMD”) took place by telephone conference on 4<sup>th</sup> October and 10<sup>th</sup> December 2021, and 29<sup>th</sup> April 2022.
4. Notification of a CMD to take place on 9<sup>th</sup> August 2022 was made upon parties by letter dated 21<sup>st</sup> May 2022.

## **The Case Management Discussion**

5. A CMD took place by telephone conference on 9<sup>th</sup> August 2022. The Applicant was not in attendance and was represented by Mr David Adams, Solicitor. The Respondent was not in attendance.
6. The Tribunal considered the terms of Rule 29. The Tribunal determined that the Respondent had been given reasonable notice of the time and date of the CMD. The Tribunal determined that the requirements of Rule 17(2) had been satisfied and that it was appropriate to proceed with the application in the absence of the Respondent upon the representations of the Applicant and the material before the Tribunal.
7. Mr Adams said the Respondent has continued to pay the rent in full, and make payment towards the arrears, which are now £2363.92. The Respondent has not made full payment of the agreed sum of £1000 per month towards the arrears, which should now have been reduced by £4000. The direct debit frequently fails, and when contacted, the Respondent makes some payment. Mr Adams said the Applicant has no intention of proceeding with eviction but is concerned that the arrangement has not been maintained and the balance has not been reduced as much as it should have been. There was a shortfall of £859.32 in the expected reduction in rent arrears.
8. Responding to questions from the Tribunal, Mr Adams said the Respondent had told the Applicant he will be clearing the arrears in mid-August. Mr Adams said the Applicant is concerned because a previous application for an eviction order was withdrawn and the Respondent did not continue the payment arrangement. At least if the Respondent had been present at the CMD, he could have given an undertaking to the Tribunal to clear the arrears, which undertaking could be referred to if the Applicant had to raise a further application in due course. That would have given the Applicant some security.
9. Mr Adams' primary motion was to continue the case for a further three months, failing which, he asked the Tribunal to grant an eviction order. The Applicant would undertake not to enforce the order if the arrears were cleared.

## **Findings in Fact**

10.
  - i. Parties entered into a private residential tenancy agreement in respect of the Property which commenced on 22<sup>nd</sup> May 2018 with a monthly rent of £600, which was increased annually thereafter, and is now £646.40 per month.
  - ii. Notice to Leave has been served upon the Respondent.
  - iii. The Respondent has been in arrears of rent for three or more consecutive months.

- iv. At the date of the CMD, the Respondent was in arrears of rent by an amount greater than the amount payable as one month's rent.
- v. The Respondent's rent arrears are not due to a delay or failure in the payment of a relevant benefit.
- vi. The pre-action requirements for private residential tenancies have been met.
- vii. The Respondent has made payment towards the arrears which have reduced considerably.
- viii. It is not reasonable to grant an eviction order.

### **Reasons for Decision**

11. Ground 12 of Schedule 3 of the Act provides that it is an eviction ground if the tenant has been in rent arrears for three or more consecutive months. The Tribunal must find that this applies if (1) at the beginning of the day on which the Tribunal first considers the application for an eviction order, 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; (2) the tenant 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 (3) 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.
12. The Tribunal is satisfied that the necessary Notice to Leave has been correctly issued to the Respondent in terms of the Act.
13. The Tribunal is satisfied that Ground 12 has been established.
14. The Tribunal took into account that the case has been continued on several occasions and it is not the role of the Tribunal to continue further in order to monitor payments towards arrears. The Respondent has reduced the arrears from a high point of £11558.40 in October 2021 to £2363.92. He has continued to pay his rent in full. Although he has not always maintained the payment arrangement entered into, he has made a considerable effort and the Tribunal noted that the monthly repayment sum of £1000 per month was a very high one even though the respondent has a good salary. The Tribunal noted that the Respondent has stated he will clear the arrears in mid-August.
15. The Tribunal took into account the fact that the Applicant does not intend to proceed with eviction at this point in time even if an Order were granted.

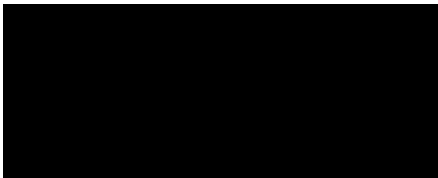
16. The Tribunal considered that the Respondent has already given undertakings during these proceedings to clear the arrears, and these undertakings could, no doubt, be taken into account should the Applicant have to make any further application for eviction.
17. The Tribunal took into account that the Applicant has a payment order, at least in respect of a portion of the arrears, which will give the Applicant some security.
18. In all the circumstances, the Tribunal considered it would not be reasonable to grant an eviction order, and it would not be appropriate to continue the case.

### **Decision**

19. No eviction order is granted.

### **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.**



**Legal Member/Chair**

**9<sup>th</sup> August 2022**  
**Date**