



**Decision 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/22/1427**

**Re: Property at 3A Lord Gambier Wharf, Kirkcaldy, Fife, KY1 2SH (“the Property”)**

**Parties:**

**Mr David Deakin, Tyn-y-Byrwydel, Cwm Golay, Cyfronydd, Welshpool, SY21 9EZ (“the Applicant”)**

**Miss Holly Stafford, 3A Lord Gambier Wharf, Kirkcaldy, Fife, KY1 2SH (“the Respondent”)**

**Tribunal Members:**

**Richard Mill (Legal Member) and Ann Moore (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction be granted against the respondent**

**Introduction**

This is an application under rule 109 and section 51 of the Private Housing (Tenancies) (Scotland) Act 2016.

Service of the proceedings and intimation of the Case Management Discussion (CMD) was effected upon the respondent by Sheriff Officers on 26 July 2022.

The CMD took place by teleconference at 10.00 am on 29 August 2022.

The applicant was represented by Miss Kelly Gibson of Messrs Ballantynes, Letting Agents. The respondent failed to lodge any submissions and did not participate in the hearing. There was no barrier to her doing so.

## Findings and reasons

The property is 3A Lord Gambier Wharf, Kirkcaldy, Fife KY1 2SH.

The applicant is Mr David Deakin. He is the heritable proprietor of the property and the registered landlord. The respondent is Ms Holly Stafford who is the tenant.

The parties entered into a private residential tenancy which commenced on 12 December 2019. The rent was stipulated at £575 per month.

The lease had a second named landlord who was Mrs Shelley Deakin, the applicant's wife; also a registered heritable proprietor. Mrs Deakin died on 12 April 2021.

Throughout the duration of the tenancy, the respondent has fallen into arrears of the contractual rental payments. She has been consistently in arrears since March 2020. As at the date of this application to the tribunal (13 May 2022) the rent arrears amounted to £4,425. As at the date of the hearing the arrears had risen to £6,150.

The current eviction proceedings are based upon the arrears of rent and the relevant ground relied upon is ground 12, contained within Part 1, Schedule 3 to the 2016 Act, namely that the respondent is in rent arrears over three consecutive months.

Ground 12 as originally drafted was a mandatory ground for eviction. Since the coming into force of the Coronavirus (Scotland) Act 2020, all eviction grounds are discretionary. The relevant notice period under ground 12 was one of 28 days at the time that the Notice to Leave was served.

The Notice to Leave which is relied upon is dated 6 April 2022. With reference to Section 62 of the Act, the day specified as being the earliest day upon which proceedings before the Tribunal can be raised requires to be a total of the notice period of 28 days plus an additional three days. That date referred to within the Notice to Leave was specified as 9 May 2022.

The applicant has produced and relies upon a Sheriff Officer's report which vouches that the Notice to Leave was lawfully served upon the respondent on 8 April 2022.

The Tribunal was satisfied that the Notice to Leave was validly prepared and served and can be relied upon. No challenge has been taken to the Notice to Leave on behalf of the respondent.

The Tribunal was satisfied that more than three consecutive months of rent was unpaid at the time that the Notice to Leave was served and at the date of the hearing. This establishes ground 12.

The Tribunal proceeded to consider the issue of reasonableness.

The respondent is 29 years of age. She has no dependents. She has no known disabilities or vulnerabilities. She is known to have been self employed as a hairstylist at the commencement of the lease.

Under Part 2 of Schedule 1 to the Coronavirus (Scotland) No 2 Act 2020, Scottish Ministers were given the power to make Regulations setting out pre-action requirements for landlords in relation to certain cases. The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 were subsequently brought into force and apply in respect of any application made to the Tribunal on or after 6 October 2020. There is good evidence with compliance with the Regulations.

The respondent has not taken advantage of the tenant loan scheme (which closed to new applications from 31 December 2021) nor the tenant grant fund (which can cover rent arrears for the period 23 March 2021 to 9 August 2021).

The applicant has served a valid Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003. It is most likely that in the event of an Eviction Order being granted the local authority will make alternative accommodation available for the respondent.

There is a lengthy history of rent arrears and it is not reasonable that the applicant requires to continue to maintain the accommodation available for the respondent in such circumstances. The applicant has mortgage commitments over the property which he has to service.

The tribunal attached weight to the entirety of the unchallenged documentary evidence lodged on behalf of the applicant which was found to be both credible and reliable. The respondent has not opposed the application.

In all the circumstances, the Tribunal concluded that it was reasonable to make the eviction order sought.

## **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.**

**Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.**

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

Richard Mill

29 August 2022

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Legal Member/Chair

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Date