



**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 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)**

**Chamber Ref: FTS/HPC/EV/22/2623**

**Re: Property at 39 Balvaird Place, Perth, PH1 5DZ (“the Property”)**

**Parties:**

**Mrs Lesley Whyte, 5 Wilson Street, Perth, PH2 0EX (“the Applicant”)**

**Miss Sinead Lovie, Mr Michael O'Brien, 39 Balvaird Place, Perth, PH1 5DZ; 76 Threipland Wynd, Perth, PH1 1RH (“the Respondent”)**

**Tribunal Members:**

**Nicola Weir (Legal Member) and Eileen Shand (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession of the property be granted.**

**Background**

1. By application lodged on 1 August 2022, the Applicant applied to the Tribunal for an order for recovery of possession of the property in terms of Section 51 of the 2016 Act against the Respondent. The application sought recovery in terms of Ground 12 of Schedule 3 to the 2016 Act. Supporting documentation was submitted in respect of the application, including a copy of the tenancy agreement, the Notice to Leave, the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003, a Rent Statement showing the balance of rent arrears owing at the time of the application being made of £3,500 and evidence regarding the ‘pre-action requirements’.

2. On 3 November 2022, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. On 14 December 2022, a copy of the Application and supporting documentation was served on both Respondents by Sheriff Officer, together with intimation of the date, time and details of the Case Management Discussion (“CMD”) to take place by telephone conference call on 6 February 2023. Written representations were to be lodged by 3 January 2023. No written representations were submitted by the First Respondent. Representations were lodged on behalf of the Second Respondent by his solicitor by email on 28 December 2022.
4. On 23 January 2023, the Applicant’s representative, her letting agent, emailed the Tribunal Administration attaching an updated rent statement, indicating that the rent arrears now amounted to £7,000. This was notified to the other parties by the Tribunal Administration.

### **Case Management Discussion**

5. At the CMD on 6 February 2023 at 10am the Applicant was present and was represented by Ms Bernadette O’Conner from Simple Approach Letting Agents Limited, the Applicant’s letting agents. Also in attendance from the letting agents was Ms Kerry Burgess, as observer and to take notes only. Neither Respondent was present but the Second Respondent’s solicitor, Mr MJ Tavendale from Hodge Solicitors was in attendance. The commencement of the CMD was delayed for approximately 5 minutes to see if the First Respondent would join the call but she did not.
6. After introductions and introductory remarks by the Legal Member, Ms O’Conner addressed the eviction application and confirmed that eviction was still sought. The Applicant also provided some information and there were some questions from the Tribunal Members. The eviction is sought on the grounds of three consecutive months’ rent arrears (Ground 12 of Schedule 3 to the 2016 Act). The rent arrears owing when the application was lodged amounted to £3,500 and arrears currently amount to £7,700. The joint tenancy commenced on 15 February 2022. The monthly rental is £700. Reference was made to the Rent Statements lodged and the Tribunal noted that the last payment received was in March 2022 and that the rent account has been continuously in arrears since April 2022. Reference was also made to the Notice to Leave dated 1 July 2022 and the other supporting documentation lodged with the application.
7. Mr Tavendale confirmed that a Notice to Leave had been served on the Second Respondent, Mr Michael O’Brien and that the Second Respondent has no objection to the eviction order being granted and that this is, in fact, in his interests. The Second Respondent is not in occupation of the property and has been trying to terminate his interest in the tenancy since March 2022, when he moved out of the property, having been assaulted by the First Respondent and having returned to live with his parents. Mr Tavendale referred to the representations and documentation he had lodged with the Tribunal on behalf

of the Second Respondent showing that the Second Respondent had notified the Applicant's letting agents of his circumstances and wish to come off the tenancy at that time. Mr Tavendale advised that the Second Respondent is not in contact with the First Respondent but that he is aware that she continues to occupy the property and seems content to sit there, not paying rent, despite being in receipt of Universal Credit which should cover housing costs too. Mr Tavendale stated that the Second Respondent paid the deposit of £800 and the first months' rent himself and that he has no reason to dispute the current rent arrears figure stated. Ms O'Conner confirmed that they were made aware, on 4 March 2022, of the Second Respondent having moved out and his wish to come off the tenancy but understood that both tenants required to give notice in order to terminate the joint tenancy and the First Respondent had not done so.

8. The Legal Member explained that, apart from establishing that there is a ground for eviction, the Tribunal now requires to be satisfied that it is reasonable in all the circumstances to grant an eviction order. Ms O'Conner and the Applicant made some submissions in that regard. It was stated that the letting agent had frequently sought to contact the First Respondent, Ms Sinead Lovie, regarding the arrears but that she has not really engaged with them, other than stating that she could not afford the rent, that she is hoping to obtain a Council house and that she is pregnant. They have visited her at the property. She has not taken up their advice that she seeks financial support, debt advice or sets up a payment plan. She has made no payments whatsoever towards rent or the arrears and not made any offers of payment. She does not want to be at the property and wants a fresh start in a Council house. She does not take care of the property, which has been damaged, and complaints of antisocial behaviour and police attendance at the property have also been made. In September 2022, she left the property unoccupied and unsecured for a few days. The Applicant confirmed that there are now 11 months of rent arrears and she is concerned not only about the level of arrears but also the fact that the property has been damaged and this will also cost money to repair. She confirmed that it is a two bedroom property in a block of four, that it is not adapted in any way and that it was in good condition and nicely decorated when this tenancy began. This is the Applicant's only rental property. It is not mortgaged. It was submitted on behalf of the Applicant that, in all of these circumstances, it was reasonable for the Tribunal to grant the eviction order sought today.

### **Findings in Fact**

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the joint tenant of the Property by virtue of a Private Residential Tenancy commencing 15 February 2022.
3. The rent in terms of the tenancy is £700 per calendar month.
4. Rental arrears have accrued since April 2022 and amounted to £3,500 when the application was lodged with the Tribunal and now amount to £7,700.

5. The rent account has continuously been in arrears since April 2022.
6. A Notice to Leave in proper form and giving the requisite period of notice was served on each of the Respondents on 1 July 2022. The First Respondent acknowledged receipt of same in writing on that date.
7. The date specified in the Notice to Leave as the earliest date the eviction Application could be lodged with the Tribunal was specified as 1 August 2022.
8. The Tribunal Application was submitted on 1 August 2022.
9. The First Respondent continues to reside in the Property.
10. The Respondent has been called upon to make payment of the rental arrears or enter into a satisfactory payment arrangement but has failed to do so.

### **Reasons for Decision**

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, and the oral evidence given at the CMD on behalf of the Applicant and Second Respondent.
2. The Tribunal found that the Application was in order, that a Notice to Leave in proper form and giving the correct period of notice had been served on the Respondents and that the application was made timeously to the Tribunal, all in terms of the tenancy agreement and the relevant provisions of the 2016 Act.
3. The Tribunal considered the ground of eviction that the tenant has been in rent arrears for three or more consecutive months (Ground 12 of Schedule 3 to the 2016 Act, as amended) 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.*

***F26****(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.*

***[F27]****(3A) Sub-paragraph (3B) applies where the First-tier Tribunal is satisfied—*

*(a) that the eviction ground named by sub-paragraph (1) applies, and*

*(b) that all or part of the rent in respect of which the tenant is in arrears as mentioned in that eviction ground relates to the period during which paragraph 5 of schedule 1 of the Coronavirus (Scotland) (No.2) Act 2020 is in force.*

*(3B) Where this sub-paragraph applies, in considering for the purposes of sub-paragraph (3)(b) whether it is reasonable to issue an eviction order against the tenant, the First-tier Tribunal is to consider the extent to which the landlord has complied with pre-action requirements before applying for the 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.*

***[F28]****(6) In sub-paragraph (3B), "pre-action requirements" means such requirements as the Scottish Ministers may specify in regulations.*

*(7) Regulations under sub-paragraph (6) may in particular make provision about—*

*(a) information to be provided by a landlord to a tenant including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy,*

*(b) steps to be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,*

*(c) such other matters as the Scottish Ministers consider appropriate.]*

#### **Textual Amendments**

**F26**Sch. 3 para. 12(2) repealed (temp.) (7.4.2020) by virtue of Coronavirus (Scotland) Act 2020 (asp 7), s. 17(1), sch. 1 para. 1(1), (3)(i) (with ss. 11-13, sch. 1 para. 10)

**F27**Sch. 3 para. 12(3A)(3B) inserted (temp.) (27.5.2020) by virtue of Coronavirus (Scotland) (No.2) Act 2020 (asp 10), s. 16(1), sch. 1 para. 5(2)(a) (with s. 9)

**F28**Sch. 3 para. 12(6)(7) inserted (temp.) (27.5.2020) by virtue of Coronavirus (Scotland) (No.2) Act 2020 (asp 10), s. 16(1), sch. 1 para. 5(2)(b) (with s. 9)

#### **Commencement Information**

**I12**Sch. 3 para. 12 in force at 1.12.2017 by S.S.I. 2017/346, reg. 2, sch."

The Tribunal was satisfied that all elements of Ground 12 were met and that it was reasonable, having regard to all of the circumstances known to the Tribunal, as outlined above under the heading "Case Management Discussion", to grant the eviction order sought. The rent account had been in arrears for a significant period of time (continuously from in or around April 2022) and amount to a significant sum which the Tribunal was satisfied was having a negative impact on the Applicant's finances. There appears also to have been damage caused to the Property by the Respondent which would incur further costs for the Applicant to repair. Although the First Respondent is understood to be in receipt of Universal Credit, there was no information before the Tribunal to indicate that any of the rent arrears were a consequence of a delay or failure in the payment of a relevant benefit. In addition, the Tribunal was satisfied from the evidence before it that the Applicant had complied with the pre-action requirements, including seeking to engage with the First Respondent, who remains in occupation of the Property, refer her for appropriate advice and resolve the arrears situation. The First Respondent has not engaged with the Applicant, made any payments towards the rent nor made any offers of payment. The Applicant's position is that the First Respondent has no interest in the Property nor in continuing to live there and has sought assistance from the local authority and hopes to be housed by them.

4. The First Respondent did not submit any written representations to the Tribunal, nor attend the CMD of which she had been properly and timeously notified by the Tribunal by way of Sheriff Officer service. The Second Respondent's position in relation to the eviction application, put forward by his solicitor, is that he has not resided in the Property for some time, does not dispute the rent arrears figures stated by the Applicant and has no opposition to an eviction order being granted. The Tribunal did not therefore have any material before it to contradict the Applicant's position. The Tribunal accordingly determined that an order for recovery of possession of the Property could properly be granted at the CMD as there were no facts in dispute concerning the eviction application nor any other requirement for an Evidential Hearing.

#### **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.**

**Nicola Weir**

**Legal Member/Chair**

—

**6 February 2023**  
**Date**