



**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/22/2446**

**Re: Property at 9 West Drive, Dingwall, IV15 9RN (“the Property”)**

**Parties:**

**Angus MacLeod, Marjorie MacLeod, 14/11 Boat Green, Edinburgh, EH3 5LN (“the Applicants”)**

**Adrian Jan Kolodziejczyk, 9 West Drive, Dingwall, IV15 9RN, Piotr Pawel Szczodrowski, whose present whereabouts are unknown (“the Respondents”)**

**Tribunal Members:**

**Joel Conn (Legal Member) and Gordon Laurie (Ordinary Member)**

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

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

**Background**

1. This is an application by the Applicants for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”). The PRT in question was by the Applicants to the Respondents commencing on 1 March 2019 (though we noted that the style agreement used was not in standard form, and was an old assured tenancy style).
2. The application was dated 14 July 2022 and lodged with the Tribunal on that date. The application relied upon a Notice to Leave dated 11 May 2022 in terms of section 50 of the *Private Housing (Tenancies) (Scotland) Act 2016*, intimated upon the Respondents by Sheriff Officers on 13 May 2022. The Notice relied upon Ground 12 of Schedule 3 Part 1 of the 2016 Act, being that “the tenant has been in rent arrears for three or more consecutive months”. In regard to Ground

12, the body of the notice referred to arrears of £9,750 at that time, and provided details of the months missed (March 2021 to May 2022) at the rate of £650 per month. (The rent due under the Tenancy Agreement lodged was £650 per month due in advance on the first day of each month.) The Notice intimated that an application to the Tribunal would not be made before 11 June 2022.

3. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon Highland Council on 11 October 2022 was provided with the application. Evidence of the Applicants' solicitor providing pre-action protocol information to the Respondents by letter on 18 May 2022 was further provided in the application papers.

### **The Hearing**

4. The matter called for a case management discussion ("CMD") of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 2 March 2023 at 14:00. We were addressed by the Applicants' agent Theresa McWilliams, solicitor, of Trainor Alston. There was no appearance from the Respondents.
5. We were informed by the clerk that no contact had been received from the Respondents (or on their behalf) with the Tribunal. The Applicants' agent said that the second named Respondent was believed not to have been at the Property for around two years. (Service by advertisement had been carried out against the second named Respondent and we were provided with a certificate from the clerk evidencing same.) The Applicants' agent said that there had been no contact from the first named Respondent.
6. The Applicants' agent explained that the Tenancy had been set up by a letting agent and since then the first named Applicant worked abroad much of the time. He and his sister, the second named Applicant, were not aware of any material details of the Property or the Respondents.
7. We considered that the first named Respondent had received clear intimation of the CMD from Sheriff Officers and the second named Respondent had received the appropriate service by advertisement. Having not commenced the CMD until around 14:05, we were satisfied to consider the application in the Respondents' absence. In any case, no attempt was made by the Respondents to dial in late to the CMD.
8. At the CMD, the Applicants' agent confirmed that the application for eviction was still insisted upon and referred to an updated rent ledger to 9 February 2023 showing no payments since 17 February 2021. Arrears were now £15,600.
9. The Applicants' agent was not aware of any issues with benefits and, further to the lack of information held by the Applicants, she was not aware if the first named Respondent was in employment. She was aware of a history of issues with the Property, and involvement by Police Scotland. She described a recent "raid" of the Property and that, since then, only the first named Respondent

resided there. Prior to that, she believed that there had been frequent other occupants. A letter from Police Scotland had been lodged prior to the CMD regarding the service of a warrant (in regard to unspecified matters) on an occupant of the Property (unnamed for data protection reasons) on 2 February 2023.

10. The Applicants did not believe anyone else other than the first named Respondent now resided at the Property and had not agreed to any adaptation of the Property for accessibility. They knew of no reason that the Respondents required the Property due to its specific location or convenience to any support service. The Applicants had no other residential properties that they rented out.
11. No motion was made for expenses.
12. We noted that there was no listing for the Property in the Landlord Registration database and the application papers referred to an application having been lodged in February 2022 and, by November 2022, still being pending. The Applicants' agent confirmed that she had no further information about the application but conceded that correspondence to the first named Applicant may not have been picked up given his absence abroad for work.

### **Findings in Fact**

13. On 1 March 2019, the Applicants let the Property to the Respondents under a lease with commencement on 1 March 2019 ("the Tenancy").
14. The Tenancy Agreement purported to be an assured tenancy and used a style applicable to such a tenancy but, commencing on 1 March 2019, was a Private Residential Tenancy.
15. In terms of clause (THIRD) of the Tenancy Agreement, the Respondents require to pay rent of £650 a month in advance on the first day of each month.
16. On 11 May 2022, the Applicants' agent drafted a Notice to Leave in correct form addressed to the Respondents, providing the Respondents with notice, amongst other matters, that they were in rent arrears for a period in excess of three consecutive months and detailing arrears at that date of £9,750.
17. The Notice to Leave provided the Respondents with notice that no application would be raised before the Tribunal prior to 11 June 2022.
18. The Applicants' agent served a copy of the Notice to Leave on the Respondents by Sheriff Officer's service on 13 May 2022.
19. The Applicants raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying in part on Ground 12 of Schedule 3 Part 1 of the 2016 Act.

20. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon Highland Council on the Applicants' behalf.
21. The Applicants' agent provided the Respondents with suitable pre-action protocol information by letter on 18 May 2022.
22. As of 2 March 2023, the Respondents remained in arrears of rent in the amount of £15,600 which is the equivalent of 24 months of rent.
23. The Respondents do not claim to have paid any amount of the arrears of £15,600 remaining as at 2 March 2023.
24. The sum of arrears remaining as of 2 March 2023 is neither wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, other than any referable to an act or omission of the Respondents.
25. On 23 January 2023, the Tribunal intimated to the first named Respondent the date and time of the CMD of 2 March 2023 by Sheriff Officer.
26. On 19 January 2023, the Tribunal intimated to the second named Respondent the date and time of the CMD of 2 March 2023 by advertisement.

### **Reasons for Decision**

27. The application was in terms of rule 109, being an order for eviction of a PRT. Though the Tenancy Agreement lacks a notice provision, due to being in a non-standard style, we were satisfied on the basis of the application and supporting papers that the Notice to Leave had been correctly drafted and served upon the Respondents.
28. Ground 12 of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:
  - (1) *...the tenant has been in rent arrears for three or more consecutive months. ...*
  - (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*
    - (a) *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, and*

(b) *the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations.*

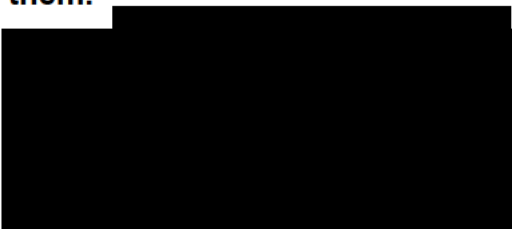
29. The arrears information provided at the CMD clearly showed that Ground 12 was satisfied in regard to the length of arrears and amount outstanding. There is nothing to suggest that Respondents' failure to pay is related to an issue with benefits. We were satisfied that there was evidence of the pre-action protocol being complied with.
30. We require, in terms of the Act as currently amended, to consider the reasonableness of the application even in regard to such substantial arrears. We were satisfied that the Applicants' reasons for seeking eviction were reasonable given the amount and duration of the arrears and the absence of any engagement by the Respondents.
31. In all the circumstances before us, we were satisfied that Ground 12 was well founded by the Applicants and reasonable to grant. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we were thus satisfied to grant an order for eviction at this time.
32. In terms of Rule 26(12), we direct the clerk to send a copy of this decision to Highland Council in regard to the absence of any registration of the Applicants as landlords. If the application is still pending, we hope the Council shall take steps to advance the application as a matter of urgency. If the application is missing, has lapsed, or is pending due to some failure by the Applicants, the Council will no doubt consider matters as it sees fit.

### **Decision**

33. In all the circumstances, we grant an order against the Respondents for eviction from the Property under section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* in normal terms further to ground 12 of Schedule 3 of that Act.

### **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**

2 March 2023

**Date**