



**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/23/2374**

**Re: Property at 126 Mill Road, Cambuslang, Glasgow, G72 7QZ (“the Property”)**

**Parties:**

**Mr David Gourlay, Stephen Twynholm, Flat 3/1, 13 Florida Drive, Glasgow, G42 9DN; (“the Applicant”)**

**Mr Daniel Hendren, 126 Mill Road, Cambuslang, Glasgow, G72 7QZ (“the Respondent”)**

**Tribunal Members:**

**Jan Todd (Legal Member) and Elizabeth Dickson (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 possession be granted.**

1. This was a case management discussion in respect of an application by the Applicant dated 17<sup>th</sup> July 2023 for an order for eviction against the Respondent. This was the first calling of the case before a Tribunal.
2. The following documents were lodged with the application:-
  - A copy of the Tenancy Agreement dated with a commencement date of 14<sup>th</sup> February 2019
  - Copy Notice to Leave dated 15<sup>th</sup> June 2023
  - Copy emails confirming service of notice to leave dated 15<sup>th</sup> June 2023
  - Copy S 11 Notice and email to South Lanarkshire Council dated 17<sup>th</sup> July 2023
  - Letters to tenant regarding non-payment of rent dated 19<sup>th</sup> May 2023 and 25<sup>th</sup> May 2023
  - Rent statement showing sum due to 14<sup>th</sup> July 2023 of £3850

3. On 17<sup>th</sup> October the first named applicant submitted an updated rent statement showing that rent due to October 2023 was now £5,350

### **The CMD**

4. The CMD proceeded today by way of teleconference. The Convener made introductions, and explained how the CMD would be conducted over the teleconference. Both Applicants Mr David Gourlay and Mr Stephen Twynholm were present.
5. The Applicants are seeking eviction under Ground 12 A of Schedule 3 to the 2016 Act
6. The Respondent did not attend nor was he represented on the teleconference. The Respondent had been served a copy of the application and papers by sheriff officers on 12<sup>th</sup> October 2023 together with a note of the date and time of the teleconference and details of how to join. The Respondent has been given fair notice and the Tribunal therefore felt it was appropriate and fair to continue in his absence.
7. Mr Gourlay advised that they were seeking an order for eviction of Mr Hendren who was the tenant in the Property. He explained that the Respondent had underpaid some rent and then stopped paying rent altogether in January this year and is in substantial rent arrears which today amount to £5,850. He confirmed that no further payments had been made and that the Respondent would not reply to their phone calls, has blocked them on whats app and has not responded to their letters. Mr Gourlay also advised that the Applicants sought a payment order from the Tribunal earlier in the year and although they believe the Respondent is working have struggled to enforce it. He also advised that the Respondent has started dumping household waste in the front garden of the property but would not engage with South Lanarkshire Council Environmental Health department who had received a lot of complaints about this. As a result the Applicants have been forced to clear the front garden of the waste on at least 2 occasions to avoid further action by the council and to try and stop vermin being attracted to the area. Mr Gourlay also noted that the tenant has not allowed pest control to visit and respond to the issues caused by the waste.
8. Mr Twynholm also advised that they had to seek a right of entry order to allow a gas inspection to be carried out due to the Respondent refusing access to the gas engineer on 3 occasions.
9. The Applicants confirmed that as far as they are aware the Respondent lives alone although he may have children staying with him on some occasions. They did not know why the Respondent who had paid his rent regularly for several years suddenly stopped doing so this year with no explanation.

### **Facts**

1. The Applicant and the Respondent entered into a lease of the Property which commenced on 14<sup>th</sup> February 2019.

2. The Respondent is still occupying and in control of the Property and the tenancy is continuing.
3. A notice to leave dated 15<sup>th</sup> June 2023 was served on the Respondent by email confirming that no proceedings would be raised before 16<sup>th</sup> July 2023
4. These proceedings were raised on 17<sup>th</sup> July 2023 and the application included a copy of the Notice to Leave.
5. A Section 11 notice has been served on South Lanarkshire Council
6. There were at least 6 months' rent arrears outstanding at the date of service of the Notice to Leave.
7. The Rent due was £500 payable in advance in terms of the lease.
8. The current rent contractually due and not paid as at 15<sup>th</sup> November 2023 is £5,850.
9. The last payment made was on 3<sup>rd</sup> January 2023 for £150.
10. The Respondent has failed to communicate or respond to the Applicant regarding the rent arrears and has made no response to this application.
11. The Tribunal finds it reasonable that an order for eviction is granted for the reasons stated below.

### **Reasons for Decision**

- The Tribunal was satisfied that the Respondents had been served with a valid Notice to Leave under S52 (3) of the 2016 Act specifying Ground 12 A of Schedule 3 of the Act as the relevant grounds of eviction.
- The Notice to Leave was also accompanied by evidence of how the ground was met namely a rent statement.
- Grounds 12 A require 28 day's notice under the current rules. The Notice sets out the notice period as expiring on 16<sup>th</sup> July 2023 and was served by email on 15<sup>th</sup> June 2023. This Application is therefore timeous.
- The Tribunal considered whether the terms of Ground 12 A were met namely that the tenant has substantial rent arrears. This ground may be met if the Respondent is in arrears of rent by an amount equal to or greater than the amount which would be payable as six months' rent under the tenancy on the day the Notice to Leave was served and the Tribunal finds it reasonable that an order for eviction be granted. The first rent missed was in October 2022. The rent statement shows that as 15<sup>th</sup> June 2023 the sum outstanding was ££350. The Tribunal notes the Respondent was in arrears of rent to the extent of at least 6 months' rent when the Notice to Leave was served on 15<sup>th</sup> June and there has been no payments since then. So there have been continuous arrears since the Notice to Leave was served and the sum due and not paid today is £5,850 which is more than 6 months' rent. The Tribunal accepted that Ground 12 A has been met.
- The Tribunal went on to consider if it was reasonable to grant an order for eviction. They found Mr Gourlay and Mr Twynholm to be credible in their statements and responses to questions and accepted that the Respondent has been difficult to contact, has not made any payment since January more than 10 months ago. The Respondent has stopped all communication with the Applicant, he has failed to attend to requests for gas checks in the Property and is now causing an issue with vermin by dumping waste in the front garden

and not responding to interventions by the local authority or pest control. There is no suggestion that the failure to pay is a consequence of any delay or failure in the payment of benefit.

- There being no response to counter this from the Respondent, the Tribunal is satisfied in terms of S 51 (1) of the Act that Ground 12 A being an eviction ground specified in the application and in the Notice to Leave is met, and that it is reasonable for the Tribunal to grant the application.
  
- Decision

An order for possession 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.**

# Jan Todd

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Legal Member/Chair

**15<sup>th</sup> November 2023**

**Date**