

**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/23/0886**

**Re: Property at 96 Winifred Street, Kirkcaldy, KY2 5ST (“the Property”)**

**Parties:**

**JSMD Properties Ltd, 32 Forth Park Crescent, Kirkcaldy, KY25AB (“the Applicant”)**

**Mr Grant Henderson, 96 Winifred Street, Kirkcaldy, KY2 5ST (“the Respondent”)**

**Tribunal Members:**

**Valerie Bremner (Legal Member) and Gerard Darroch (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted in terms of ground 12A of Schedule 3 of the Private Housing ( Tenancies) ( Scotland ) Act 2016 as the Respondent has accrued substantial rent arrears which exceed the amount of six months’ rent in terms of the tenancy agreement as at the date of service of the Notice to Leave and at the date of the hearing on the application and the Tribunal is satisfied that it is reasonable to grant an eviction order.**

1.This application for an eviction order in terms of Rule 109 of the Tribunal Rules of procedure was first lodged with the Tribunal on 17<sup>th</sup> March 2023 along with a related civil application with reference FTS/HPC/CV/23/0893.The eviction application was accepted by the Tribunal on 19<sup>th</sup> September 2023.A case management discussion was set down for both applications for 15<sup>th</sup> December 2023 at 10am.

**The Case Management Discussion**

2. The case management discussion was attended by Ms Kirsty Robertson from Belvoir representing the Applicant company. The Respondent did not attend and was not represented. The Tribunal members noted that both applications and papers had been served on the Respondent by Sheriff Officer putting these through the letterbox at the property on 3<sup>rd</sup> November 2023.The Tribunal was satisfied that the Respondent had received fair notice of the proceedings and that it was appropriate to proceed in his absence.

3.The Tribunal had sight of the Application, a tenancy agreement, a rent statement, an updated rent statement, a Notice to Leave, an execution of service of the Notice to Leave by Sheriff Officer, a Notice in terms of Section 11 of the Homelessness etc (Scotland ) Act 2003 and an email intimating this Notice to Fife Council, terms of business documentation, together with letters and emails between the Applicant's representative concerning the rent arrears, some of which signposted him to sources of support in the event of financial difficulty.

4.Ms Robertson advised the tribunal that the Applicant company entered into a tenancy agreement at the property with the Respondent with effect from 21<sup>st</sup> February 2021.The monthly rent in terms of the tenancy agreement is £450 payable in advance.

5.The Applicant's representative took over management of the tenancy in November 2021 and no rent was paid at all by the Respondent during the time that they were dealing with the tenancy up to the time when the Notice to Leave was served and as at the date of the case management discussion.

6.A Notice to Leave was served by Sheriff Officers on the Respondent on 2<sup>nd</sup> February 2023 in terms of Ground 12A of Schedule 3 of the 2016 Act when the rent arrears had reached £6300.This Notice gave the Respondent notice that an application for eviction under Ground 12 A would not be submitted to the Tribunal before 3<sup>rd</sup> March 2023.

7.A Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 was intimated to Fife Council in relation to this eviction application on 17<sup>th</sup> March 2023.

8.Ms Robertson advised the Tribunal that the level of rent arrears at the date of the case management discussion had reached £10800.Ms Robertson advised the Tribunal that on 11<sup>th</sup> December 2023 the Respondent had been in contact with the Applicant's representative to make offers to pay the rent arrears. An offer of £500 per month (monthly rent and £ 50) had been made by the Respondent but this had not been accepted by the director of the Applicant company as this would have taken a number of years to pay off the rent arrears and the landlord did not consider this to be sufficient and that it would take too long to pay the debt. Another offer was made by the Respondent to pay the rent arrears at £300 per month over and above the monthly rent payments along with fitting a new bathroom and a new front door at the property at his expense. The landlord had rejected this offer due to the time it would take to pay off the debt and also, he had no confidence that the Respondent would keep up payments of the arrears. No previous offers to pay the rent arrears had been made before 11<sup>th</sup> December 2023.

9.Ms Robertson was permitted to seek further information about the tenancy and the Respondent's circumstances. She indicated that her information was that when the Respondent took on the tenancy he was believed to be working and it was understood he was still working. There was no information before the Tribunal to suggest that the Respondent had had any issues with delay or failure in payment of benefits, has any health conditions and he was believed to live alone at the property.

10.The Tribunal considered that it had sufficient information upon which to make a decision and that the proceedings had been fair.

## **Findings In Fact**

11. The Applicant company entered into a private residential tenancy agreement with the Respondent at the property with effect from 21st February 2021.

12. The monthly rent due by the Respondent in terms of the tenancy agreement is £450 per month payable in advance.

13. At the time when the tenancy started the Respondent was understood to be working and it is believed he is still working.

14. The Applicant's representative took over the management of the tenancy in November 2021 and no rent at all has been paid by the Respondent since that date.

15. No issues of delay or failure to pay relevant benefits to the Respondent have contributed to the accrual of rent arrears.

16. The Applicant's agents corresponded with the Respondent regarding the rent arrears and some of these communications signposted him to sources of support in relation to paying the rent.

17. A Notice to Leave in proper terms was served on the Respondent on 2<sup>nd</sup> February 2023 giving notice that an application for eviction in terms of Ground 12A of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 would not be made to the First-tier tribunal before 3<sup>rd</sup> March 2023.

18. A Notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 was sent to Fife council on 17<sup>th</sup> March 2023.

19. As at the date of service of the Notice to Leave rent arrears of £6300 had accrued, in excess of 6 months' rent due in terms of the tenancy agreement.

20. As at the date of the case management discussion the rent arrears accrued in terms of the tenancy have reached £10 800.

21. The Respondent has accrued substantial rent arrears in terms of the tenancy agreement.

22. On 11<sup>th</sup> December 2023, the Respondent made offers to pay off the rent arrears in instalments, but these offers were rejected by the director of the Applicant company as taking too long for the debt to be paid and because he had no confidence that any payment plan would be maintained until the rent arrears were paid off.

## **Reasons for Decision**

23. The Tribunal was satisfied that the appropriate procedures had been carried out in order that the eviction application could be properly applied for. The Tribunal was

satisfied that the eviction ground was made out and substantial rent arrears had accrued at the time of service of the Notice to Leave and as at the date of the case management discussion the rent arrears were in excess of £10 000.

24. An offer to pay the rent arrears off at £50 per month had been made to the Landlord by the Respondent a few days before the case management discussion but this would have taken several years to pay off the arrears. A higher offer had been made together with an offer to carry out improvements at the property, but this offer would have taken three years to pay off the rent arrears. The landlord had rejected these offers and had no confidence that any payment plan would be adhered to. The Tribunal considered that this concern about payment plans being adhered to appeared reasonable given the history of the tenancy and the non-payment of rent for at least two years. The Respondent did not engage with the tribunal or appear at the case management discussion so there was no formal offer made regarding the rent arrears for the Tribunal to consider as these had already been rejected by the Applicant.

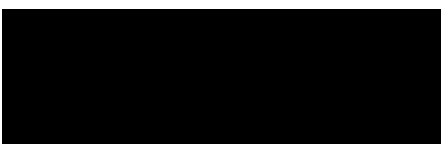
25. The Tribunal considered that it was reasonable to grant an eviction order having considered all of the circumstances. The rent arrears are substantial, no rent had been paid for 2 years and offers to pay made to the landlord would have taken too long to pay off the debt and given the history of non-payment, it was not surprising or unreasonable that these offers had been rejected by the landlord. There was nothing by way of representations or appearance before the Tribunal from the Respondent and on the information before it the Tribunal granted the order.

## **Decision**

The Tribunal determined that an eviction order be granted in terms of ground 12A of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 as the Respondent has accrued substantial rent arrears which exceed the amount of six months' rent in terms of the tenancy agreement as at the date of service of the Notice to Leave and at the date of the hearing on the application and the Tribunal is satisfied that it is reasonable to grant an eviction order.

## **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.**



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**Legal Member/Chair**

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**15.12.23**  
**Date**