



**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/23/1985**

**Re: Property at 3 St Monance Place, Dundee, DD3 9LE (“the Property”)**

**Parties:**

**Janette Brown, Lee Brown, 309 Strathmartine Road, Dundee, DD3 8NS (“the Applicants”)**

**Bethany Robertson, 3 St Monance Place, Dundee, DD3 9LE (“the Respondent”)**

**Tribunal Members:**

**Joel Conn (Legal Member) and John Blackwood (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

**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 Respondent commencing on 1 February 2022.
2. The application was dated 15 June 2023 and lodged with the Tribunal on that date. This makes the application subject to the *Cost of Living (Tenant Protection) (Scotland) Act 2022*, as shall be referred to further below.
3. The application relied upon a Notice to Leave dated 19 December 2022 in terms of section 50 of the *Private Housing (Tenancies) (Scotland) Act 2016*, intimated upon the Respondent by recorded delivery post, and said to have been posted on that date. 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 £900 as of that date, and detailed missed payments and underpayments making up this amount. The rent stated in the Tenancy Agreement lodged was £700 a month, meaning the arrears as at the date of the Notice to Leave was less than 1.3 months of arrears but some arrears had been outstanding for over four months as at the date of the Notice. The Notice intimated that an application to the Tribunal would not be made before 19 January 2023.

4. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon Dundee City Council on 15 June 2023 was provided with the application. There was no evidence of the Applicants providing pre-action protocol information to the Respondent (other than those elements within the Notice to Leave) and written submissions were included in the application papers seeking for us to dispense with the need for such correspondence.
5. Prior to the case management discussion ("CMD") we received written submissions on behalf of the Respondent from the solicitor who then appeared at the CMD.

### **The Hearing**

6. The matter called for a CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 19 January 2024 at 14:00. We were addressed by Iain MacRae, solicitor, Gilmartin Finlay MacRae, on behalf of the Applicants and by Rebecca Falconer, solicitor, Dundee Law Centre for the Respondent.
7. At the CMD, the Applicants' agent confirmed that the application for eviction was still insisted upon and that arrears were now £1,550 and were rising by £50 per month. A rent statement to 12 June 2023 was lodged with the application papers and showed arrears at that date of £1,200, being made up of a missed payment of £700 in December 2022 and a shortfall of £50 per month each other month from August 2022 until June 2023. The Applicants' agent confirmed that there had been further shortfalls of £50 each month from July 2023 onwards.
8. The Respondent's agent's position was materially set out in her written submissions. No defence was extended on the validity of the Notice to Leave or its service, nor on the amount of the arrears, or on reasonableness. The Respondent was not, however, consenting to the order or in a position to vacate voluntarily, as she was not wishing to take any steps that could be construed as making herself intentionally homeless. She was, however, in contact with the local authority regarding rehousing, as she regarded the Property as overcrowded. She was a single mother with four children (7, 5, 3 and a new born) and it was a 2 bedroom property. She was informed that it may take the local authority some time to locate suitable further accommodation of sufficient size, and that if she was evicted she might first be rehoused in temporary accommodation.

9. The parties were in agreement that steps had been taken to convert an attic space to form a further bedroom at the Property, but that the work had not then received local authority approval (either due to quality and/or specification) and the attic was not deemed “habitable” (in terms of the regulations overseen by the local authority) as extra living space. The Respondent’s specific submission was that the work required to be “subsequently removed”, on which the Applicants did not specific comment. Further, the Applicants said that they had funded the work which was undertaken by the Respondent’s contractors (and thus it was the Respondent’s contractors who had failed to ensure the correct specification and quality of work). The Respondent’s agent however had no information on who funded or undertook the works and had no submission to make on those matters.
10. In regard to the arrears, the Applicants’ agent stated that the Tenancy Agreement of 2022 was not the first PRT tenancy between the parties. A PRT was first entered into in 2018 at a rent of £650. The current Tenancy Agreement of 2022, at £700 per month, was set up to represent an increase in rent that the Applicants’ agent said was partly a representation of an increase in rent after four years and partly in consideration of the work to extend the Property into the attic space. The Respondent’s submission was that the increase in rent was solely regarding the attic space works, and highlighted that the rent has remained at the higher level despite the attic not now being deemed habitable. Either way, parties were agreed on the rent payments, and the Applicants’ agent focused on there being no arrears until 1 August 2022. The full £700 had thus been paid February to July 2022.
11. On that, the Respondent’s agent explained that the Respondent was not in employment and was supported by a number of benefit payments including Universal Credit. She was simply not in a position to fund the full rent at present and could not see a way that she would be able to fund the full rent and the arrears. She was seeking a Discretionary Housing Payment. (There had been some mis-steps on this, in regard to obtaining a rent statement to support the application, on which parties had differing perspectives but on which ultimately nothing turns.) The Respondent’s agent accepted, however, that the payment of such a discretionary benefit was not guaranteed, would not be paid long-term, and may not cover all the arrears to date. It was not, therefore, a complete solution and the Respondent had no complete solution to the arrears and the £50 shortfall that was occurring each month. For this reason, the Respondent was hopeful that she would obtain public housing and, even though two of her children were in local schools, she was happy to leave the area. She had informed the local authority of this in regard to the request for rehousing. Though an order for eviction would potentially mean a family of five (with a new born) moving to temporary homelessness accommodation, the Respondent was also clear that the Property was now over-crowded and a material route for her to obtain suitable new accommodation was through public rehousing if she were evicted (even if it was not an immediate rehousing).
12. Parties were agreed that that the Property was not adapted for the needs of the Respondents nor any dependent and that the Property’s location and nature

did not possess any specific suitability for the Respondents (such as proximity to a support network or medical facility).

13. In regard to the parties' respective financial circumstances, the Applicants had at least four rental properties (either personally or in a connected company) and the arrears were not a significant financial strain on them, but they were conscious that there was no means to bring the arrears to a complete end. For the Respondent, she was concerned that the arrears continued to grow and she was not in a position to address them. She was not comfortable with being in mounting arrears.
14. In regard to adherence with the pre-action protocol, the Applicants' agent provided written submissions seeking that the Tribunal dispensed with any requirement, given the circumstances of the Respondent's position on the application. We further noted that the Respondent was in receipt of legal advice, and had received information regarding sources of advice and the arrears within the Notice to Leave. Submissions were further provided as to information on arrears being exchanged between the parties' agents in October 2023, significantly prior to the CMD.
15. In regard to further procedure, neither party sought to lead witnesses and both were satisfied for a decision to be made on the merits of the application based on the submissions and documentation provided. No motion was made for expenses.

### **Findings in Fact**

16. On 12 January 2022 the Applicants let the Property as a Private Residential Tenancy to the Respondent under a lease with commencement on 1 February 2022 ("the Tenancy"), in substitution of an earlier private residential tenancy.
17. In terms of clause 7 of the Tenancy Agreement, the Respondent required to pay rent of £700 a month in advance on the 1<sup>st</sup> day of each month.
18. On 19 December 2022, the Applicants' agent drafted a Notice to Leave in correct form addressed to the Respondent, providing the Respondent with notice, amongst other matters, that she was in rent arrears for a period in excess of three consecutive months and detailing arrears at that date of £900.
19. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior to 19 January 2023.
20. The Applicants' agent served a copy of the Notice to Leave on the Respondent by recorded delivery post on 19 January 2023.
21. Clause 3 of the Tenancy Agreement permits for service of notices by recorded delivery post.

22. The Applicants raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 12 of Schedule 3 Part 1 of the 2016 Act on 15 June 2023.
23. As at the date of the Notice to Leave, rent arrears were in excess of 1.2 months and there had been some level of arrears outstanding in regard to the Property since 1 August 2022, a period in excess of 4 months.
24. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon Dundee City Council by the Applicants' agent on 15 June 2023.
25. As of 19 January 2024, the Respondent remained in arrears of rent in the amount of £1,550 which is equivalent of over 2.2 months of rent and there had been some level of arrears outstanding in regard to the Property for a period in excess of 16 months.
26. The Respondent does not claim to have paid any amount of the arrears of £1,550 remaining as at 19 January 2024.
27. The sum of arrears remaining as of 19 January 2024 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 Respondent.
28. The Respondent has four dependent children, of which two are in full-time education in a local school.
29. The Property is not specially adapted with the use of the Respondent.
30. The Property is not especially suitable for the Respondent by reason of its location.
31. The Property is no longer suitable for the Respondent and her family given it is too small for their needs.
32. The Respondent is concerned as to the mounting arrears and her inability to address them.

### **Reasons for Decision**

33. The application was in terms of rule 109, being an order for eviction from a PRT. We were satisfied on the basis of the application and supporting papers, and in consideration of the Respondent's submissions, that the Notice to Leave had been correctly drafted and served upon the Respondent.
34. 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.*

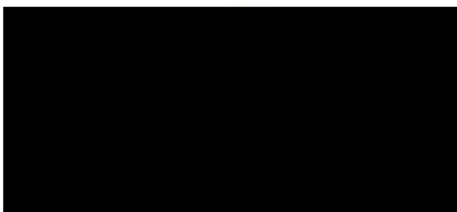
35. The arrears information provided at the CMD clearly showed that Ground 12 was satisfied in regard to the length of arrears and amount outstanding. The Respondent's agent conceded that the Respondent's failure to pay is not related to an issue with a relevant benefit and, though she is seeking a further discretionary benefit payment, there is no long-term resolution to the arrears and the shortfall that will come from any application relating to benefits. Ground 12 is satisfied subject to paragraph 3(b) regarding reasonableness.
36. We require, in terms of the Act as currently amended, to consider the reasonableness of the application even in regard to persistent arrears. We were satisfied that the Applicants' reasons for seeking eviction were reasonable given the duration of the arrears. We appreciated the candour of their agent in conceding that the amount of the arrears was not causing material financial difficulty to them. It was, however, a substantial sum of money to the Respondent who had no plan for full resolution of the position and was concerned about this. Further, though granting the order was placing a family at risk of homelessness, clearly the Property was currently unsuitable for their needs both as it was too small and too expensive. We are satisfied that it is reasonable to evict on the basis of the information before us.
37. We remain of this view in the absence of any evidence of compliance with the pre-action protocols. We were aware that the Respondent has had the benefit of the information in Notice of Leave (which covers many of the matters within a pre-action protocol letter), as well as having engaged a specialist solicitor. The purpose of the pre-action protocol has been fully addressed.
38. 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 are thus satisfied to grant an order for eviction at this time under Ground 12 subject to the appropriate suspension under the 2022 Act.

## **Decision**

39. In all the circumstances, we grant an order against the Respondent for eviction from the Property under section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* 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.**



**19 January 2024**

**Legal Member/Chair**