



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)**

**Chamber Ref: FTS/HPC/EV/23/3304**

**Re: Property at 65 Urquhart Terrace Top Floor Right, Aberdeen, AB24 5NJ (“the Property”)**

**Parties:**

**Mr Karl Gray, Strathholm, Clachan, Tarbet, Argyll, PA29 6XL (“the Applicant”)**

**Miss Katie Murphy, 65 Urquhart Terrace Top Floor Right, Aberdeen, AB24 5NJ (“the Respondent”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member) and Frances Wood (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 should be granted.**

**Background**

1. The Applicant seeks an eviction order in terms of Section 51 of the 2016 Act. A tenancy agreement, Notice to Leave, Section 11 Notice, rent statement and correspondence with the Respondent were lodged in support of the application. A related application for a payment order under Chamber reference CV/23/3305 was also submitted.
2. A copy of the application was served on the Respondent by Sheriff Officer. Both parties were advised that a case management discussion (“CMD”) would take place by telephone conference call on 9 January 2024 at 2pm and that they were required to participate. On 4 December 2023 and 3 January 2024, the Applicant lodged an updated rent statement and a request to amend the sum claimed in the related payment application. The Applicant also asked the

Tribunal to consider ground 12A as the arrears now exceed 6 months rent.

3. The CMD took place on 9 January 2024. The Applicant was represented by Ms MacDonell. The Respondent did not participate and was not represented.

### **Case Management Discussion**

4. Ms MacDonell told the Tribunal that the Respondent is still in occupation of the property. There was contact with her to arrange access for a repair in December 2023. The visit did not take place although it is not clear whether it was cancelled by the contractor or the Respondent. The letting agents have continued to contact the Respondent by email but she does not respond. Ms MacDonell advised the Tribunal that it would be reasonable for the Tribunal to consider ground 12A, substantial rent arrears, although this is not mentioned in the Notice to leave. She said that the arrears are now in excess of 7 months rent. In response to questions from the Tribunal she said that the implications of the Cost of Living Act are not significant as the delay in enforcement which would apply to ground 12 would only mean an additional few weeks at this stage.
5. Ms MacDonell told the Tribunal that the arrears started in November 2022. The Respondent advised the letting agent that she had changed job, and this had caused some problems with her income. She also discovered that she was expecting twins. They were born in May or June 2023. There had been previous arrears in June/July 2022 which were repaid by the guarantor. The Respondent made proposals to clear the arrears which were not maintained. From January 2023, Universal Credit started making direct payments to the account although these did not cover the full rent charge and the Respondent did not meet the shortfall. Following the birth of the twins, the payments from universal credit increased and covered the full rent charge. However, the Respondent made no additional payments, and the arrears did not reduce. In October 2023, the Respondent advised them that she had asked UC to make the payments to her and not the letting agent. She said that she had to do this and that she would set up a standing order for the rent plus a contribution to the arrears. However, no payments have been received from the Respondent or universal credit since 1 November 2023. The balance currently owed is £3774.67. In response to questions from the Tribunal, Ms MacDonell told the Tribunal that the Respondent indicated that she lives at the property with her two children. She said that she has separated from her partner although he did not reside at the property anyway. Ms MacDonell is not aware of any health issues or disabilities. She is not sure if the Respondent is on maternity leave or unemployed. She doesn't know if the Respondent has approached the Local Authority about re-housing. The property is a fifth floor two bedroom flat. It is the only property the agency manages for the Applicant. She is unaware of any other rental properties owned by him. He has indicated that the rent arrears are causing financial difficulties, but she does not know if he has a mortgage.

## **Findings in Fact**

6. The Applicant is the owner and landlord of the property.
7. The Respondent is the tenant of the property in terms of a private residential tenancy agreement.
8. The Respondent is due to pay rent at the rate of £500 per month.
9. The Respondent has been in arrears of rent since December 2022 and has made no payments to the rent account since 1 November 2023.
10. The Respondent currently owes the sum of £3774.67 in unpaid rent.
11. The Applicant served a Notice to leave on the Respondent on 2 March 2023.
12. The Applicant has issued information to the Respondent in compliance with the Rent Arrears Pre action Protocol.
13. The Applicant has made extensive efforts to engage with the Respondent regarding the arrears.
14. The Respondent has made offers of re-payment but has not adhered to payment arrangements.
15. The Respondent resides at the property with twins aged approximately 7 months.
16. The Respondent contacted Universal Credit and requested that the housing costs element of the benefit be paid to her and not to the rent account. Since then, no payments to the rent account have been made.

## **Reasons for Decision**

17. The Tribunal noted that when the Notice to Leave was served on ground 12, the arrears were £1762.27, the equivalent of three and a half months rent. Since then, the arrears have decreased and then increased. However, they did not reach the equivalent of 6 months' rent (substantial rent arrears) until 1 December 2023, 7 months after the notice was served and 3 months after the application was lodged with the Tribunal. For the most part, the rent charge was met by universal credit between 30 June and 1 November 2023. In the circumstances the Tribunal is not satisfied that it would be reasonable to allow the Applicant to include ground 12A in terms of section 52(5)(b) of the 2016 Act.

18. The application was submitted with a Notice to Leave dated 2 March 2023, together with a copy of an email which establishes that the Notice was sent to the Respondent on the same date. The Notice states that an application to the Tribunal is to be made on ground 12, rent arrears over three consecutive months. Part 4 of the notice indicates that the earliest date that an application to the Tribunal can be made is 2 April 2023.
19. The application to the Tribunal was made after expiry of the notice period. The Tribunal is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a copy of the Section 11 Notice which was sent to the Local Authority. The Tribunal is therefore satisfied that the Applicant has complied with Section 56 of the 2016 Act.
20. Section 51(1) of the 2016 Act states, "The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies." Ground 12 of Schedule 3 (as amended by the Coronavirus (Recovery and Reform (Scotland) Act 2022 states "(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. (3) The First-tier Tribunal may find that the ground named in 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."
21. Sub-Paragraph (4) states, "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 Minister in regulations." Relevant benefits are defined in sub-paragraph (5) and include housing benefit and universal credit. The Pre Action-Requirements Regulations include the provision of clear information relating to the terms of the tenancy agreement, the level of the arrears, the tenant's rights in relation to eviction proceedings and how the tenant can access information and advice.
22. From the documents submitted and the information provided at the CMD, the Tribunal is satisfied that the Respondent currently owes the sum of £3774.67 and that she has been in arrears of rent for three or more consecutive months, both at the date of service of the Notice to leave and the CMD.
23. The Tribunal proceeded to consider whether it would be reasonable to grant the order and noted the following: -
  - (a) The Tribunal is satisfied that the Applicant has complied with the Rent Arrears Pre-Action Protocol. The Applicant submitted copies of emails to the Respondent which provided all information required in terms of the protocol. In addition, the Applicant's agent has attempted to contact the Respondent to discuss the arrears on many occasions.

- (b) The Respondent responded to some emails and made repayment proposals but did not adhere to these.
- (c) The Tribunal is also satisfied that there is no evidence that the arrears are attributable to a delay or failure in the payment of a relevant benefit. The Respondent did not participate in the CMD or provide any information regarding her circumstances. However, the Applicant's representative was able to advise the Tribunal that the rent charge was being met by universal credit payments until the Respondent notified the DWP that the housing costs should be paid to her and not to the Applicant.
- (d) The arrears are substantial and there have been no payments made to the rent account since 1 November 2023.
- (e) The Respondent has twin babies living with her at the property.
- (f) Although the Applicant's agent indicated that the Applicant has experienced financial difficulty as a result of the arrears no details were available, and no evidence was submitted in support of this.
- (g) The Respondent did not contact the Tribunal or participate in the CMD. She has not opposed the application.

24. Although the impact of eviction is likely to be significant for the Respondent and her children, her failure to engage with the Applicant's agent, the increasing level of arrears, the fact that all payments have ceased and the steps taken by the Respondent to stop direct payments of UC housing costs to the rent account lead the Tribunal to conclude that it would be reasonable to grant the order for eviction.

25. The Tribunal concludes that the Applicant has complied with the requirements of the 2016 Act and that the eviction ground has been established. For the reasons outlined in paragraph 23 and 24, the Tribunal is also satisfied that it would be reasonable to grant the order for eviction.

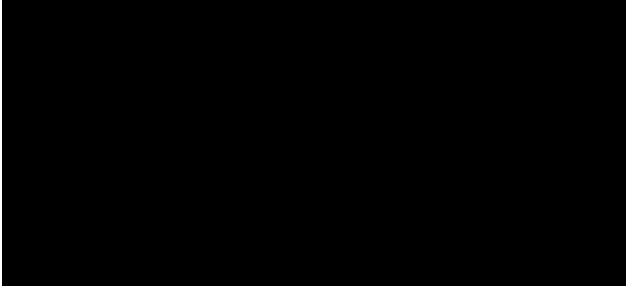
## **Decision**

26. The Tribunal determines that an eviction order should be granted against the Respondent.

## **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.**



**9 January 2024**