



**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/23/3147**

**Re: Property at 0/2 36 Cleveden Drive, Glasgow, G12 0RY (“the Property”)**

**Parties:**

**Alexander Newbery's Testamentary Trust, Mallowdale, 9 Montgomerie Terrace, Skelmorlie, PA17 5DT (“the Applicant”)**

**Mr Kevin McGeachie, 0/2 36 Cleveden Drive, Glasgow, G12 0RY (“the Respondent”)**

**Tribunal Members:**

**Karen Kirk (Legal Member) and Ahsan Khan (Ordinary Member)**

**Introduction**

This Hearing was a Case Management Discussion fixed in terms of Rule 17 of the Procedure Rules and concerned an Application for an Eviction Order under Section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016. The purpose of the Hearing being to explore how the parties dispute may be efficiently resolved.

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Eviction Order against the Respondent under section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016.**

**Attendance**

**Francesca Newbury attended for the Applicants. She is the sole beneficiary of the Applicant. Alan Burke, Property Bureau, Melville House, 70 Dryman Road, Bearsden, G61 2RH.**

**The Respondent was not in attendance. He had not lodged written representations. The Respondent was served by Sheriff Officer on 7<sup>th</sup> December 2023.**

### **Preliminary Matters**

The Respondent was not in attendance. Alan Burke explained that the letting agency has continued to chase the arrears by letter, visits and text messages. Francesca Newbury said she last spoke to the Respondent on 18 Oct 2023. They were both satisfied the Respondent continued to reside at the property. The last payment that the Respondent had paid to rent other than through housing benefit was December 2022.

Francesca Newbury confirmed she had lodged an up to date rent statement to 1<sup>st</sup> January 2024 and the rent arrears due by the Respondent to the Applicant was £25,620,01. This had been sent to the Respondent.

The Applicant confirmed that she sought an eviction and she relied on Ground 12A. The Tribunal noted that fair notice had been given as the application relied on Ground 12A and noted same.

There were no other preliminary issues raised.

### **Summary of Discussion**

#### *For the Applicant*

The Applicant set out that she sought an Eviction Order in terms of Schedule 3, Part 3, Ground 12A of the Private Housing (Tenancies) (Scotland) Act 2016. She referred to the rent statements lodged. She confirmed as at the 1<sup>st</sup> January 2024 rent arrears for the property were £25,620,01.

The Applicant explained that the Respondent stopped rental payments in December 2022. The Applicant relied upon the Notice to Leave dated 31<sup>st</sup> March 2023 and served by recorded delivery post on 1<sup>st</sup> April 2023 and signed for by the Respondent. The Applicant considered the Respondent had failed to engage to resolve matters.

The Applicant set out that it was reasonable to grant an order. She had tried to support the Respondent when he was unable to meet rent. She had offered to allow him to store his belongings without cost. She had tried to work with him. The Applicant said that the letting agent was told the tenant explained he had no intention to leave until sheriff officers come. He resides with his adult son and the Applicant believes both to be working.

The Applicant explained she is the sole beneficiary of the trust who own the property. It is an income trust and she has had no income from same from December 2022. There is a mortgage on the property and it is a buy to let. The Applicant as a result of matters has had to sell her own property and move in order to manage her finances.

## **Reasons for Decision and Findings in Fact**

- 1. The Tribunal was satisfied that a decision could be made at the Case Management Discussion and that to do so would not be contrary to the interests of the parties having regard to the Overriding objective. The Respondent had been served by Sheriff Officer on 7<sup>th</sup> December 2023. The tribunal had before it all necessary information in order to make a decision.**
- 2. The Applicant sought an Order for Eviction in terms of Schedule 3, Part 3, Ground 12A of the Private Housing (Tenancies) (Scotland) Act 2016 that the Respondent is in substantial rent arrears. The Applicant has title and interest. As at the 1<sup>st</sup> January 2024 the Respondent's rent arrears for the property were £25,620,01.**
- 3. Parties entered into a Private Residential Tenancy for the property on 16<sup>th</sup> April 2019. Rent per calendar month due by the Respondent to the Applicant is £1995.**
- 4. As at 1<sup>st</sup> January 2024 rent due by the Respondent to the Applicant was £25,620.01. This sum comprises in excess of 6 months rent**
- 5. The Applicant and their letting agency had lodged email correspondence between parties showing evidence of contact and attempts to contact the Respondent in compliance with the pre-action protocol and steps taken to try to resolve matters.**
- 6. The Tribunal was satisfied that under Schedule 3, Part 3, Ground 12A of the Private Housing (Tenancies) (Scotland) Act 2016 the Respondent has substantial rent arrears of more than 6 months rent.**
- 7. Further the Tribunal was satisfied that in terms of Section 52 of the 2016 Act a valid Notice to Leave had been given to the Respondent by valid means on 1<sup>st</sup> April 2023 and signed for by him, with the correct notice period.**
- 8. The Tribunal noted the Local Authority under the 2016 Act had been notified.**
- 9. The Tribunal considered reasonableness. The Respondent had not lodged written representations or appeared but was believed to be working and residing with his adult son. The Applicant set out that substantial rent arrears and the non payment of rent for a significant period has had a determinantal effect on her own finances. The income trust has not produced income and the property has a mortgage on same. She has had to sell her own house to re-manage her affairs as a result.**
- 10. Accordingly, in terms of Section 51 of the 2016 Act the Tribunal granted an Eviction order against the Respondents.**
- 11. The Application will be not be affected by the Cost of Living (Protection for Tenants)(Scotland) Act 2022.**

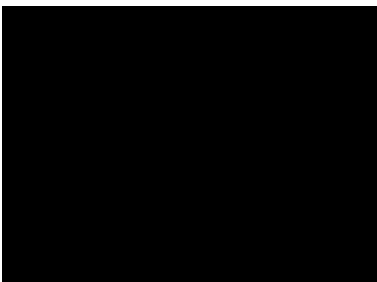
## **Reasons for Decision**

The Tribunal found that an Order was reasonable in terms of the Coronavirus (Scotland) Act 2020. Accordingly, in terms of Section 51 of the 2016 Act the Tribunal granted an Eviction order against the Respondent. The rent arrears were substantial

and the Applicant was clear as to the detrimental effect of the non-payment of rent on her finances. There is a buy to let mortgage on the property. She had to sell her own house. The Respondent failed to engage in the Tribunal process.

### **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**

**29<sup>th</sup> January 2024**

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**Date**