

**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/23/3670**

**Re: Property at 43 Black Loch Place, Dunfermline, KY11 8ZD (“the Property”)**

**Parties:**

**Kingdom Initiatives Limited, Saltire Centre, Pentland Court, Glenrothes, KY6 2DA (“the Applicant”)**

**Mr Michael Keddie, 43 Black Loch Place, Dunfermline, KY11 8ZD (“the Respondent”)**

**Tribunal Members:**

**Shirley Evans (Legal Member) and Eileen Shand (Ordinary Member)**

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

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at 43 Black Loch Place, Dunfermline, KY11 8ZD under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth and from the Property and to make the same void and redd that the Applicant or others in their name may enter thereon and peaceably possess and enjoy the same.

**Background**

1. By application dated 17 October 2023, the Applicant’s solicitor applied to the First- tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for repossession under Rule 109 of the First-tier

Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).

2. The application was accompanied by a copy of a Head Lease between Kingdom Housing Association and the Applicant, a Private Residential Tenancy Agreement between the parties dated 20 August 2018, a Notice to Leave with Sheriff Officer’s execution both dated 18 July 2023, a rent statement and an email dated 16 October 2023 addressed to Fife Council with a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003.
3. On 8 November 2023, the Tribunal accepted the application under Rule 9 of the Regulations.
4. On 8 December 2023 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 29 December 2023. The Tribunal advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 5 February 2024. This paperwork was served on the Respondent by William Wywalec, Sheriff Officer, Kirkcaldy on 11 December 2023 and the Execution of Service was received by the Tribunal administration.
5. The Respondent did not lodge any written representations by 29 December 2023.
6. On 22 January 2024, in response to a Notice of Direction the Applicant’s solicitor forwarded an up to date rent statement and a letter to the Respondent dated 1 September 2022.

### **Case Management Discussion**

7. The Tribunal proceeded with a CMD on 5 February 2024 by way of teleconference. Ms Brechany from TC Young, solicitors appeared for the Applicant. There was no appearance by or on behalf of the Respondent despite the CMD starting 10 minutes late to allow him plenty of time to join the call. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in his absence. The action was heard together with an action for payment of rent arrears under reference FTS/HPC/CV/23/3671.
8. The Tribunal had before it the copy Head Lease between Kingdom Housing Association and the Applicant, the Private Residential Tenancy Agreement between the parties dated 20 August 2018, a Notice to Leave with Sheriff Officer’s execution both dated 18 July 2023, a rent statement to 1 January 2024, the letter dated 1 September 2022 and an email dated 16 October 2023 addressed to Fife Council with a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003, The Tribunal considered these documents.

9. Ms Brechany moved the Tribunal to grant an order of eviction. Arrears had increased from £10 716.81 when the application was submitted and have now increased to £12 745.73 as at 5 February 2024. She submitted the Respondent was in substantial rent arrears of over six months rent. Arrears have accrued over a number of years. The Applicant has assisted the Respondent with a payment of £1000 towards the arrears from their Tenant Grant Fund on 5 November 2020. Letters have been sent signposting him to advice agencies. The Notice to Leave had been served in July 2023. On 24 August 2023 an appointment was arranged to meet the Respondent on 31 August 2023 to discuss the arrears. He failed to attend and indicated that although he had the means to pay rent, he did not see the point in paying if he was going to be evicted.
10. She advised that she understood the Respondent was in employment and that there were no benefits issues. The Applicant was aware he had been furloughed and had lost his job during the pandemic. There had been improved communication at that time. The Applicant had spoken to him on 13 November 2023, but again he expressed that there was no point in paying rent if he was to be evicted. The Applicant have referred him to Frontline Fife and last wrote to him on 30 January 2024.
11. In response to questioning from the Tribunal, Ms Brechany advised the Respondent was 39 years of age and lived alone. He has access to a 17 year old daughter. She was not aware of any vulnerabilities other than there being a note in 2021 that he had poor mental health and was struggling with alcohol abuse. She submitted that in all the circumstances with the level of arrears being substantial, having accrued over a number of years, that it was reasonable to evict.

### **Reasons for Decision**

12. The Tribunal considered the issues set out in the application together with the documents lodged in support. The Tribunal also considered the following legislation in its determination -
- Private Housing (Tenancies) (Scotland) Act 2016
  - The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.
  - The Cost of Living (Tenant Protection) (Scotland) Act 2022.
13. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on Ground 12A (substantial rent arrears).
14. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.

15. In terms of Section 54 of the 2016 Act a landlord may not make an application to the Tribunal for an eviction order against a tenant until the expiry of the relevant period in relation to that Notice. The relevant period begins on the day the tenant receives the Notice which in the case of Ground 12A of Schedule 3 is 28 days.
16. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states that it proceeds on Ground 12 A of schedule 3 of the 2016 Act and states the amount of arrears at Part 2 of the Notice. The Notice to Leave specifies the date the Applicant as landlord expects to become entitled to make an application for an eviction order namely 19 August 2023. In terms of Section 62(4) of the 2016 Act, the Notice to Leave must specify the day falling after the day on which the notice period defined in section 54(2) will expire. In this case the Notice to Leave was received by the Respondent on 18 July 2023, having been served by Sheriff Officers. In the circumstances the Tribunal is satisfied the Respondent has been given sufficient notice of 28 days. Accordingly, the Notice to Leave complies with Section 62.
17. Paragraph 5 (a) of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 ("the 2022 Act") introduced additional grounds of repossession and amended Schedule 3 of the 2016 Act on 28 October 2022, including the introduction of Ground 12A. Ground 12A (Substantial rent arrears) provides –
- "(1) It is an eviction ground that the tenant has substantial rent arrears.*
- (2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—*
- (a) the tenant has accrued rent arrears under the tenancy in respect of one or more periods,*
- (b) the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy when notice to leave is given to the tenant*
- on this ground in accordance with section 52(3), and*
- (c) the Tribunal is satisfied that it is reasonable to issue an eviction order.*
- (3) In deciding under sub-paragraph (2) whether it is reasonable to issue an eviction order, the Tribunal is to consider—*
- (a) whether the tenant being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit,*
- (b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers under paragraph 12(4)(b) (and continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022).*
- (4) For the purpose of this paragraph—*
- (a) references to a relevant benefit are to—*
- (i) a rent allowance or rent rebate under the Housing Benefit Regulations 2006 (S.I.2006/213),*
- (ii) a payment on account awarded under regulation 93 of those Regulations,*

*(iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,*  
*(iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,*  
*(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.”*

18. Paragraph 1(1) and (2) of Schedule 2 of the 2022 Act introduced certain restrictions on residential evictions. Paragraph 1(5) provides that where an eviction order relates to a private residential tenancy under the 2016 Act the restrictions do not apply where an order for eviction is granted on various grounds including Ground 12A.
19. The Tribunal considered the Respondent had not opposed the order for eviction. The Respondent's arrears exceeded six month's arrears, the monthly rent being £507.23 with reference to the rent statement to 1 January 2024. However, Ground 12A is discretionary ground of eviction. As well as being satisfied the facts have been established to support the ground, the Tribunal has to be satisfied that it is reasonable to evict.
20. The Tribunal considered the issues set out in the application together with the documents lodged in support. Although there was one pre action requirement letter lodged and dated 1 September 2022 the Tribunal accepted Ms Brechany's submission that the Applicant had sent other letters to the Respondent throughout the years and signposted him to advice agencies. In particular the Tribunal accepted the Respondent had received £1000 from the Tenants' Grant Fund which was shown on the rent statement. The Tribunal was persuaded by Ms Brechany's submissions that Ground 12 A had been established and that it was reasonable to evict. The Applicant had clearly done everything it could to avoid taking action and assist the Respondent. On the other hand, the Respondent did not oppose the application. He was in employment and had indicated to the Applicant that he did not see any point in paying rent if he was going to get evicted. The Tribunal noted that notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Fife Council had been served. The Tribunal was satisfied on the basis of the documents lodged, together with submissions made by Ms Brechany, that the factual basis of the application had been established. A case under Ground 12A of Schedule 3 of the 2016 Act as amended by the 2022 Act was accordingly met. The balance of reasonableness in this case weighted towards the Applicant.
21. In the circumstances the Tribunal considered that in terms of Ground 12A of Schedule 3 the Respondent is in substantial rent arrears of over six months and that it is reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

## **Decision**

22. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

## **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.



---

Legal Chair

5 February 2024

---

Date