



**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/23/3831**

**Re: Property at 47a George Street, Perth, PH1 5LA (“the Property”)**

**Parties:**

**Allan Macgregor, 7 County Place, Perth, PH2 8EE (“the Applicant”)**

**Sean Russell, 47a George Street, Perth, PH1 5LA (“the Respondent”)**

**Tribunal Members:**

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

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

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

**Background**

1. This is an application by the Applicant 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 Applicant to the Respondent commencing on 1 August 2021. The application was dated 26 October 2023 and lodged with the Tribunal on that date. This makes the application subject to the *Cost of Living (Tenant Protection) (Scotland) Act 2022*, though as eviction is sought under Ground 12A there are no additional requirements under that Act.
2. The application relied upon a Notice to Leave dated 2 August 2023 in terms of section 50 of the *Private Housing (Tenancies) (Scotland) Act 2016*, intimated upon the Respondent by email to the email address within the Tenancy Agreement. (The email lodged with the application papers was undated but there was no dispute that the notice was timeously sent and nothing in the papers suggested it was not timeously sent.) The Notice relied upon Ground

12A of Schedule 3 Part 1 of the 2016 Act, being that “the tenant has substantial rent arrears”. The terms of the notice were that: “The tenant is due 6 months rent, rent per month due is £400, last payment received from the tenant was on 17<sup>th</sup> March 2023 for the sum of £370” (all *sic*). There was further reference in the Notice to chasing of the rent and an offer to make instalment payments on which the Respondent then failed to adhere. It was difficult to ascertain the arrears figure due as at 2 August 2023 with certainty. (Read with other application papers, however, it appeared that the arrears as at 2 August 2023 were £2,470.) The Notice intimated that an application to the Tribunal would not be made before 2 September 2023. The rent stated in the Tenancy Agreement lodged was £400 a month.

3. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon Perth & Kinross Council on 26 October 2023 was provided with the application. There was further evidence of the Applicant (via their letting agent A&S Properties) providing pre-action protocol information in standard form to the Respondent by letter on 1 April and 1 May 2023.

### **The Hearing**

4. The matter called for a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 19 January 2024 at 10:00. We were addressed by Jay Lawson, solicitor, MML Law, for the Applicant. There was no appearance from the Respondent.
5. We were informed by the clerk that no contact had been received from the Respondent (or on his behalf) with the Tribunal. The Applicant’s agent stated that there had been no contact from the Respondent since the Notice to Leave, despite further attempts at contact on behalf of the Applicant. The Applicant’s agent stated that it was believed that the Respondent remained in occupation of the Property.
6. We considered that the Respondent had received clear intimation of the CMD from Sheriff Officers acting for the Tribunal. Having not commenced the CMD until around 10:05, we were satisfied to consider the application in the Respondent’s absence. In any case, no attempt was made by the Respondent to dial in late to the CMD.
7. At the CMD, the Applicant’s agent confirmed that the application for eviction was still insisted upon. No payments had been received since the Notice to Leave, and the last rent payment had been £330 on 17 March 2023. The arrears were now £4,470 (being in regard to the rent due through to 31 January 2024). A statement of arrears was included in the application papers as at 25 October 2023, when arrears were £3,270 and further rent for 1 November 2023, 1 December 2023 and 1 January 2024 of £400 per month had now gone unpaid.

8. The Applicant's agent stated that he had no information to suggest that the Property was adapted for the Respondent's use or that it was especially suitable for his needs. He was believed to live alone, was around 23 years old, and that the Property was a 1 bed flat. He was believed to be in employment in the construction industry but no further information was known. The Applicant had no information to suggest that Respondent had any dependents or was claiming (or seeking to claim) any benefits. As no contact had been received from the Respondent since the Notice to Leave, the Applicant's agent knew of no dispute by the Respondent as to its terms or mode of service.
9. No motion was made for expenses.

### **Findings in Fact**

10. On or about 15 July 2021 the Applicant let the Property as a Private Residential Tenancy to the Respondent under a lease with commencement date of 1 August 2021 ("the Tenancy").
11. In terms of clause 8 of the Tenancy Agreement, the Respondent required to pay rent of £400 a month in advance on the 1<sup>st</sup> day of each month.
12. On 2 August 2023, the Applicant's agent drafted a Notice to Leave addressed to the Respondent, providing the Respondent with notice, amongst other matters, that he was in rent arrears for "6 months rent" (*sic*) and that eviction was sought in terms of Ground 12A of Schedule 3 Part 1 of the 2016 Act.
13. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior to 2 September 2023.
14. The Applicant's agent served a copy of the Notice to Leave on the Respondent on or around 2 August 2023 by email, in accordance with clause 4 of the Tenancy Agreement.
15. The Applicant raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 12A of Schedule 3 Part 1 of the 2016 Act.
16. As at the date of the Notice to Leave, rent arrears were in excess of six months' of rent arrears. As at 2 August 2023, notwithstanding the terms of the Notice to Leave, the Respondent was in arrears of £2,470, being unpaid rent of £400 due on 1 January 2023, a shortfall in payment of £70 for the rent due on 1 March 2023, and unpaid rent of £400 due on each of 1 April, 1 May, 1 June, 1 July and 1 August 2023.
17. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon Perth & Kinross Council by the Applicant's agent on 26 October 2023.
18. The Applicant's agent provided the Respondent with pre-action protocol information by way of letters sent on 1 April and 1 May 2023.

19. As of 19 January 2024, the Respondent remained in arrears of rent in the amount of £4,470 which is equivalent of over eleven months of rent.
20. The Respondent does not claim to have paid any amount of the arrears of £4,470 remaining as at 19 January 2024.
21. 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.
22. On 28 November 2024, the Tribunal intimated to the Respondent the date and time of the CMD of 19 January 2024 by Sheriff Officer.
23. The Respondent has no dependents.
24. The Property is not specially adapted with the use of the Respondent.
25. The Property is not specially suitable for the Respondent due to its location.

### **Reasons for Decision**

26. 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 that the Notice to Leave had been correctly served upon the Respondent.
27. In regard to its drafting, it lacks the simple clarity of stating a total sum of outstanding arrears as at the date of the Notice. From the papers provided, it is clear that the arrears were £2,470 at that date, but the wording of the Notice suggests that arrears are a straight six months of arrears (so £2,400) but fails to explain exactly which payments have been missed (as it refers only to specific shortfalls which would have amounted to £2,030). Further, the Notice is inaccurate as it refers to £370 having been paid on 17 March 2023 whereas the rent statement provided, and the pre-action protocol letters all state that £330 was paid (or that there was a shortfall of £70) in March 2023.
28. Nonetheless, the Notice alerted the Respondent to the need to pay (at least) £2,400 or risk termination and no payment of £2,400 nor any other figure was made subsequent to the said Notice. The Notice was thus, in our view, adequately drafted in these specific circumstances.
29. Ground 12A of the said Schedule applies if:
  - (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 subparagraph (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.*
30. The arrears information provided at the CMD clearly showed that Ground 12A was satisfied in regard to the length of arrears and amount outstanding. As at the date of the Notice to Leave the arrears were already substantial, were not addressed by the Respondent, and no communication was made as to a dispute as to the arrears amount.
31. Further, we were satisfied that it was fair to draw an inference from the facts presented to us that there is nothing to suggest that the Respondent's failure to pay is related to an issue with benefits. There is no sign of payments from benefits having been made previously and the Applicant knew of no claim for benefits, and understood the Respondent to be in employment. We were thus satisfied that Ground 12A was made out.
32. We require, in terms of the Act as amended, to consider the reasonableness of the application even in regard to such substantial arrears. We were satisfied that it was reasonable for the Applicant to seek eviction given the amount, the

duration of the arrears, and the lack of communication. The arrears are substantial and there is the absence of any engagement by the Respondent on payment of the arrears. We were not minded to grant any additional suspension of the order to evict given the lack of information from the Respondent.

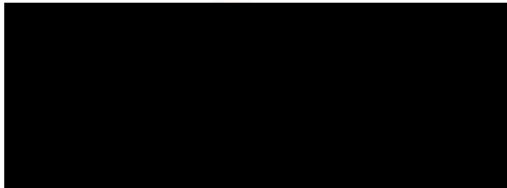
33. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time under Ground 12A.

### **Decision**

34. 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 12A 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.**



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**Legal Member/Chair**

19 January 2024

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**Date**