



**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 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)**

**Chamber Ref: FTS/HPC/EV/23/2768**

**Re: Property at Linden, 17 Raemoir Road, Banchory, AB31 5UJ (“the Property”)**

**Parties:**

**Mr Peter Garioch, Master Mackenzie Duncan, Miss Ellie Duncan, Sharma, Inchmarlo Road, Banchory, AB31 4AJ; Drumhead Cottage, Finzean, Banchory, AB31 6PB; Drumhead Cottage, Finzean, Banchory, AB31 6PB (“the Applicant”)**

**Mrs Tracey Rait, Mr Martin Rait, Linden, 17 Raemoir Road, Banchory, AB31 5UJ; Linden, 17 Raemoir Road, Banchory, AB31 5UJ (“the Respondent”)**

**Tribunal Members:**

**Nicola Weir (Legal Member) and Jane Heppenstall (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession of the property be granted.**

**Background**

1. By application received on 20 June 2023, the Applicant applied to the Tribunal for an order for recovery of possession of the property in terms of Grounds 12 and 12A of Schedule 3 to the 2016 Act (rent arrears over 3 consecutive months; substantial rent arrears equivalent to at least 6 months’ rent). Supporting documentation was submitted in respect of the application, including a copy of the tenancy agreement, the Notices to Leave and proof of service of same, the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003/proof of service of same, a Rent Statement showing the balance of

rent arrears owing at the time of the application being made of £6,275 and evidence regarding the 'pre-action requirements'.

2. Following initial procedure, on 7 September 2023, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. Notification of the application and details of a Case Management Discussion ("CMD") fixed for 13 November 2023 was served on both Respondents by way of Sheriff Officer on 9 October 2023. In terms of said notification, the Respondent was invited to make written representations which the First Respondent, Mrs Tracey Rait, did on 6 November 2023. The representations alleged repairs issues at the Property, damp and mould, and exacerbation of health conditions of the Respondent. An updated Rent Statement was also lodged on behalf of the Applicant on 4 October 2023, showing an increased rent arrears figure of £7,400.
4. The CMD took place by telephone conference call on 13 November 2023 in front of two different Tribunal Members. It was attended only by the Applicant's representative, Mr Martin Kingdon. The Respondent did not attend. Following the CMD, the Tribunal adjourned the matter to a further CMD and issued a Note on the CMD and a Direction to parties, both dated 13 November 2023. The Direction required both parties to lodge further documentation and representations on various matters no later than 7 days prior to the next CMD. The Applicant complied with the Direction, lodging required documentation and further representations on 23 November 2023 and 7 December 2023. The Respondent did not respond to the Direction and there was no further contact by the Respondent to the Tribunal in advance of the next CMD.

#### **Case Management Discussion – 24 January 2024**

5. A Case Management Discussion ("CMD") took place by telephone conference call on 24 January 2024 at 2pm, attended by one of the Applicants, Mr Peter Garioch who was accompanied by his daughter, Mrs Donna Duncan, in a supportive capacity. The Applicant was also represented at the CMD by Mr Martin Kingdon, Head of Residential Leasing, Peterkins solicitors. Neither Respondent again attended. The commencement of the CMD was delayed for over 5 minutes to allow an opportunity for the Respondent to join late but they did not do so.
6. Following introductions and introductory remarks by the Legal Member, Mr Kingdon was asked to confirm if there had been any recent contact with the Respondent. He confirmed that previous contact had been with the Applicant direct but that there has not been recent contact. Both Respondents are understood still to be resident at the Property.
7. Mr Kingdon was asked to address the application and confirm the updated position in respect of both the rent arrears situation and the property repair

issues which had been raised in the Respondent, Mrs Rait's written representations, lodged prior to the first CMD. It was also explained to Mr Kingdon that the Tribunal also required to be addressed on the matter of the reasonableness of granting an eviction order as this is now an additional requirement in terms of the legislation. Mr Kingdon did so and both he and Mr Garrioch answered some questions from the Tribunal Members. Reference was made to supporting documentation lodged on behalf of the Applicant, both with the application and subsequently, and in response to the Tribunal's Direction.

8. Mr Kingdon stated that the Notices to Leave were served in April 2023 when rent arrears amounted to £5,225. The sum outstanding now is £9,950 which Mr Kingdon stated was a huge sum of money, just short of £10,000 and which is continuing to increase every month. The Respondent did make a payment plan previously and were supposed to make payments towards the arrears at the rate of £150 per week. Although some payments of that amount were received, the ongoing rent payments of £675 were still not made, so the arrears have continued to accrue. The last payment received was £150 in October 2023. Although the Respondent was not present at the previous CMD, the representations lodged by Mrs Rait raised the matter of repair issues in respect of the Property. The background was that the rent account was already substantially in arrears when notice was served in April 2023 and the first mention made to the Applicant of repairs allegedly being required was when Aberdeenshire Council contacted the Applicant directly in June 2023. The Council advised the Applicant that they had been contacted by the Respondent for advice and that the Respondent claimed a number of repairs were required. The Respondent had not contacted the Applicant about these matters before contacting the Council. The Applicant arranged for the necessary repairs to be carried out by early July 2023 and, other than the garage roof still leaking slightly (pending a permanent repair being carried out), there is nothing outstanding. Aberdeenshire Council were kept informed about progress with the repairs and have not been in further contact since that time. Mr Garrioch confirmed that there has been no notification made of any Repairs application being made to the Tribunal by the Respondent or Aberdeenshire Council on their behalf. Mr Garrioch confirmed that the Respondent has never said that the reason the rent was not being paid was due to repairs issues and has never offered any explanation for the non-payment, such as financial difficulties. Mr Kingdon stated that there has been no contact made with him directly concerning the arrears and, in his submission, the Respondent is simply making no efforts to pay rent or clear the arrears.
9. As to reasonableness, the Applicant understands that it is just the two Respondents who occupy the Property. They do not have any children or other dependants living with them and are understood to both be working. The Applicant has no knowledge as to whether the Respondent may be in receipt of any state benefits, nor any health conditions which Mrs Tait had mentioned in her written representations. Mr Garrioch stated that she appears to manage to work and to manage around the Property. He also confirmed that both Respondents were present when he and his daughter visited the Property. Mr Kingdon stated that it appeared likely that the Respondent has sought advice

from Aberdeenshire Council regarding their housing situation and that it may be that they will not be offered assistance until an eviction order is granted.

10. As to the issue of reasonableness from the perspective of the circumstances of the Applicant, Mr Kingdon stated that rent arrears of this amount would have a detrimental effect on anyone. He reiterated that when February's rent is added on, the arrears will be well in excess of £10,000. Mr Garrioch added that he is 86 years old and has been renting out properties for thirty-five years and has never had a problem, until now. The situation is affecting him and he really does not need the stress at all. He confirmed that there are two other properties adjoining this one which he used to rent out but these are now empty. He is, however, still incurring costs in relation to them, including rates. The long-term plan is to demolish all three properties and use the land for something else. Mr McLelland concluded by submitting that he could not see how it would not be reasonable for the Tribunal to grant an eviction order in these circumstances and invited the Tribunal to do so.
11. The Tribunal briefly adjourned the CMD to discuss in private and, on re-convening, the Legal Member confirmed that the Tribunal was satisfied that the grounds of eviction were met and that it was reasonable to grant the order in the circumstances. There was some brief discussion regarding the issuing of paperwork, the appeal period and the usual timescale for enforcement of the order, given that an eviction order under Ground 12A is not caught by the provisions of the Cost of Living (Tenant Protection) (Scotland) Act 2022.

## **Findings in Fact**

1. The Applicant is the landlord of the Property.
2. The Respondent is the joint tenant of the Property by virtue of a Private Residential Tenancy which commenced on 6 April 2019.
3. The rent due in respect of the tenancy is £675 per calendar month.
4. There was a history of rent arrears with erratic and missed payments, such that arrears had accrued amounting to £5,225 by the time Notice to Leave was served in April 2023.
5. A payment arrangement was entered into, whereby the Respondent agreed to pay £150 per week towards the accrued arrears on top of ongoing rental payments.
6. Some payments of £150 were made but the last payment received was in October 2023 and ongoing rental payments have not been made.
7. The Applicant has contacted the Respondent concerning the rent arrears throughout and in terms of the 'pre-action protocol'.

8. The rent arrears outstanding when this Application was submitted to the Tribunal amounted to £6,275 and have now risen to £9,950.
9. Notices to Leave in proper form and giving the requisite period of notice were served on the Respondent by email sent on 25 April 2023.
10. The date specified in the Notice to Leave as the earliest date an eviction application could be lodged with the Tribunal was specified as 26 May 2023.
11. The Tribunal Application was submitted on 20 June 2023.
12. The Respondent has been called upon to make payment of the rental arrears or enter into a satisfactory payment arrangement but has failed to do so.
13. The Respondent has been in arrears of rent for three or more consecutive months.
14. The Respondent has accrued rent arrears under the tenancy in respect of one or more periods and the cumulative amount of those arrears exceeded the equivalent of 6 months' rent (£4,050) both when the Notice to Leave was served (£5,225) and currently (£9,950).
15. There is no indication that the arrears have arisen wholly or partly as a result of a failure or delay in the payment of relevant benefits.
16. The Respondent is still occupying the Property.
17. Although the First Respondent submitted written representations prior to the first CMD, neither Respondent attended either CMD, nor complied with a Tribunal Direction in terms of submitting requested further documentation/representations.

## **Reasons for Decision**

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation; the written representations lodged by the First Respondent prior to the first CMD; the further documentation and written representations submitted on behalf of the Applicant, in response to the Direction and otherwise; and the information presented orally at the CMD on 24 January 2024 by Mr Kingdon on behalf of the Applicant and by the First Applicant himself, Mr Garioch.
2. The Tribunal found that the application was in order, that Notices to Leave in proper form and giving the correct period of notice had been served on the Respondent and that the application was made timeously to the Tribunal, all in terms of the tenancy agreement and the relevant provisions of the 2016 Act.

3. The Tribunal considered the grounds of eviction relied upon in this application, namely Grounds 12 and 12A of Schedule 3 to the 2016 Act, as amended, which are as follows:-

**“Rent arrears**

*12(1)It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.*

*(2). . . . .*

*(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.*

*(5)For the purposes of this paragraph—*

*(a)references to a relevant benefit are to—*

*(i)a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971),*

*(ii)a payment on account awarded under regulation 91 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.*

*(6)Regulations under sub-paragraph (4)(b) may make provision about—*

*(a)information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),*

*(b) steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,*

*(c) such other matters as the Scottish Ministers consider appropriate.*

### **Substantial rent arrears**

*12A(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.”*

The Tribunal was satisfied that all elements of both Grounds 12 and 12A were met and that it was reasonable in all the circumstances, to grant the eviction order sought. It was apparent from the rent statements produced that the rent account had been continuously in arrears for a significant period of time, far exceeding the 3 consecutive months required in terms of Ground 12 and were also substantial, amounting to in excess of the equivalent of 6 months' rent at the time the Notices to Leave were served in April 2023 and currently, amounting to £9,950. There was no information before the Tribunal to indicate that any of the rent arrears were a consequence of a delay or failure in the payment of a relevant benefit. In addition, the Tribunal was satisfied from the supporting documentation lodged that the Applicant had complied fully with the pre-action protocol, including seeking to engage with the Respondent and resolve the arrears situation and providing information and sources of advice. The Applicant himself had also provided the Tribunal with oral information at the CMD regarding his discussions with the Respondent and the payment arrangement entered into in respect of the arrears, which was ultimately not adhered to by the Respondent.

4. As to reasonableness, the high level of arrears, the length of time the rent account had been in arrears, the Applicant's attempts to engage with the Respondent to resolve the matter and the Respondent's failure to address the arrears or provide explanation for them were all considered by the Tribunal to be significant factors weighing in favour of granting the order. The Tribunal also accepted that these factors were impacting negatively on Mr Garioch, both financially but also in terms of his mental wellbeing. Mr Garioch is an elderly man and it was noted by the Tribunal that, although he had been a landlord for many years, he no longer rents out any other properties and now no longer wishes to rent out this Property. Although the Respondent did not attend the CMDs, the Tribunal did take account of the written representations lodged prior to the first CMD and the contents of them, particularly in respect of the repairs issues raised. However, the Tribunal considered that the Respondent had chosen not to attend the CMDs nor comply with the Tribunal Direction issued following the first CMD. The Tribunal considered that the Respondent had not therefore taken the opportunities given to them to submit further information to the Tribunal in further support of their written representations, either in terms of their health/medical conditions nor the alleged repairs issues. On the contrary, the Applicant had complied with the Direction and supplied detailed further information, both by way of documentation and written representations and oral information at the CMD. The Tribunal was satisfied from this information provided that any repairs issues had been addressed satisfactorily and that there had been no further communications from Aberdeenshire Council to the contrary. The Tribunal was also satisfied that the rent arrears and repairs were separate issues, the arrears having existed for some time prior to the repairs issues being raised by the Respondent. Neither was there any information to suggest that the Respondent was formally withholding rent or seeking an abatement of rent. Given that the Respondent had received notice around 9 months ago and had been in contact with Aberdeenshire Council thereafter, the Tribunal considered that the Respondent had had ample opportunity to seek advice from the Council in respect of these eviction proceedings and seeking alternative accommodation. In all of these circumstances, the Tribunal

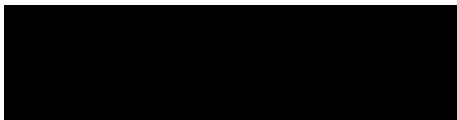


determined that it was reasonable to grant the order sought and to do so at this stage.

5. The Tribunal did not have any material before it to contradict the Applicant's current position, including the stated level of arrears. The Tribunal accordingly determined that an order for recovery of possession of the Property could properly be granted at the CMD as, in the circumstances, there was no need for an Evidential Hearing.

### **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**

**24 January 2024**  
**Date**