



**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/23/3427**

**Re: Property at 30F St Andrews Street, Aberdeen, AB25 1JA (“the Property”)**

**Parties:**

**Parkhill Properties The Firm, Parkhill Properties The Firm, Craig Durward, 16 Keppleston Gardens, Aberdeen, AB16 4DH; David Souden, Orchard Grove Lodge, Kinellar, Aberdeenshire, AB21 0RZ (“the Applicant”)**

**Miss Dana Jamieson, 30F St Andrews Street, Aberdeen, AB25 1JA (“the Respondent”)**

**Tribunal Members:**

**Melanie Barbour (Legal Member) and Gordon Laurie (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.**

**Background**

1. An application had been received under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession under a private residential tenancy by the Applicant against the Respondent for the Property.

2. The application contained: -
  - a. the tenancy agreement,
  - b. the notice to leave with evidence of service
  - c. section 11 Notice with evidence of service
  - d. rent statement
  - e. pre-action requirement letter
3. A case management discussion took place on 13 February 2024. In attendance was the applicant's agent, Chloe Baxter from Parkhill Properties (Aberdeen) Ltd. Notice of the CMD had been made by sheriff officers on 21 December 2023. The respondent did not appear. The tribunal was prepared to proceed in their absence given they had notice of today's CMD.

### Discussion

4. The applicant's agent advised that the applicants were seeking an order for recovery of the possession of the property under the ground 12 (three months rent arrears).
5. She moved to amend the application to include the heritable owners Craig Durward and David Souden as the applicants. The tribunal agreed to this amendment.
6. She advised that the rent arrears had been increasing since the application was made and were now £7,878.12.
7. She advised that the respondent had never made any payments herself to the rent, all payments made were from benefits. She advised that the respondent had originally received Housing Benefit and then it had moved to universal credit. This was paid direct to the respondent at points and when it was paid direct to her, the respondent would not pay her rent.
8. She advised that since 30 October 2023, the DWP had been paying universal credit directly to the landlord of £595 per month. There was a shortfall of £155 and there had been no payments made to the shortfall.
9. She advised that as far as she was aware there were no outstanding benefit issues, and she did not believe that there were any backdated benefits due to be paid to the respondent.

10. She had spoken to and emailed the respondent about the arrears. She advised that the respondent also has support from a professional person in the local council and they are aware of the issue of rent arrears. There had however been no proposal to address the arrears. She advised that there had been some advice that the respondent was going to get discretionary housing payment from the council but nothing had come of this.
11. She advised that the respondent was unemployed. She lived in the property with her child who was around 8/9 years of age. There was also an adult son who stayed there sometimes. She thought the younger child attended a local school. She was not aware of other issues affecting the respondent. She advised that there were other issues with the tenancy, for example, they had problems getting access to the tenancy for PAT testing.
12. There was other suitable accommodation in the local area. She said the property was an upstairs flat, on the third floor with no lift and she did not think it was that suitable for the child. She advised that the council had emailed to say that they would rehouse her if an eviction order was granted.
13. She advised that the ongoing failure to address the rent arrears was having an impact on the applicants, as they had a mortgage over the property and this affected their ability to pay the mortgage. She advised that the applicants have around 15-20 houses that they rent. She advised that they could still manage the mortgage payments due to the other properties they rented, but the failure to pay did have an impact on their financial situation. This property business supported two families.
14. In terms of the rent statement provided she advised that universal credit stopped being paid direct in May 2023. She thought that this was because the respondent had asked for it to be paid directly to her and not the landlord, previously the benefits had been paid directly to the landlord. She said that the payments shown were either from the DWP or the council, there had been no direct payments made by the respondent. The payments had started again from universal credit when the landlord had contacted the DWP to request direct payments again.

## Findings in Fact

15. The Tribunal found the following facts established: -
16. There existed a private residential tenancy between Parkhill Properties The Firm and Dana Jamieson. It had commenced on 11 February 2019.
17. The tenant was Dana Jamieson.
18. The landlord was Parkhill Properties The Firm.
19. The heritable owners of the property were Craig Durward, 16 Keppleston Gardens, Aberdeen and David Souden Orchard Grove Lodge, Aberdeenshire.
20. The property was 30 St Andrews Street, F, City Centre, Aberdeen.
21. The tenancy stated that rent was £750 a calendar month payable in advance.
22. Rent arrears as of 11 August 2023 were £6,353.12.
23. There was submitted a notice to leave dated 22 August 2023, stating that an application would not be made until 22 September 2023. It sought eviction under ground 12 rent arrears. It set out that the respondent had been in significant rent arrears. A rent statement was attached to it. The notice to leave had been emailed to the tenant. There was evidence of service.
24. A section 11 notice had been sent to the local authority advising that the landlord was seeking possession of the property. There was evidence of service.
25. At 13 February 2024 rent arrears were £7,878.12.
26. There was evidence that the pre-action protocol requirements had been followed.
27. There was no evidence of failure or delay in any benefit payment to the respondent.
28. The respondent had failed to pay part of the monthly rent since her tenancy commenced. It appeared that she had always been in arrears of rent. The arrears had been steadily accruing over the years.

## Reasons for Decision

29. Section 51 of the 2016 Act provides the Tribunal with the power to grant an order for eviction for a private residential tenancy if it finds that one of the grounds in Schedule 3 of the Act applies.

30. The ground which the Applicant seeks eviction under is ground 12. It is in the following terms :-

12 Rent arrears

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

(2) [...]<sup>2</sup>

(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 [ — ] 3 [

(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. ] 3

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

40. The applicant's agent confirmed that they sought an order for eviction based on the fact that the respondent had been in rent arrears for three or more consecutive months. When the notice to leave was served in August 2023 the respondent had been in rent arrears for well over three months. The rent statement showed that there had been rent arrears on the rent account since February 2019. There did not appear to be any benefit issues which were causing the arrears. It appeared that the first part of the ground 12 was met.

41. Given the first part of the ground is met the tribunal is therefore required to proceed to consider if it would be reasonable to grant the order.

42. We find it would be reasonable to grant the order for eviction, in coming to this conclusion we took into account the following matters:-

43. Matters in support of granting the order were as follows:- The arrears were now in excess of £7,800. Arrears had been accruing since the beginning of the tenancy. The respondent had never made any payment towards the arrears or the rent shortfall. Any payments made had been by direct payments from the DWP or local council. The tenant had at times arranged to have the universal credit paid directly to her and on those occasions, she had paid no rent. There were no proposals to repay the arrears. That the respondent had the assistance of a professional person in the local council who was aware of her situation. That there appeared to be other property available in the local area. That the local council had advised the agent that they would rehouse the respondent if the order was granted.
44. That the applicants had a commercial business renting out houses, that supported two families. They could still make payments to their mortgage even though there was a rental shortfall, however, the failure to have the arrears repaid was financially detrimental to them. That the applicant's agents attempted to contact the respondent to address the arrears but contact did not meet with any success.
45. Matters against the order being granted were that there was an 8-year-old child in the property who attended the local school. The applicants were a commercial enterprise and would expect to take some risk renting out properties. That the applicant was receiving a fairly substantial proportion of the rent due from the DWP.
46. In balancing up the various factors before us, we consider that while the applicants would suffer some financial detriment if the respondent remained in the property with her child this is not a significant matter that weighs in favour of the application being granted. The apparent failure by the respondent to engage in any meaningful discussion about repayment of the arrears and shortfall does however weigh in favour of the application being granted. It was also significant that the arrears had existed since the start of the tenancy and during that time that there had been no attempt by the respondent to repay them. It was also significant that the respondent had some professional support and that had not addressed the rent arrears issue. We also gave weight in granting the order to the fact that the arrears were continuing to rise. The principal reason weighted in favour of not granting the order was due to the

child living in the property, however, we consider that the fact there is other suitable accommodation in the area and the council has indicated that they will rehouse the tenant, leads us to believe that the child living in the property does not outweigh the reasons to grant the order.

47. Accordingly, considering the papers before us and the oral submission by the applicant's agent the tribunal was prepared to grant the order for recovery of possession, given that the first part of ground 12 was met and in all the circumstances it appeared to us to be reasonable to grant the order.

### Decision

48. The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

### **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.**

Melanie Barbour

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**Legal Member/Chair**

**Date: 15/02/2024**