



**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 Act”)**

**Chamber Ref: FTS/HPC/EV/23/4050**

**Re: Property at 32 Cloverfield Gardens, Aberdeen, AB21 9BD (“the Property”)**

**Parties:**

**Mr Muhammad Faraz Haider , 56 Swabey Road, Langley, Slough, SL3 8NR (“the Applicant”)**

**Miss Alexandria Kemp, Mr Ryan Calder (SBA), 32 Cloverfield Gardens, Aberdeen, AB21 9BD; (“the Respondents”)**

**Tribunal Members:**

**Jim Bauld (Legal Member) and Kingsley Bruce (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that that the application for the order for possession should be granted**

**Background**

1. By application dated 15 November 2023, the applicant sought an order under section 51 of (“the Act”) and in terms of rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the procedure rules”). On 5 January 2024 the application was accepted by the tribunal and referred for determination by the tribunal.
2. A Case Management Discussion (CMD) was set to take place on 22 March 2024 and appropriate intimation of that hearing was given to all parties

3. The application was heard together with a conjoined application involving the same parties for a payment order under tribunal reference FTS/HPC/CV/23/4052

### **The Case Management Discussion**

4. The Case Management Discussion (CMD) took place on 20 March 2024 via telephone case conference. The applicant was not personally present in the telephone case conference but was represented by his letting agent, MS Rachel MacDonnell from Trinity Factoring services Limited, 209 Bruntsfield Place, Edinburgh EH10 4DH. The Respondents did not take part.
5. The tribunal explained the purpose of the CMD and the powers available to the tribunal to determine matters.
6. The tribunal asked various questions of the applicant's representative with regard to the application.
7. She confirmed that she wished the order for eviction to be made.

### **Findings in Fact**

8. The Applicant is the registered owner of the property .
9. The Applicant and the Respondents as respectively the landlord and tenants entered into a tenancy of the property which commenced on 16 December 2020
10. The tenancy was a private residential tenancy in terms of the Act.
11. The initial agreed monthly rental was £875. Rent was increased to £901 per month on 1 August 2023.
12. On 5 October 2023 the applicant served upon the tenant a notice to leave as required by the Act. Service was effected by email and Notice became effective on 5 November 2023. The notice informed the tenant that the landlord wished to seek recovery of possession using the provisions of the Act.
13. The notice was correctly drafted and gave appropriate periods of notice as required by law.
14. The notice set out one of the grounds contained within schedule 3 of the Act, namely ground 12 (that the tenant had been in arrears of rent for three or more consecutive months) . Arrears at the date of service of the notice were £2,945.50
15. Arrears had accrued over the course of the tenancy and at the date of the lodging of the application arrears amounted to £3059.63.

16. The amount of arrears at the date of the CMD was £3,516.15.
17. Appropriate accounting had been provided in respect of the outstanding rent with the application to the tribunal.
18. The basis for the order for possession on ground 12 was thus established.

### **Reasons for Decision**

19. The order for possession sought by the landlord was based on ground specified in the Act and properly narrated in the notice served upon the tenant. The tribunal was satisfied that the notice had been served in accordance with the terms of the Act and that the landlord was entitled to seek recovery of possession based upon those grounds.
20. The tribunal accepted the evidence presented on behalf of the landlord with regard to the rent arrears. A rent statement was produced which set out the history of the arrears. Over the course of the tenancy, the respondent has failed to pay the rent as it fell due and significant arrears have accrued. The last payment made personally by the respondents was on 7 July 2023 of £875. After that date no payments were made until 1 November when the respondent's payment were made by direct payment from Universal credit of £786.87. Further monthly payments of that amount have been received each month. This payment does not cover the monthly rent and the respondents have made no additional payments to cover the shortfall or the arrears. It was noted that the second named respondent, Ryan Calder appears to have removed from the property at some point prior to August 2023. It appears the relationship between the respondents has ended. The first named respondent Alexandria Kemp continues to occupy the property with her children.
21. The tribunal was satisfied that the tenants had been in arrears for a period far in excess of three consecutive months. The tribunal accepted the unchallenged evidence of the applicant relating to the arrears. The tribunal accepted that the applicant had made appropriate attempts to encourage the respondents to deal with the arrears. The applicant has fully complied with the relevant provisions of the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020
22. The grounds for eviction based on rent arrears was accordingly established.
23. Since 7 April 2020, in terms of changes initially made by the Coronavirus (Scotland) Act 2020 and then by the Coronavirus (Recovery and Reform) (Scotland) Act 2022, an eviction order on ground 12 can only be granted if

the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.

24. The applicant's representative indicated that she also sought eviction on the basis of ground 12.
25. An eviction order on this ground can only be granted if the Tribunal is also satisfied that it is reasonable to issue an eviction order on account of that fact
26. The Tribunal has a duty, in such cases, to consider the whole of the circumstances in which the application is made. It follows that anything that might dispose the tribunal to grant the order or decline to grant the order will be relevant. This is confirmed by one of the leading English cases, *Cumming v Danson*, ([1942] 2 All ER 653 at 655) in which Lord Greene MR said, in an oft-quoted passage:

***“[I]n considering reasonableness ... it is, in my opinion, perfectly clear that the duty of the Judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad commonsense way as a man of the world, and come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or no weight, others may be decisive, but it is quite wrong for him to exclude from his consideration matters which he ought to take into account”.***

27. In determining whether it is reasonable to grant the order, the tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties.
28. In this case the tribunal finds that it is reasonable to grant the order. The balance of reasonableness in this case is weighted towards the landlord in this application for the following reasons .
29. The level of arrears is extremely high, and it is unlikely that the arrears will ever be repaid. There is no suggestion that the remaining tenant is making any attempt to meet the ongoing shortfall in rent. No arrangement has been made to deal with the arrears which have accrued. The first named respondent is a single adult female with no known disabilities or other problems. She is believed to have been in full time employment when the tenancy commenced but is now apparently unemployed.. She has two dependent children residing with her in the tenancy. She has made no proposal to deal with the arrears. It was noted that she requested the letting agent to serve the relevant Notice to Leave upon her as he now accepts she cannot afford to maintain this tenancy. It was believed by the applicant's representative that the respondent has approached the local council for assistance in obtaining alternative housing and has been advised that such assistance will only be provided if an eviction order is made. The respondents have provided no explanation for the failure to fully meet the

rental obligations. The arrears as the date of the CMD are a significant sum and there appears to be no likelihood of them being repaid by the respondents. The respondents have lodged no written representations with the tribunal despite being offered the opportunity to do so.

30. The landlord provided a written statement to the tribunal in which he indicated that he is now suffering financial difficulties. He has recently been made redundant from his employment and is currently unemployed. Further financial worries are being caused by the non-payment of rent. He continues to have obligations to pay the mortgage on the property and the costs of repairs and maintenance while rental arrears are increasing.

31. The tribunal decided to exercise the power within rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that a final order should be made at the CMD.

### **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.**

# Jim Bauld

22/03/2024

Legal Member/Chair

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Date