



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/EV/23/2764**

**Re: Property at 7 Gimmerscroft Crescent, Airdrie, ML6 8PB (“the Property”)**

**Parties:**

**Mr John Weldon, 5 Craignure Crescent, Airdrie, ML6 8EL (“the Applicant”)**

**Miss Lucy Rhodes, 7 Gimmerscroft Crescent, Airdrie, ML6 8PB (“the Respondent”)**

**Tribunal Members:**

**Valerie Bremner (Legal Member) and Melanie Booth (Ordinary Member)**

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

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted in terms of Ground 12 A of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 in that the Respondent has accrued substantial rent arrears at the property under the tenancy and the cumulative amount of the rent arrears was the equivalent of six months’ rent at the time the Notice to Leave was served and it is reasonable to issue an eviction order.

The decision of the Tribunal was unanimous.

**Background**

1. This application for an eviction order in terms of Rule 109 of the Tribunal rules of procedure was first lodged with the Tribunal on 14<sup>th</sup> August 2023 and accepted by the Tribunal on 9<sup>th</sup> November 2023. A case management discussion was set down for 2<sup>nd</sup> February 2024 at 2pm.

**Case Management Discussion**

2.The case management discussion on 2<sup>nd</sup> February 2024 was attended by the Applicant and Respondent who represented themselves.

3.The Tribunal had sight of the application, a tenancy agreement, representations and photographs, further representations, a Notice to Leave, a delivery receipt, a further Notice to Leave, a notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003, post office receipts, a rent statement and an updated rent statement.

4.The application and papers had been received by the Respondent and she had made no written representations.

5.The Applicant, Mr Weldon was initially seeking an eviction order based on anti-social behaviour. The parties had entered into a private residential tenancy at the property with the Respondent as the sole tenant, with effect from 12<sup>th</sup> October 2021.The monthly rent payable in terms of the tenancy is £550 and Mr Weldon explained that rent arrears had also accrued at the property in terms of the agreement and that these had reached £4,400 in January 2024, the last rent having been paid in May 2023.

6.Mr Weldon explained that he had received information regarding certain incidents at the property and wished to rely on these to support the eviction ground. Ms Rhodes denied the allegations of anti-social behaviour.

7.Miss Rhodes indicated that she had been planning to leave when a first notice had been served on her indicating that the Applicant was selling the property. She had been advised that the notice had the wrong dates. She had approached the council but was told she did not have enough points to be offered housing at that time. She said that she was keen to leave the property and said it was the Applicant's fault that she was still there. She had not paid rent and said she did not see why she should when it was his fault she still there. She mentioned an incident in the bathroom when the toilet became blocked which was a genuine accident. She mentioned a period when she had no heating or hot water. She said that people had tampered with the pipes and she had been left with her child with no heating or hot water. No one had come to assist with this issue. She wanted to leave the property as soon as possible.

8.The Tribunal legal member asked if Mr Weldon had served another Notice to Leave, as the papers appeared to suggest he had done. He said that had served a Notice to Leave in relation to rent arrears and after discussion, he indicated he wished to rely on this Notice.

9.Miss Rhodes was unclear as to the position regarding another Notice possibly being used and had understood the eviction related to alleged anti-social behaviour. She was aware of the other Notice to Leave and had received it.

10.The Tribunal adjourned to consider what should happen with the application. The Tribunal considered it was appropriate to fix a hearing in relation to the application given that the Grounds were denied.

11. The Tribunal indicated it would issue a Direction on the question of the Notice to Leave in terms of rent arrears and whether this would be allowed to be considered and the application amended. The tribunal indicated that Miss Rhodes would have the chance to comment on this and if she did not object in due course to that Notice being used and the Tribunal allowed it to be used, that she would be asked if the matter could be dealt with without a hearing taking place. A Hearing was fixed for 31<sup>st</sup> May 2024 at 10am.

12. Mr Weldon submitted further information to the Tribunal between February and May 2024. A Notice to Leave in terms of ground 12 A was submitted, a further notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003, and representations on whether the Tribunal should allow the application to be amended to consider the eviction ground in terms of Ground 12A. Further statements regarding outstanding rent were also lodged along with letters from previous tenants of the Applicant, an email dated 31/7/23 sent to the Respondent regarding rent arrears, and a rent increase notice for an increase yet to have effect. On the day of the hearing on 31<sup>st</sup> May 2024 the Applicant also submitted an email sending the Notice to Leave to the Respondent on 17<sup>th</sup> November 2023.

## **Hearing**

13. At the hearing on 31<sup>st</sup> May 2024 the Applicant attended along with his wife as a supporter. The Respondent did not attend. The Applicant requested that the Tribunal proceed in her absence. The Tribunal noted that the Respondent had been given notice of the Hearing and had also not complied with a Direction of the Tribunal as to whether she objected to the Notice to leave in terms of ground 12 A being used. Given that the Respondent had received fair notice of the hearing the Tribunal considered that it was appropriate to proceed in the absence of the Respondent.

14. The Tribunal considered whether it was reasonable to allow the application to be amended to include Ground 12 A as an eviction ground and whether the tribunal could consider this Ground as the Notice to Leave was served after the application was submitted. The Tribunal considered that it was reasonable to allow the application to be amended to include this ground given that it related to rent arrears and the Respondent has indicated at the case management discussion that she had received the notice and also that she was not paying rent. The level of rent arrears required for an order under Ground 12A had not been reached when the application had been submitted but rent arrears had continued to accrue. The Tribunal allowed the application to be amended and Mr Weldon the Applicant indicated that he would seek an order on Ground 12 A only.

15. Mr Weldon advised the Tribunal that no rent had been paid since May 2023 and rent arrears as of the date of the hearing had reached £6600. He had sent letters by email during the tenancy to the Respondent offering her the chance to pay by instalments and signposting her to sources of assistance but the rent had not been paid. He understood that the Respondent lived at the property with her young son and he had understood at the start of the tenancy that her mother paid the rent for her. He had no information to suggest that the rent was not being paid due to any issue with benefits and pointed to the fact that at the case management discussion the Respondent had herself accepted that she was not paying rent and said that she did

not see why she should as it was the landlord's fault she remained at the property due to what she had described as errors with the first Notice to Leave served.

16.Mr Weldon advised that there was a mortgage at the property and he was having to pay this as well as landlord's insurance without receiving any rent and that the position could not continue. Mr Weldon was out of pocket and his wife had recently retired and the lack of rent was affecting their finances. They were also concerned that the condition of the property was deteriorating.

17.The Tribunal noted that a Notice to Leave in proper form setting out Ground 12 A substantial rent arrears as a ground for eviction had been served on the Respondent by email on 17<sup>th</sup> November 2023 after the rent arrears had reached £3300, six months rent on 16<sup>th</sup> November 2023.

18.A Notice in terms of Section 11 of the Homelessness etc ( Scotland ) Act 2003 had been sent to North Lanarkshire Council on 18<sup>th</sup> December 2023.

19.The Tribunal had sight of emails to the Respondent regarding the rent arrears and offering assistance with these.

20.The Tribunal considered that it had sufficient information upon which to make a decision and that the proceedings had been fair.

### **Findings in Fact**

21.The parties entered into a private residential tenancy at the property with the Respondent as the sole tenant with effect from 12<sup>th</sup> October 2021.

22.The monthly rent payable in terms of this tenancy is £550.

23. Rent arrears started to accrue in 2023 and no rent has been paid since May 2023.

24.A Notice to Leave was sent to the Respondent by email on 17<sup>th</sup> November 2023 setting out as an eviction ground substantial rent arrears in terms of Ground 12A of Schedule 3 of the Private Housing ( Tenancies) ( Scotland ) Act 2016 when the rent arrears had reached the equivalent of 6 months' rent or £3300.This Notice to Leave indicated that an application would not be made to the First Tier Tribunal before 18<sup>th</sup> December 2023.

25.As at the date of the hearing on this application on 31<sup>st</sup> May 2024 substantial rent arrears have accrued in the sum of £6600.

26.A Notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 was sent to North Lanarkshire Council in relation to this application on 18<sup>th</sup> December 2023.

27.When rent arrears started to accrue the Applicant sent two letters by e mail to the Respondent offering a payment plan and setting out sources of support for the Respondent.

28.The Respondent lives at the property with her young son and at the case management discussion in February 2024 accepted she had not paid rent and wished to leave the property.

29.There is no information to suggest that the rent arrears have accrued under the tenancy due to any failure or delay in payment of a relevant benefit to the Respondent.

30.The Applicant continues to pay the mortgage and landlord insurance on the property without rent payments coming in and this is affecting his finances on an ongoing basis.

### **Reasons for Decision**

31.The tribunal accepted that the eviction ground was made out and that there are substantial rent arrears which have accrued at the property during this tenancy. The Respondent wishes to leave and was aggrieved that a first Notice to Leave (under another ground) served on her appeared to have incorrect dates and felt that the landlord was responsible for the fact that she had required to remain at the property and this appeared to be the reason why rent was not being paid by her.The Respondent was aware that a Notice to Leave under Ground 12A had been served on her and she accepted she had received it but did not comply with a Direction of the Tribunal to indicate whether she objected to this Notice to leave being used in the application and did not attend the Hearing although she knew of the date. The rent arrears have now reached £ 6600 and this is affecting the Applicant's financial position and cannot continue indefinitely. No rent has been paid for a year. Having regard to all of the circumstances before the tribunal it is reasonable to grant the eviction order.

### **Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) determined that an eviction order be granted in terms of Ground 12 A of Schedule 3 of the Private Housing ( Tenancies) (Scotland )Act 2016 in that the Respondent has accrued substantial rent arrears at the property under the tenancy and the cumulative amount of the rent arrears was the equivalent of six months' rent at the time the Notice to Leave was served and it is reasonable to issue an eviction order.

### **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 Member/Chair

\_\_\_\_\_  
31/5/24  
Date