



**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/23/4107**

**Re: Property at 17 Woodside Street, Rosyth, Fife, KY11 2JR (“the Property”)**

**Parties:**

**Mr Mohammed Irshad, 48A Dalgrain Road, Grangemouth, FK3 8EL (“the Applicant”)**

**Mr Neil Beveridge, 17 Woodside Street, Rosyth, Fife, KY11 2JR (“the Respondent”)**

**Tribunal Members:**

**Shirley Evans (Legal Member) and Leslie Forrest (Ordinary Member)**

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

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at 17 Woodside Street, Rosyth, Fife, KY11 2JR under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth and from the Property and to make the same void and redd that the Applicant or others in their name may enter thereon and peaceably possess and enjoy the same.

**Background**

1. This is an action for recovery of possession of the Property raised in terms of Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).

2. The application was accompanied by a Private Residential Tenancy Agreement between the parties commencing 20 February 2023, a Notice to Leave dated 23 August 2023, a Sheriff Officer's Execution of Service dated 24 August 2023. a rent statement, letters from the Applicant to the Respondent dated 28 May 2023 and 4 August 2023 and an email dated 17 November 2023 addressed to Fife Council with a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003.
3. In response to a query regarding the Notice period in the Notice to Leave the Applicant's solicitor submitted that as the Notice to Leave had not been served by Sheriff Officers until 24 August 2023 the notice period had been miscalculated and fell short by one day. They requested the Tribunal use its discretion in terms of Section 52 (4) of the 2016 Act the application not having been raised until 17 November 2023.
4. On 4 March 2024, the Tribunal accepted the application under Rule 9 of the Regulations.
5. On 14 May 2024 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 4 June 2024. The Tribunal advised parties that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 18 June 2024. This paperwork was served on the Respondent by Stephen McCallum, Sheriff Officer, Kirkcaldy on 15 May 2024 and the Execution of Service was received by the Tribunal administration.
6. The Respondent did not lodge any written representations by 4 June 2024.
7. On 4 June 2024 the Applicant's solicitor forwarded an up to date rent statement to 20 May 2024 and the letters dated 28 May and 4 August 2023 already lodged. These were sent to the Respondent.

### **Case Management Discussion**

8. The Tribunal proceeded with a CMD on 18 June 2024 by way of teleconference. Ms McKay from W & AS Bruce solicitors appeared for the Applicant. The Applicant was also in attendance. There was no appearance by or on behalf of the Respondent despite the CMD starting 5 minutes late to allow him plenty of time to join the call. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in his absence.

9. The Tribunal had before it the Private Residential Tenancy Agreement between the parties commencing 20 February 2023, the Notice to Leave dated 23 August 2023 with Sheriff Officer's Execution of Service dated 24 August 2023, letters from the Applicant to the Respondent dated 28 May 2023 and 4 August 2023, the email dated 17 November 2023 addressed to Fife Council with a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003 and rent statement to 20 May 2024. The Tribunal considered these documents.
10. Ms McKay moved the Tribunal to grant an order for eviction. The tenancy had started on 20 February 2023 and problems arose soon after the start of the tenancy. The first payment of rent of £600 was due on 20 February 2023 but was not paid and arrears started to accrue. The last payment was of £150 on 26 May 2023. Arrears stand at £7800. Mr Irshad had written to the Respondent to try to get him to enter into a repayment arrangement, but the Respondent had not engaged. She asked the Tribunal to use its discretion in terms of Section 52(4) of the 2016 Act and accept the Notice to Leave. She understood the Respondent lived alone.
11. On being questioned by the Tribunal as to whether the Respondent was on benefits, she explained that she would have thought that if he had been rent would have been paid. Regarding the two letters the Applicant had sent she explained that they clearly showed that Mr Irshad was willing to enter into an agreement but in any event the Respondent had totally ignored these.
12. Mr Irshad explained that the Respondent was in his mid to late 30s. He had known the Respondent since high school and he used to come into his place of business. He was not sure whether the Respondent worked and explained he had not taken a deposit off the Respondent as the Respondent had wanted certain things done to the Property. He had known the Respondent for about 25 years and had trusted him. He had attended the Property in the hope that he would speak to the Respondent but had not been able to do so. The Property was a terraced house and the neighbours had reported that the Respondent did not live there and would only turn up every couple of weeks. They have also reported that the Respondent had kicked in the back door.

### **Reasons for Decision**

13. The Tribunal considered the issues set out in the application together with the documents lodged in support. The Tribunal also considered the following legislation in its determination -

- Private Housing (Tenancies) (Scotland) Act 2016
- The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.

14. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on Ground 12 (rent arrears).

15. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.

16. In terms of Section 54 of the 2016 Act a landlord may not make an application to the Tribunal for an eviction order against a tenant until the expiry of the relevant period in relation to that Notice. The relevant period begins on the day the tenant receives the Notice which in the case of Ground 12 of Schedule 3 is 28 days.

17. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states that it proceeds on Ground 12 of schedule 3 of the 2016 Act and states the amount of arrears at Part 2 of the Notice. The Notice to Leave specifies the date the Applicant as landlord expects to become entitled to make an application for an eviction order namely 10 November 2023. In terms of Section 62(4) of the 2016 Act, the Notice to Leave must specify the day falling after the day on which the notice period defined in section 54(2) will expire. In this case the Notice to Leave was received by the Respondent on 24 August 2023 and became live on 21 September 2023. This falls short of the required period of notice. However, in the circumstances the application not being made until 17 November 2023 the Tribunal is prepared to use its discretion in terms of Section 52(4) of the 2016 Act and entertain the application. The Tribunal considered it reasonable to do so with consideration that rent had not been paid for over a year and that the Respondent has had sufficient time since the Notice to Leave to make repayment proposals before the application was raised.

18. The Tribunal considered the Respondent had not opposed the order for eviction. The Respondent's arrears were increasing and stood at £7800 the monthly rent being £600 with reference to the rent statement to 20 May 2024. However, Ground 12 is discretionary ground of eviction. As well as being satisfied the facts have been established to support the ground, the Tribunal has to be satisfied that it is reasonable to evict.

19. The Tribunal considered the issues set out in the application together with the documents lodged in support. The Applicant had sent two pre-action letters to the Respondent. It was clear to the Tribunal that the Applicant and the Respondent had known each other for a long period. Although the letters did not sign post the Respondent to advice agencies, the Tribunal considered that the Respondent would have responded to the Applicant if he had any intention of paying the arrears, let alone the rent. The Respondent was fully aware of the arrears. He had not made any payments for over a year. The Tribunal was persuaded by Ms McKay's submissions that it was reasonable to evict. The Applicant had clearly done what he could to try to get the Respondent to engage with him. The Tribunal considered the submission from the Applicant that neighbours were reporting the Respondent did not live at the Property. That was a material consideration. The Respondent had not opposed the application. The Tribunal noted that notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Fife Council had been served. The Tribunal was satisfied on the basis of the documents lodged, together with submissions made by Ms McKay, that the factual basis of the application had been established. A case under Ground 12 of Schedule 3 of the 2016 Act was accordingly met. The balance of reasonableness in this case weighted towards the Applicant.

20. In the circumstances the Tribunal considered in terms of Ground 12 of Schedule 3 of the 2016 Act, the Respondent being in rent arrears, that it is reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

### **Decision**

21. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

### **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.**

**Shirley Evans**

**18 June 2024**

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**Legal Chair**

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**Date**

