



**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 (“the Act”)**

**Chamber Ref: FTS/HPC/EV/24/0955**

**Re: Property at 40 Firs Street, Falkirk, Stirlingshire, FK2 7AY (“the Property”)**

**Parties:**

**Mr J Redfern t/a Matheson Glynn, 3a Broughton Place, Edinburgh, EH1 3RL (“the Applicant”)**

**Ms Senga Stuart, 40 Firs Street, Falkirk, Stirling, FK2 7AY (“the Respondent”)**

**Ms H Forbes (Legal Member) and Ms E Shand (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 should be granted.**

**Background**

1. This is an application for an eviction order received in the period between 27<sup>th</sup> and 28<sup>th</sup> December 2023 in terms of Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”), and under grounds 12 and 12A of Schedule 3 of the Act. The Applicant representative lodged a copy of the private residential tenancy agreement between the parties, which commenced on 22<sup>nd</sup> December 2021 with a monthly rent of £365, a rent statement, section 11 notice with evidence of service, copy notice to leave with evidence of service, copy correspondence from the Applicant representative to the Respondent, copy Tribunal decision dated 20<sup>th</sup> February 2024 in respect of a payment order, and pre-action requirement correspondence.
2. Notification of the application and the forthcoming Case Management Discussion upon the Respondent was carried out by Sheriff Officers on 9<sup>th</sup> May 2024.

**The Case Management Discussion**

3. A Case Management Discussion (“CMD”) took place by telephone conference on 11<sup>th</sup> June 2024. The Applicant was in attendance. The Respondent was not in attendance.

4. The Tribunal considered the terms of Rule 29. The Tribunal determined that the requirements of Rule 17(2) had been satisfied, and it was appropriate to proceed with the application in the absence of the Respondent.
5. The Applicant said there has been no recent correspondence from, or contact with, the Respondent. The last contact was with a gas safety contractor who had attended at the Property for the purposes of inspection on 17<sup>th</sup> May 2024.
6. The Applicant asked the Tribunal to grant an eviction order under grounds 12 and 12A. The current arrears are £6,500. The last partial payment towards the rent was made by Universal Credit in April 2023. The Respondent was in receipt of Universal Credit from the start of the tenancy. The rent has never been fully covered by Universal Credit, and this has left a monthly shortfall. Direct payments were made initially, but these stopped in April 2023. There was some discussion about a problem with the Respondent's benefit claim and mention of an incorrect address, but no further information on that matter was provided to the Applicant. The Applicant said they had tried to support the Respondent to sustain the tenancy, and had complied with the pre-action protocol.
7. Responding to questions from the Tribunal regarding the circumstances of the Respondent, the Applicant said they believe the Respondent lives alone and has no dependents. The Applicant is not aware of any health issues in respect of the Respondent. The Property is a one-bedroom first-floor tenement flat without adaptations.

### **Findings in Fact and Law**

8.
  - (i) Parties entered into a private residential tenancy agreement in respect of the Property that commenced on 22<sup>nd</sup> December 2021 with a monthly rent of £365.
  - (ii) The Applicant has served a notice to leave upon the Respondent.
  - (iii) The Respondent has accrued rent arrears.
  - (iv) The Respondent has been in rent arrears for three or more consecutive months.
  - (v) The Respondent had substantial rent arrears which exceeded an amount that is the equivalent of 6 months' rent at the time of serving the notice to leave.
  - (vi) The Respondent being in rent arrears is not as a result of a delay or failure in the payment of a relevant benefit.

- (vii) The Applicant has complied with the pre-action protocol.
- (viii) It is reasonable to grant an eviction order.

### **Reasons for Decision**

9. Ground 12 of Schedule 3 of the Act provides that it is an eviction ground if the tenant has been in rent arrears for three or more consecutive months. The Tribunal may find that this applies if for three or more consecutive months the tenant has been in rent arrears and the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order. The Tribunal notes that the arrears were £3,275.50 at the time of serving the Notice to Leave on 19<sup>th</sup> September 2023. The Tribunal is satisfied that Ground 12 has been established.
10. Ground 12A of Schedule 3 of the Act provides that it is an eviction ground that the tenant has substantial rent arrears. The Tribunal may find that this applies if the tenant has accrued rent arrears and the cumulative amount of the arrears equate to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy when notice to leave is given. The Tribunal must be satisfied that it is reasonable to issue an eviction order on account of that fact. The Respondent had substantial rent arrears which exceeded an amount that is more than the equivalent of 6 months' rent at the time of serving the Notices to Leave.
11. In deciding whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenant's being in arrears of rent over that period is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit. There was no evidence before the Tribunal that the Respondent was in rent arrears as a result of a delay or failure in the payment of a relevant benefit.
12. In deciding whether it is reasonable to issue an eviction order, the Tribunal is to consider the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations. The Applicant has complied with the pre-action protocol by sending letters to the Respondent dated 20<sup>th</sup> June 2023, 23<sup>rd</sup> June 2023, and 5<sup>th</sup> July 2023.
13. In considering whether it was reasonable to grant the eviction order, the Tribunal considered the circumstances of both parties. The Respondent has paid no rent for over a year. The Applicant has made reasonable endeavours to assist the Respondent to enter into a payment plan, with no success. The Tribunal had no information before it to suggest any vulnerabilities on the part of the Respondent, who chose not to participate in the proceedings.
14. The Applicant is entitled to rent lawfully due in terms of the tenancy agreement. The sum outstanding is significant. Given the passage of time and

the lack of engagement, there appears to be no real prospect of the Respondent paying their ongoing rent or addressing the arrears.

15. In all the circumstances, the Tribunal considered it reasonable to grant the order sought.

### **Decision**

16. An eviction order in respect of the Property is granted. The order is not to be executed prior to 12 noon on 15<sup>th</sup> July 2024.

### **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.**

# H Forbes

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Legal Member/Chair

11<sup>th</sup> June 2024  
Date