



**Decision 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/23/3805**

**Re: Property at G/3 72 Arklay Street, Dundee, DD3 7LH (“the Property”)**

**Parties:**

**Mr Michael Johnston, Mrs Theresa Johnstone, Flat 1, Magnum House, 138 Seagate, Dundee, DD1 2HF (“the Applicants”)**

**Mr Ross McCallum, Mr Ayden Binnie, G/3 72 Arklay Street, Dundee, DD3 7LH (“the Respondents”)**

**Tribunal Members:**

**Nicola Irvine (Legal Member) and Ahsan Khan (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicants are entitled to the Order sought to evict the Respondents from the property.**

**Background**

1. The Applicants submitted an application under Rule 109 of the Housing & Property Chamber Procedure Regulations 2017 (“the Rules”) for an order to evict the Respondents from the property.
2. A Convenor of the Housing and Property Chamber (“HPC”) having delegated power for the purpose, referred the application under Rule 9 of the Rules to a case management discussion (“CMD”).
3. Letters were issued on 20 May 2024 informing both parties that a CMD had been assigned for 25 June 2024 at 10am, which was to take place by conference call. In that letter, the parties were also told that they were required to take part in the discussion and were informed that the Tribunal could make

a decision today on the application if the Tribunal has sufficient information and considers the procedure to have been fair. The Respondents were invited to make written representations by 10 June 2024. No written representations were received by the Tribunal.

4. On 18 June 2024 the Applicants' representative sent an email to the Tribunal, attaching an updated rent statement and advising that the Applicants wanted to increase the sum sought. That email had been copied to the First Respondent and to Dundee Law Centre, who represent the Second Respondent.

#### **The case management discussion – 25 June 2024**

5. The CMD took place by conference call. The Applicants were represented by Mr Campbell and the Second Respondent by Mrs McLanders. The First Respondent did not take part in the conference call and the discussion proceeded in his absence. This case called alongside a related case which proceeds under chamber reference FTS/HPC/CV/23/3813. The Second Respondent accepted that the rent statement lodged is accurate and accepted that the sum remains outstanding. Notwithstanding that acceptance, the Second Respondent opposed the application for an eviction order. The Second Respondent has been making payments towards the rent account from his universal credit claim. Although full rental payments have not been made, the Second Respondent considers that he has paid his half. The Second Respondent is not in employment and his only income comes from benefits. He is unable to make any proposals in relation to the rent arrears. The Second Respondent suffers from some health issues. He has been in contact with the local authority and has made an application for a single person tenancy although there is no information about the timescale for determination of that application. It was submitted that in these circumstances, it would be unreasonable for the Tribunal to grant an order for eviction. The Second Respondent's representative advised that no further evidence or information will be relied upon by the Second Respondent and she was content to let matters rest on the submissions made today.
6. The Applicants' representative explained that this is the only rental property owned by the Applicants. Given the substantial level of arrears, the Applicants have decided to sell the Property. The Applicants have instructed marketing agents who will be ready to market the Property if vacant possession is obtained. In circumstances where the rent arrears are continuing to increase notwithstanding the payments made by the Second Respondent, it was submitted that it is reasonable to grant an order for eviction. The rent arrears due amount to £8,870.21.

#### **Findings in Fact**

7. The parties entered into a private residential tenancy which commenced 1 August 2021.

8. The Applicants served Notice to Leave on the Respondents by email on 21 July 2023.
9. The Respondents have accrued rent arrears which equate to more than 6 months' rent.

### **Reason for Decision**

10. The Tribunal proceeded on the basis of the documents lodged and the submissions made at the CMD. The Applicants relied upon grounds 1 and 12A of the Private Housing (Tenancies) (Scotland) Act 2016. The Second Respondent accepted that the rent statement lodged is accurate albeit he does not accept that he is due to pay all of the arrears. The tenancy in this case is a joint tenancy and therefore the Respondents are jointly responsible for their obligations in terms of the tenancy agreement. The Tribunal concluded that this is a tenancy which is unsustainable. The level of rent arrears due equates to 20 months' rent. The full monthly rent charge is not being met and there is no proposal to pay the rent arrears. The Tribunal was satisfied that ground 12A was established. On the basis of the information before it, the Tribunal was also satisfied that ground 1 was established. In relation to the issue of reasonableness, the rent statement produced demonstrates that the Respondents have been consistently in arrears of rent since the start of this tenancy. Since the application was made, rent arrears have increased. Payment of rent is the Respondents' primary obligation in terms of the tenancy agreement. The Respondents have been given fair notice of these proceedings. The tenancy appears to be unaffordable by the Respondents. In light of all of the information before it, the Tribunal was satisfied that it was reasonable to grant the order for eviction.

### **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.**

**Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.**

**Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.**

# Nicola Irvine

Legal Member/Chair

25 June 2024

Date