



**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/22/1943**

**Re: Property at 470 (TFL) George Street, Aberdeen, AB25 3XH (“the Property”)**

**Parties:**

**Mrs Rebecca Jane Wilby, 441 Trewyddfa Road, Morriston, Swansea, SA6 7QH (“the Applicant”)**

**, 470 (TFL) George Street, Aberdeen, AB25 3XH (“the Respondent”)**

**Tribunal Members:**

**Alison Kelly (Legal Member) and Ann Moore (Ordinary Member)**

**Decision**

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

On 20<sup>th</sup> June 2022 the Applicant lodged an Application with the Tribunal under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondent from the property.

Lodged with the application were: -

1. Copy Tenancy Agreement with a commencement date of 21<sup>st</sup> August 2018 showing the rent as £395 per month;
2. Copy Notice to Leave dated 30<sup>th</sup> November 2021 to leave by 3<sup>rd</sup> June 2022;
3. Email dated 30<sup>th</sup> November 2021 by way of proof of service;
4. Section 11 Notice;
5. Pre Action Information letter dated 30<sup>th</sup> November 2021

6. Copy of a letter of engagement from solicitors regarding the sale dated 17<sup>th</sup> November 2021
7. Rent Statement
8. Copy Power of Attorney dated 20<sup>th</sup> May 2019 appointing Rebecca Wilby as Attorney to the landlord, Jeffrey Evans

The Application was served on the Respondent by Sheriff Officers on 1<sup>st</sup> August 2022.

On 26<sup>th</sup> August 2022 the Applicant's solicitor lodged an application to amend the amount of arrears together with an up to date rent statement.

On 15<sup>th</sup> September 2022, the morning of the Case Management Discussion, the Respondent sent an email to the Tribunal. He said that he was in Estonia and had not received the papers until 11<sup>th</sup> September 2022. He said that the Applicant had not fulfilled contractual obligations of the tenancy including obtaining safety certificates, giving the wrong landlord registration number and not lodging his deposit in an approved scheme. He went on to say that he was presently unemployed, and in Estonia due to a family bereavement. He said that on returning to the UK he would seek employment and start paying rent asap. He said that his exact date of return is unknown.

### **Case Management Discussion**

The Case Management Discussion ("CMD") took place by teleconference. The Applicant was represented by Mr Doran of Raeburn, Christie, Clark and Wallace, Solicitors. The Respondent joined the call and represented himself.

The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. The Chairperson explained that the Applicant needed to provide sufficient evidence to establish the ground of eviction, and that it was reasonable for the Tribunal to grant the order.

The Tribunal asked Mr Doran to address them. He said that the applicant was seeking an eviction order based no grounds 1 and 12. He outlined the documents which had been sent to show that the ground had been established. He said that the Applicant was 76 years of age. He owns two rental properties in Aberdeen. He had suffered a serious accident a year ago and now lived in a retirement home and was required to pay for his care. He needed to sell his rental properties to pay for that care. He said that his firm had been instructed in the marketing and sale

Mr Doran said that the rent was in arrears by £3232.99, which was more than sixteen months' payments. At the start of the coronavirus pandemic the Applicant had lowered the monthly rent from £395 to £200 per month, despite the mortgage payment for the property being £245 per month. He said that the Respondent had not made any attempt to engage and had not kept up payments.

Mr Doran had not had sight of the email sent by the Respondent this morning. The Chairperson read it to him .He said that he had spoken to the Respondent on Monday of that week and the Respondent had raised this issues of inspections and documentation. He said that he had spoken to his client and he was of the view that

all necessary inspections had been carried out and documentation was in place. He said that in the conversation the Respondent had said that he intended to have the flat cleaned and his stuff moved out by this Saturday.

Mr Doran said that the Respondent had not mentioned in their call the tenancy deposit.

Mr Doran pointed out that none of these issues were relevant to the grounds of eviction, and that the Respondent had different remedies available to him regarding those matters. He said that the overriding objective of the Tribunal was to act justly, and that there was no need for a hearing to be assigned.

The Respondent said that he was opposing the order for eviction. This was after the tribunal seeking clarification of his position. He said that he needed to have a place to stay. He said that he agreed that substantial sums were due, but that he had only started to research the law recently. The Tribunal asked him about his work history. He said that when the pandemic began he was working as a food courier. He was also trying to set up a business with a friend, but it did not take off. In March 2021 he contracted covid and had long covid. He did not apply for any benefits. He has not paid rent in over a year. He said that he fell in to a depression. He did not apply for benefits as he did not want to be a burden to anyone. He lived off family and friends. After the tribunal pressed him he confirmed that there had been months when he had not lived at the flat but had stayed with family and friends.

The Respondent said that he had been in Estonia since the beginning of September 2022 due to a family bereavement. Despite being pressed by the Tribunal he would not commit to a date when he would return to Scotland. He said he would need somewhere to live when he did come back. He was adamant that the issues he had raised should be taken in to consideration.

## **Findings in Fact**

1. The parties entered into a Tenancy Agreement in respect of the property;
2. The Tenancy Agreement had a commencement date of 21<sup>st</sup> August 2018;
3. The rent initially was £395 per month;
4. The Applicant reduced the rent to £200 per month from March 2020 due to the coronavirus pandemic;
5. A Notice To Leave was served timeously and correctly;
6. The correct notice period in terms of the amendments made to the housing (Scotland) Act 1988 by the Coronavirus (Scotland) Act 2020 has been given;
7. This Application was served on the Respondent by Sheriff Officer on 1<sup>st</sup> August 2022;
8. The Applicant intends to sell the property;
9. The Applicant needs to sell the property to pay for his care fees;

10. The Applicant has instructed solicitors to handle the marketing and sale of the property;
11. The Respondent owes rent of £3232.99;
12. The Respondent did not apply for benefits;
13. The Respondent is in arrears of more than three months' rent;
14. The Respondent is not currently in the UK and cannot confirm when he will return.

## **Reasons for Decision**

It is usually mandatory to grant an application under Grounds 1 and 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 provided that notices have been served correctly. However, Section 2 and Schedule 1 of the Coronavirus (Scotland) Act 2020 amended the legislation as follows:

*1(1)The Private Housing (Tenancies) (Scotland) Act 2016 applies, in relation to a notice to leave within the meaning of section 62 of that Act served on a tenant while this paragraph is in force, in accordance with the modifications in this paragraph.*

*(2)Section 51(2) (First-tier Tribunal's power to issue an eviction order) has effect as if the words "or must" were repealed.*

*(3)Schedule 3 (eviction grounds) has effect as if—*

*(a)in paragraph 1(2) (landlord intends to sell)—*

*(i)in the opening words, for the word "must" there were substituted " may ",*

*(ii)after paragraph (a), the word "and" were repealed,*

*(iii)after paragraph (b) there were inserted " , and*

*(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.",*

*(b)in paragraph 2(2) (property to be sold by lender)—*

*(i)in the opening words, for the word "must" there were substituted " may ",*

*(ii)after paragraph (b), the word "and" were repealed,*

*(iii)after paragraph (c) there were inserted " , and*

*(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.",*

*(c)in paragraph 3(2) (landlord intends to refurbish)—*

*(i)in the opening words, for the word "must" there were substituted " may ",*

*(ii)after paragraph (b), the word "and" were repealed,*

*(iii)after paragraph (c) there were inserted “, and*

*(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*

*(d)in paragraph 4(2) (landlord intends to live in property)—*

*(i)for the word “must” there were substituted “ may ”,*

*(ii)the words from “the landlord” to “3 months” were paragraph (a),*

*(iii)after paragraph (a) there were inserted “, and*

*(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,*

*(e)in paragraph 6(2) (landlord intends to use for non-residential purpose)—*

*(i)for the word “must” there were substituted “ may ”,*

*(ii)the words from “the landlord” to “home” were paragraph (a),*

*(iii)after paragraph (a) there were inserted “, and*

*(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,*

*(f)in paragraph 7(2) (property required for religious purpose)—*

*(i)in the opening words, for the word “must” there were substituted “ may ”,*

*(ii)after paragraph (b) the word “and” were repealed,*

*(iii)after paragraph (c) there were inserted “, and*

*(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*

*(g)in paragraph 8 (not an employee)—*

*(i)in the opening words of sub-paragraph (2), for the word “must” there were substituted “ may ”,*

*(ii)for paragraph (c) there were substituted—*

*“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*

*(iii)sub-paragraph (3) were repealed,*

*(iv)in sub-paragraph (4), for the words “sub-paragraphs (2) and (3)” there were substituted “ sub-paragraph (2) ”,*

*(h)in paragraph 10(2) (not occupying let property)—*

- (i) in the opening words, for the word “must” there were substituted “ may ”,*
- (ii) after paragraph (a), the word “and” were repealed,*
- (iii) after paragraph (b) there were inserted “, and*
- (c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*
- (i) in paragraph 12 (rent arrears), sub-paragraph (2) were repealed,*
- (j) in paragraph 13(2) (criminal behaviour)—*
- (i) in the opening words, for the word “must” there were substituted “ may ”,*
- (ii) after paragraph (a), the word “and” were repealed,*
- (iii) after paragraph (b) there were inserted “, and*
- (c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”.*

The Tribunal now has to decide if it is reasonable to grant the eviction order.

The Tribunal were of the view in this case. that the Applicant had established both Ground 1 and Ground 12.

The Tribunal therefore had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order.

The Applicant has done his best to assist the Respondent, particularly in lowering the rent during the coronavirus pandemic to a level lower than the mortgage payment. The Respondent has taken no steps to address his situation. He has not lived in the property for periods of time. He had not applied for benefits. He is currently out of the UK and cannot confirm when he will return. In those circumstances the Tribunal has no hesitation in considering it reasonable to grant the 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.**

**15<sup>th</sup> September 2022**

\_\_\_\_\_  
**Legal Member/Chair**

\_\_\_\_\_  
**Date**