



**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/24/0374**

**Re: Property at 1/2, 165 Kilearn Street, Glasgow, Lanarkshire, G22 5HY (“the Property”)**

**Parties:**

**Ms Elizabeth Davies, Flat 1/2, 561 Pollockshaws Road, Glasgow, G41 2QQ (“the Applicant”)**

**Mr Graham Ryan, 1/2, 165 Kilearn Street, Glasgow, Lanarkshire, G22 5HY (“the Respondent”)**

**Tribunal Members:**

**Alison Kelly (Legal Member) and Elizabeth Williams (Ordinary Member)**

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

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

**Background**

1. On 23<sup>rd</sup> January 2024 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 under Ground 12A of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.
2. Lodged with the application were: -
  - i. Copy Private Residential Tenancy Agreement showing a commencement date of 27<sup>th</sup> February 2019 and a rent of £500 per month;
  - ii. Copy Notice to Leave dated 27<sup>th</sup> October 2023;
  - iii. Proof of service of the Notice to Leave;
  - iv. Section 11 Notice and proof of service;
  - v. Rent Statement

- vi. Four Pre Action Requirement letters
3. The Application was served on the Respondent by Sheriff Officers on 14<sup>th</sup> June 2024.
4. On 5<sup>th</sup> July 2024 the Applicant's solicitor sent an email to the Tribunal with an up to date rent statement.

### **Case Management Discussion**

5. The Case Management Discussion ("CMD") took place by teleconference. The Applicant was represented by Miss Herd of Clarity Simplicity, Solicitors. There was no attendance by the Respondent or any representative on his behalf.
6. 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.
7. Miss Herd sought an order for eviction in terms of ground 12A of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 21016. She said that the arrears at the time the Notice to Leave was served were £5000, representing 10 months' rent. The letting agent had sent four pre action requirement letters to the Respondent and had attempted to contact him on numerous occasions, including offering payment plan proposals. The Respondent had only responded by saying that he was looking for alternative accommodation. He had not made payment of rent. The current arrears are £9500.
8. As far as reasonableness was concerned Miss Herd submitted that the Respondent had not made any proposals and had not responded to many of the attempts by the letting agent to make contact. She said that the Respondent was the sole occupant of the property, she was not aware of any children residing there. She did not know anything about the Respondent's financial position, or whether he had applied for benefits. She did not know if any of the rent had previously been met by way of benefits payments.

### **Findings in Fact**

- a. The parties entered into a Private Residential Tenancy Agreement in respect of the property;
- b. The tenancy commenced on 27<sup>th</sup> February 2019;
- c. A Notice To Leave, dated 27<sup>th</sup> October 2023, was served timeously and correctly;
- d. A section 11 notice was served on the local authority;
- e. The Application was served on the Respondent by Sheriff Officer on 14<sup>th</sup> June 2024;
- f. The arrears at the date of serving of the Notice to leave were £5000;

g. The arrears as at today's date are £9500.

## Reasons for Decision

9. Ground 12A of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 was introduced by the Cost of Living (Tenant Protection)(Scotland) Act 2022 and states as follows:

*12A(1) It is an eviction ground that the tenant has substantial rent arrears.*

*(2) The First-tier Tribunal may find that the ground named by sub-paragraph*

*(1) applies if—*

*(a) the tenant has accrued rent arrears under the tenancy in respect of one or more periods,*

*(b) the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy when notice to leave is given to the tenant on this ground in accordance with section 52(3), and*

*(c) the Tribunal is satisfied that it is reasonable to issue an eviction order.*

*(3) In deciding under sub-paragraph (2) whether it is reasonable to issue an eviction order, the Tribunal is to consider—*

*(a) whether the tenant being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit,*

*(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers under paragraph 12(4)(b) (and continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022).*

*(4) For the purpose of this paragraph—*

*(a) references to a relevant benefit are to—*

*(i) a rent allowance or rent rebate under the Housing Benefit Regulations 2006 (S.I. 2006/213),*

*(ii) a payment on account awarded under regulation 93 of those Regulations,*

*(iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,*

*(iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,*  
*(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.*

10. The Tribunal were of the view in this case that the Applicant had established Ground 12A. The arrears are substantial, having represented ten missed payments at the date of the Notice to Leave, and representing nineteen missed payments. The Tribunal, when considering reasonableness noted that four Pre Action requirements letters had been sent. There was no information regarding benefits, but the Tribunal were satisfied that the substantial level of arrears made it reasonable in and of itself 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.**

# Alison Kelly

22<sup>nd</sup> July 2024

Legal Member/Chair

\_\_\_\_\_  
Date