



**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/24/1328**

**Re: Property at 170 Craigmount, Kirkcaldy, Fife, KY2 6PA (“the Property”)**

**Parties:**

**Mr Kevin Smart, Mrs Fiona Smart, 36 Dalmahoy Crescent, Kirkcaldy, Fife, KY2 6SZ (“the Applicant”)**

**Miss Caitlin Lawrence, Mr Dwayne Rowe, 170 Craigmount, Kirkcaldy, Fife, KY2 6PA (“the Respondent”)**

**Tribunal Members:**

**Yvonne McKenna (Legal Member) and Helen Barclay (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 be granted.**

**Background**

1. On 17 March 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 using Ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.
2. Lodged with the application were: -
  - Copy Private Residential Tenancy Agreement showing a commencement date of 30 October 2020 and an initial rent of £600 per month;
  - Copy Notice to Leave dated 6 February 2024 ;
  - Copy sheriff officer execution of Notice to Leave dated 7 February 2024
  - Section 11 Notice;

- Proof of service of section 11 Notice to Local Authority;
  - Rent Statement and bank statements
  - Copy of Letters sent to the Respondent re Pre-Action Requirements in terms of The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.
3. The application was served personally on the Respondent by Sheriff Officers on 12 June 2024.

### **The Case Management Discussion**

4. The Application called for a Case Management Discussion (“CMD”) by conference call at 2pm on 17 July 2024. The Applicant was present. The Respondent was not present.
5. The Tribunal explained to the Applicant the purpose of the CMD and the procedure which would be adopted. The Tribunal explained to the Applicant that in terms of Rule 17 (4) of the Rules, that the Tribunal may do anything at a CMD which it may do at a Hearing, including making a decision.
6. The Applicant said that at the date of the CMD the arrears now amounted to £5250. No payments of rent have been made since the application was made. The Respondent has not been in communication with the Applicant at all and they had not anticipated that the Respondent would join the call. They have not heard anything from them in approximately 6-7 months.
7. The applicants own two rental properties, the Property being one of the two. They are both mortgaged. Given that the Applicant is receiving no rent this is affecting their financial position as they have still had to meet the mortgage. The mortgage is £57,000 and amounts to £371.73 per month. Mr Smart is self employed and Mrs Smart is employed as a Deputy Head Teacher of a Primary School. The Property is a 2 bed roomed mid-terraced house.
8. The whole experience has put them off renting out property and they intend to sell the Property after they have resumed possession
9. The Applicant has been continuing to send letters on a monthly basis to the Respondent drawing their attention to the mounting rent arrears, and lack of payment. These letters have been signed for by the Respondent. The Respondent is still residing in the Property.
10. The Applicant returned from holiday on 15 July 2024. A letter was waiting for them from Fife Council regarding the council tax due for the Property. The letter referred to the fact that the Property was unoccupied and unfurnished with effect from 29 April 2024. This had come as a surprise to the Applicant who had not been in contact with the council and assumed that this was the Respondent who had done so. Mr Smart attended the Property and saw that there were

lights on and people moving around inside. There were shoes at the back door and a trampoline outside.

11. The Applicant has not received any notification from the local authority that the Respondent has sought re-housing.
12. The Applicant said that despite requests that the rent be paid by direct debit from the outset, that the Respondent always paid the rent on different dates. Approximately one and a half years ago, rent payments started to become more and more random.
13. The Applicant has sought help/advice from the Scottish Association of Landlords. The Applicant has not carried out any house inspection at the Property for some time on their advice, in case this could be said to amount to harassment.
14. Neighbours have complained about the Respondent's anti-social behaviour. There has been some police attendance at the Property, although the Applicant does not know why. The Applicant had believed that the Respondent had separated, as there was a suggestion Miss Lawrence was scared of Mr Rowe, and cameras were fitted at the Property. They had been going to change the tenancy into her name only and were surprised that Mr Rowe had returned.
15. The Applicant believes that the couple reside at the Property together with their child who is approximately 4 years of age.
16. A payment plan had been agreed before Christmas last year but the Respondent had not adhered to this after a 3 month period.
17. As far as the Applicant is aware there are no issues with benefits. The Applicant has never received any rental from the relevant benefits agency. Various excuses have been provided by the Respondent regarding the lack of rental payments. The Applicant said that this has caused them to question the Respondent's characters.

### **Findings in Fact**

18. The Tribunal made the following findings in fact:
  - (i) The parties entered into a Private Residential Tenancy Agreement ("the Agreement") which commenced on 30 October 2020;
  - (ii) In terms of Clause 7 of the Agreement the Respondent was due to pay rent to the Applicant in the sum of £600 per calendar month payable in advance;
  - (iii) The Applicant has served a Notice to Leave dated 6 February 2024 on the Respondent on the basis of Ground 12 of Schedule 3 to the 2016 Act, and which was served on 7 February 2024;
  - (iv) On 6 February 2024 the Respondent was in rent arrears over three consecutive months;

- (v) The Respondent has been in continuous arrears of rent since August 2023;
- (vi) The Respondent is in arrears of rent amounting to £5250 at the date of the CMD
- (vii) No rent arrears have accrued as a consequence of delay or failure of payment of a relevant benefit.
- (viii) The Applicant has complied with the Pre-Action Protocol
- (ix) The Respondent lives in the Property together with their child who is aged approximately 4 years old.
- (x) The Respondent does not oppose the Application

**Reasons for Decision**

19. Section 51 of the 2016 Act states as follows:

*51 (1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.*

*(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.*

*(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.*

*(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.*

20. Ground 12 of Schedule 3 to the 2016 Act states as follows:

*(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.*

*(2) (2).....*

*(3) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if— (a) for three or more consecutive months the tenant has been in arrears of rent, and (b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.*

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

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

*(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations.*

*(5) For the purposes of this paragraph—*

*(a) references to a relevant benefit are to— (i) a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971), (ii) a payment on account awarded under regulation 91 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.*

*(6) Regulations under sub-paragraph (4)(b) may make provision about—*

*(a) information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),*

*(b) steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,*

*(c) such other matters as the Scottish Ministers consider appropriate.*

21. The Tribunal were of the view in this case that the Applicant had established Ground 12 given the extent of the rent arrears. The Tribunal therefore had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order. The Tribunal considered that the amount of the arrears, together with the fact that the Respondent did not oppose the Application and had neither lodged written representations or turned up to the CMD made it reasonable to grant the order. In addition the Tribunal weighed up and balanced the competing interests of the Applicant and the Respondent. The Respondent has chosen not to participate in this process. The Applicant has stated that they have a mortgage to pay for the Property and have received no rent which is evidently affecting their own finances to their detriment. In all of the circumstances it is reasonable to grant the order sought.

## **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.**

**Yvonne McKenna**

**17 July 2024**

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**Legal Member/Chair**

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**Date**