



**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/23/4641**

**Re: Property at Flat 1, 4 Achray Avenue, Alexandria, G83 0QB (“the Property”)**

**Parties:**

**Ms Eileen McSkimming and Mr John Peters, 26 Woodbank Gardens, Alexandria, G83 0SW (“the Applicants”)**

**Mr Paul Evans, Flat 1, 4 Achray Avenue, Alexandria, G83 0QB (“the Respondent”)**

**Tribunal Members:**

**Shirley Evans (Legal Member) and Leslie Forrest (Ordinary Member)**

**Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at Flat 1, 4 Achray Avenue, Alexandria, G83 0QB under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicants after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with his goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicants or others in their name may enter thereon and peaceably possess and enjoy the same.

**Background**

1. This is an action for recovery of possession of the Property raised in terms of Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).

2. The application was accompanied by a Private Residential Tenancy Agreement between the parties dated 30 December 2021, a Notice to Leave and email to the Respondent both dated 11 July 2023, a rent statement, emails dated 10 March, 17 March, 10 May and 13 June 2023 to the Respondent and an email dated 26 September 2023 addressed to West Dunbartonshire Council with a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003.
3. On 26 February 2024, the Tribunal accepted the application under Rule 9 of the Regulations.
4. On 13 May 2024 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 3 June 2024. The Tribunal advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 18 June 2024. This paperwork was served on the Respondent by Paul Miller, Sheriff Officer, Glasgow on 16 May 2024 and the Execution of Service was received by the Tribunal administration.
5. The Respondent did not lodge any written representations by 3 June 2024.
6. On 3 June 2024 in response to a Notice of Direction issued by the Tribunal the Applicants’ agent forwarded an up to date rent statement to 31 May 2024 and further emails to the Respondent dated 7 September, 22 October, 19 December 2023 and emails with the guarantor under the tenancy agreement, Derek Evans dated 10 May, 13 June, 11 and 13 July, 6 and 7 September, 22 October, 7 November, 14 and 19 December 2023, 11, 13 and 16 January and 2 February 2024.

### **Case Management Discussion**

7. The Tribunal proceeded with a CMD on 18 June 2024 by way of teleconference. Ms McCulloch from Eve Property appeared for the Applicants. The Respondent appeared on his own behalf. The case was heard together with a case for arrears under case reference number FTS/HPC/CV/23/4642. Mr Derek Evans, the guarantor was present for that case.
8. The Tribunal had before it the Private Residential Tenancy Agreement between the parties dated 30 December 2021, the Notice to Leave and email to the Respondent both dated 11 July 2023, the rent statement, emails dated 10 March, 17 March, 10 May, 13 June 7 September, 22 October, 19

December 2023 to the Respondent, emails to Derek Evans dated 10 May, 13 June, 11 and 13 July, 6 and 7 September, 22 October, 7 November, 14 and 19 December 2023, 11, 13 and 16 January and 2 February 2024 and the email dated 26 September 2023 addressed to West Dunbartonshire Council with a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003. The Tribunal considered these documents.

9. Ms McCulloch moved the Tribunal to grant an order for eviction. Arrears had increased to £6245. No payment to rent had been received since 6 November 2023 when £100 was received. They had tried to work with the Respondent, but he did not respond to any correspondence and the only time they got any response was when they emailed Derek Evans, the guarantor under the tenancy agreement. He was not in a position to pay the arrears. The Tribunal noted that pre-action emails had been sent to the Respondent to highlight the arrears, encourage the Respondent to enter into an arrangement to clear the arrears and to seek advice and that emails had also been sent to Derek Evans as guarantor. She understood the Respondent worked full time and could not understand why no payment to account had not been made. She also understood the Local Authority would not step in to offer help with rehousing until an order for eviction was granted. She relied on the Notice to Leave served on 11 July 2023 and had inadvertently served another Notice on 19 December 2023 before taking advice from the Scottish Association of Landlords and submitting the application to the Tribunal on 21 December 2023.

10. The Respondent fully accepted responsibility for the rent arrears. He apologised to the Applicants for the arrears. He explained that he worked full time as a driver but that the company had stopped offering overtime. He was struggling financially and had other bills to pay as well as his rent. He offered to pay £50 per week even if he was evicted. He advised he was 60 years old, had suffered two heart attacks and also suffered with his mental health. He lived alone at the Property. He started his job in June 2023 and on being questioned by the Tribunal as to why arrears had increased by over £5000 in the last year, he explained things had got out of hand and he struggled to adapt from a monthly to a weekly wage. He explained he had contacted Shelter, but they told him he would be evicted. The Local Authority have advised they will rehouse him if evicted, but they cannot do anything before then. He confirmed he did not oppose the eviction order.

### **Reasons for Decision**

11. The Tribunal considered the issues set out in the application together with the documents lodged in support. The Tribunal also considered the following legislation in its determination -

- Private Housing (Tenancies) (Scotland) Act 2016
- The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.

12. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on Ground 12 (rent arrears).

13. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.

14. In terms of Section 54 of the 2016 Act a landlord may not make an application to the Tribunal for an eviction order against a tenant until the expiry of the relevant period in relation to that Notice. The relevant period begins on the day the tenant receives the Notice which in the case of Ground 12 of Schedule 3 is 28 days.

15. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states that it proceeds on Ground 12 of schedule 3 of the 2016 Act and states the amount of arrears at Part 2 of the Notice. The Notice to Leave specifies the date the Applicants as landlord expects to become entitled to make an application for an eviction order namely 10 November 2023. In terms of Section 62(4) of the 2016 Act, the Notice to Leave must specify the day falling after the day on which the notice period defined in section 54(2) will expire. In this case the Notice to Leave was received by the Respondent on 7 July 2023 by email. In the circumstances the Tribunal is satisfied the Respondent has been given sufficient notice of 28 days. Accordingly, the Notice to Leave complies with Section 62.

16. The Tribunal considered the Respondent had not opposed the order for eviction. The Respondent's arrears were increasing and stood at £6245 the monthly rent being £525 with reference to the rent statement to 31 May 2024. However, Ground 12 is discretionary ground of eviction. As well as being satisfied the facts have been established to support the ground, the Tribunal has to be satisfied that it is reasonable to evict.

17. The Tribunal considered the issues set out in the application together with the documents lodged in support. The Applicants' agent had sent pre-action letters to the Respondent and to the guarantor Derek Evans. The Respondent was fully aware of the arrears and accepted responsibility for them, but despite being in full time employment had not made any payments since 6

November 2023. The Tribunal was persuaded by Ms McCulloch's submissions that Ground 12 had been established and that it was reasonable to evict. The Applicants had clearly done everything they could to avoid taking action and assist the Respondent. On the other hand, the Respondent did not oppose the application. He was in employment. He had not engaged with the Applicants to clear the arrears and although he was now offering to pay £50 per week this was insufficient to tilt the balance in his favour. The Respondent was sensibly seeking help from the Local Authority. The Tribunal noted that notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to West Dunbartonshire Council had been served. The Tribunal was satisfied on the basis of the documents lodged, together with submissions made by Ms McCulloch, that the factual basis of the application had been established. A case under Ground 12 of Schedule 3 of the 2016 Act was accordingly met. The balance of reasonableness in this case weighted towards the Applicants.

18. In the circumstances, the Tribunal considered in terms of Ground 12 of Schedule 3 the Respondent being in rent arrears that it is reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

### **Decision**

19. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

### **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.**

# S. Evans

18 June 2023

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Legal Chair

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Date