



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/24/1002**

**Re: Property at 100 Afton Bridgend, New Cumnock, Cumnock, KA18 4JQ (“the Property”)**

**Parties:**

**Wincy and Rex Ltd, 4 Siskin Close, Corby, NN18 8RQ (“the Applicant”)**

**Mr James Greig, Miss KellyAnne Armstrong, 100 Afton Bridgend, New Cumnock, KA18 4JQ (“the Respondents”)**

**Tribunal Members:**

**Richard Mill (Legal Member) and Ahsan Khan (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order be granted against the Respondents for payment of Six Thousand Two Hundred and Fifty Pounds (£6,250) to the Applicant**

**Introduction**

1. These are two linked applications between the same parties. The first application seeks an eviction order and is under Rule 109 and Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The second application seeks a payment order relating to arrears of rent and is under Rule 111 and Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016.
2. Service of the applications and intimation of the Case Management Discussions (CMDs) were effected by Sheriff Officers on the respondents on 19 June 2024.
3. The CMD hearing in both cases took place by teleconference on 29 July 2024 at 10.00 am. The applicant was represented by Miss Daryl Walker of Clarity

Simplicity Solicitors. There was no appearance by or on behalf of either respondent. The second respondent sent an email dated 19 June 2024 to the Tribunal advising that an application had been made to the local council for homeless accommodation. No defence to the applications has been lodged by the respondents.

### Findings and Reasons

4. The property is 100 Afton Bridgend, Cumnock, New Cumnock KA18 4JQ. The applicant is Wincy and Rex Limited Ltd who is the heritable proprietor and registered landlord. The respondents are Mr James Greig and Ms KellyAnne Armstrong who are the named tenants.
5. A private residential tenancy was entered into between the parties which commenced on 21 February 2022. The rent stipulated was £525 per month. A deposit in the sum of £1,050 was paid.
6. The respondents have fallen into significant arrears of rent throughout the subsistence of the duration of the lease. The tenancy agreement requires £525 to be paid on the 21<sup>st</sup> day of each month. At the date of applications to the Tribunal the sum of £5,350 in rent arrears had accrued over 9 months.
7. On 12 July 2024 the applicant's representative submitted a timeous Rule 14A application which amended the sum sought to £6,250. This reflects the rent arrears outstanding as at the date of the hearing. The application was accompanied by a detailed up to date rent statement which is unchallenged was found to be a credible and reliable source of documentary evidence.
8. The applicant is entitled to recovery of arrears of rent due and under in terms of the written lease between the parties. The Tribunal therefore granted a Payment Order against the respondents in the sum of £6,250. There is no opposition by the respondents and no application for a Time to Pay Direction has been made by the respondents. No acceptable proposals have been made for repayment of the arrears. There are no known state benefits in payment or a delay in such payments.
9. The eviction proceedings are based upon the arrears of rent and the ground relied upon is ground 12A, contained within Part 1, Schedule 3 to the 2016 Act, namely that the respondents are in rent arrears over three consecutive months. 'Substantial' rent arrears are defined as being equivalent to or greater than six months' rent
10. The Tribunal found that the Notice to Leave upon which the eviction application proceeds is valid. It is dated 15 December 2023. This states that an application will not be submitted to the Tribunal for an eviction before 15 January 2024. The Notice is compliant with the requirements set out in Section 62 of the Act. There is evidence that the Notice to Leave was served by Sheriff Officers on 15 December 2023. The required 28 day notice period was given to the respondents.

11. The Tribunal was satisfied that more than six months' of rent was outstanding at the time that the notice to leave was served and also remains unpaid by the respondents. This establishes ground 12A.
12. All eviction grounds are now discretionary. The Tribunal proceeded to consider the issue of reasonableness.
13. The applicant company and its Director is adversely affected financially by the absence of rent being paid. The rent arrears are substantial. It is unreasonable to require the applicant to continue to provide accommodation to either respondent in the absence of rent being paid.
14. Little is known about the personal profile of the respondents as they have failed to fully engage in this process. They have not opposed the application for eviction and have already made an application to the local authority.
15. There is evidence that the local authority has been advised of the eviction proceedings with a relevant section 11 Notice having been issued by the applicant. In the event of an eviction order being granted the local authority has an obligation to make alternative accommodation available to the respondents.
16. The Tribunal found that the rent arrears pre-action requirements have been adequately fulfilled by the applicant and there is documentary evidence of this.
17. In all of the circumstances, the Tribunal determined it was reasonable to grant the eviction order sought by the applicant.

## **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.**

**R Mill**

**29 July 2024**

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**Legal Member/Chair**

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**Date**