



**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/24/0697**

**Re: Property at 4T Hebrides Drive, Dundee, DD4 9SA (“the Property”)**

**Parties:**

**Home Group Limited, Pavillion 6, Parkway Court, 321 Springhill Parkway, Ballieston, Glasgow, G69 6GA (“the Applicant”)**

**Messrs Lindsays, Solicitors, 18 Greenmarket, Dundee, DD1 4QB (“the Applicant’s Representative”).**

**Ms Jennifer Valentine, 4T Hebrides Drive, Dundee, DD4 9SA (“the Respondent”)**

**Tribunal Members:**

**Martin McAllister (Legal Member) and Ahsan Khan (Ordinary Member) (“the tribunal”)**

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

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

**Background**

1. On 12 February 2024, the Applicant’s Representative submitted an application to the First-tier Tribunal for Scotland seeking an order of eviction.
2. On 3 April 2024, the application was accepted for determination by the Tribunal.
3. A case management discussion was held by audio conference on 9 August 2024.

4. The Applicant's Representative submitted written representations and an updated rent statement on 31 July 2024.

#### The case management discussion

5. Miss Alison Fitzgerald, solicitor, represented the Applicant.
6. The Respondent was not present and the tribunal noted that the arrangements for the case management discussion had been intimated to the Respondent by Sheriff Officer on 4 July 2024.
7. The Legal Member explained the purpose of a case management discussion.
8. Miss Fitzgerald invited the tribunal to determine the matter without a Hearing and to issue an eviction order under Rule 101 of the Tribunal Rules on the grounds that the conditions set out in Ground 12, Part 3 of Schedule 3 of the 2016 Act have been met.

#### 9. Findings in Fact

- (i) The Applicant and the Respondent entered into a private residential tenancy agreement in respect of the Property on 28 September 2022.
- (ii) The tenancy commenced on 28 September 2022.
- (iii) The monthly rent due under the private residential tenancy was £661.36 at its commencement, increased to £681.18 on 1 August 2023 and is currently £733.64.
- (iv) The rent arrears due at 14 July 2023 were £2,367.19.
- (v) The rent arrears due at 12 July 2024 were £4,186.35

#### 10. Finding in Fact and Law

The Respondent is in rent arrears for three or more consecutive months as at the date of the case management discussion.

#### 11. Documents before Tribunal

- (i) Private residential tenancy agreement dated 28 September 2022.
- (ii) Copy Notice to Leave dated 14 July 2023.
- (iii) Copy Section 11 intimation to local authority.
- (iv) Letter from Applicant's agents to Respondent dated 21<sup>st</sup> June 2022 in which she is invited to contact the Applicant to discuss payment of rent arrears.
- (v) Various letters from the Applicant to the Respondent with regard to rent arrears and advising of support available from it and advising of agencies which might assist tenants requiring support or advice with regard to difficulties in paying rent.
- (vi) Rent statements, the latest being brought down to 12 July 2024.

## 12. The Law

### **Section 51 of the 2016 Act:**

#### **First-tier Tribunal's power to issue an eviction order**

(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.

#### **Ground 12, Part 3 of Schedule 3 of the 2016 Act**

12(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2) *Repealed*

(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.

### Applicant's Position

13. Miss Fitzgerald referred the tribunal to the rent statement which she had submitted on 31 July 2024. She said that the rent was £661.34 at the commencement of the tenancy and that it had increased to £681.18 on 1 August 2023. She said that the rent had been increased to £733.63 on 1 August 2024. She said that the rent statement shows that the Respondent has only made two payments of rent: one on 28 September 2022 at the commencement of the tenancy and another on 12 January 2023. She said that contributions to the rent were made by Universal Credit commencing on 3 March 2023 and that there was always a monthly shortfall between what was paid from Benefits and what was due.
14. Miss Fitzgerald referred the tribunal to various letters from the Applicant to the Respondent with regard to the rent arrears in which she was given information on advice agencies and others which might be able to assist her. Miss Fitzgerald said that the Applicant had attempted to assist the Respondent because it was possible that she might have been able to access a discretionary housing payment. Miss Fitzgerald said that, during the whole of

the tenancy, the Respondent had refused to engage with the Applicant in connection with addressing the issue of rent arrears.

15. Miss Fitzgerald said that, as far as she knew, non payment of rent by the Respondent was not as a consequence of delays or difficulties with payment of benefits.
16. Miss Fitzgerald advised that the Respondent resides in the Property with her twelve year old son who is soon to start high school.

#### Submissions on behalf of the Applicant

17. Miss Fitzgerald submitted that the eviction ground is met and that there is demonstrably more than three month's rent lawfully due as evidenced by the recent rent statement submitted by her.
18. Miss Fitzgerald said that the level of rent arrears demonstrated that the tenancy is unsustainable and that, in all the circumstances, it would be reasonable for the eviction order to be granted.
19. Miss Fitzgerald said that she had no other evidence to bring before the tribunal and that there would therefore be no purpose in an evidentiary hearing.

#### Reasons for Decision

20. The tribunal saw no reason for determination of the application to be continued to a Hearing. There was more than three months' rent lawfully due and Miss Fitzgerald had no further evidence to produce.
21. The tribunal was satisfied that the Notice to Leave was in appropriate terms and had been served on the Respondent. The tribunal was satisfied that the appropriate notice had been served on the local authority under the Homelessness etc (Scotland) Act 2003 and that the Applicant had followed the requirements which they required to do prior to submitting an application to the Tribunal. It had provided information to the Respondent and had attempted to assist her in dealing with the rent arrears.
22. The tribunal accepted that there was no indication that non-payment of rent was as a result of any issues with payment of benefits to the Respondent. It noted that the most recent rent statement showed that Universal Credit was being paid from 3 March 2023 and that the most recent payment was on 12 July 2024.
23. The tribunal required to consider whether or not the granting of an order of eviction was reasonable. It is a matter of judicial discretion and, in considering reasonableness a balancing exercise requires to be undertaken.

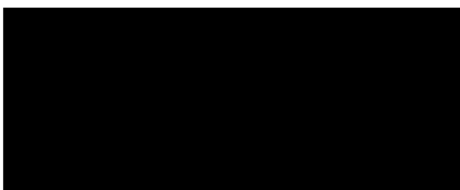
24. The Respondent had not engaged with the Tribunal process and the tribunal accepted that she had not engaged with the Applicant with regard to dealing with the arrears.
25. Nothing was known about the circumstances of the Respondent other than she resided in the Property with her twelve year old son who is due to start high school.
26. The tribunal considered the fact that the Respondent resided in the Property with a child who is soon to move school but determined that it was reasonable, given the level of rent arrears, for the order to be granted.

### Decision

27. The tribunal determined that the application be granted and that an eviction order be made.

### **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.**



**Martin J. McAllister  
Legal Member  
9 August 2024**