



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (Act)**

**Chamber Ref: FTS/HPC/EV/24/1780**

**Re: Property at 27 Brimmond Place, Torry, ABERDEEN, AB11 8EN (“the Property”)**

**Parties:**

**Mr Graham Campbell, 45 Red Moss Road, Nigg, ABERDEEN, AB12 3JJ (“the Applicant”)**

**Mrs Abiola Crown, 27 Brimmond Place, Torry, ABERDEEN, AB11 8EN (“the Respondent”)**

**Tribunal Members:**

**Alan Strain (Legal Member) and Elizabeth Dickson (Ordinary Member)**

**Decision**

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

**Background**

This is an application under Rule 109 and section 51(1) of the Act for eviction and recovery of possession on Grounds 11, 12 and 12A of Schedule 3 to the Act.

The Tribunal had regard to the following documents:

1. Application received 17 April 2024;
2. Private Residential Tenancy Agreement (**PRTA**) commencing 25 March 2019;
3. Notice to Leave dated 21 February 2024 served by email of the same date;
4. Section 11 Notice to Local Authority served by email dated 17 April 2024;
5. Rent Arrears Statement as at 25 April 2024;
6. Pre Action Correspondence dating back to May 2023 between the Applicant’s agents and the Respondent;

7. Certificate of Service of Tribunal CMD Notification on the Respondent by Sheriff Officers dated 19 August 2024;
8. Emails from the Parties of various dates in September 2024.

### **Case Management Discussion (CMD)**

The case called for a CMD by conference call on 17 September 2024. The Applicant participated and represented himself. The Respondent participated and represented herself.

The Respondent wished a postponement on the basis of her health and provided evidence of an appointment with her local hospital. She accepted that she was in arrears of at least £3,000 and wished to remain in the Property until 8 December 2024 when she would vacate and pay off the arrears.

The Respondent was in employment with a charity and had 2 children both of whom had just completed their university education. The children did not live with her during term time.

The Respondent was actively viewing private rented properties.

The Applicant stated that the latest arrears were £4,250. He opposed the postponement and asked for the eviction order to be granted in the circumstances. The Respondent has a long history of arrears and he has been extremely patient and given her many opportunities to settle the arrears. He, himself, has medical issues which he detailed to the Tribunal.

The Applicant has been retired nearly 6 years, this is his only rental property (and former home) and he relies on the rental income for his retirement.

The Tribunal refused the postponement. Both Parties had participated and the Tribunal had sufficient information upon which to make a decision and considered that it would be fair to do so.

The Tribunal had regard to Ground 12 of Schedule 3 to the Act which provides:

#### *Rent arrears*

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

*(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—*

*(a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant—*

*(i) is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day, and*

*(ii) has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, and*

*(b) the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.*

*(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 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.*

*(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.*

The Tribunal then considered the documentary evidence it had received and the submissions made. In so far as material the Tribunal made the following findings in fact:

1. The Parties let the subjects under a PRTA commencing 25 March 2019;
2. The monthly rent was £500;
3. Notice to Leave had been served on the Respondent on 21 February 2024;
4. As at the date of service of the Notice to Leave the Respondent was £4,400 in arrears of rent and had been in arrears for a continuous period of three or more consecutive months;
5. As at the date of the CMD the Respondent was in arrears of rent in the sum of at least £3,000;
6. The rental arrears were not due to any delay or failure in the payment of a relevant benefit;
7. Section 11 notification had been served on the local authority;
8. The Respondent is a single person with no dependents in the Property;
9. The Applicant (through his agents) has been in correspondence with the Respondent over the arrears since May 2023;
10. Pre Action requirements have been complied with by the Applicant's agents;
11. It was reasonable to issue an eviction order in the circumstances.

The Tribunal was satisfied that Ground 12 had been established and it was reasonable to grant the application for eviction and recovery of possession given the significant rent arrears which had been in existence over a lengthy period. Further, the Applicant was dependent upon this rent for his retirement.

The Respondent had been in correspondence with the Applicant's agents regarding the arrears since May 2023 and yet was still in substantial arrears. She was a single person and in employment.

Having made its decision on the basis of Ground 12 the Tribunal make no determination with regard to the other Grounds asserted.

### **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.**

# Alan Strain

**17 September 2024**

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**Legal Member/Chair**

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**Date**