



**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/24/0541**

**Re: Property at 21 King Street, Castle Douglas, Dumfries and Galloway, DG7 1AA (“the Property”)**

**Parties:**

**Diana Agnes Wilson, Mayfield Farm, Kelton, Castle Douglas, DG7 1TA (“the Applicant”)**

**Simon Welsh, Christine Pickthall, 21 King Street, Castle Douglas, Dumfries and Galloway, DG7 1AA; 21 King Street, Castle Douglas, Dumfries and Galloway, DG7 1AA (“the Respondent”)**

**Tribunal Members:**

**Joel Conn (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

**Background**

1. This is an application by the Applicant for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”). The PRT in question was by the Applicant to the Respondents commencing on 15 July 2020.
2. The application was dated 2 February 2024 and lodged with the Tribunal on that date. The application relied upon a Notice to Leave dated 24 November 2023 in terms of section 50 of the Private Housing (Tenancies) (Scotland) Act 2016, intimated upon the Respondents by email (in terms of the Tenancy Agreement) on that date. The Notice relied upon Ground 12 of Schedule 3 Part 1 of the 2016 Act, being that “the tenant has been in rent arrears for three or more consecutive

months". In regard to Ground 12, the body of the notice referred to arrears of £2,500 as of that date. A rent statement dated 22 November 2023 was said to have been attached to the Notice and such a statement was lodged in the application papers showing unpaid arrears of £625 per month for the rent due on 15 August, 15 September, 15 October and 15 November 2023. The rent stated in the Tenancy Agreement lodged was £625 a month. The Notice intimated that an application to the Tribunal would not be made before 25 December 2023.

3. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon Dumfries & Galloway Council on 2 February 2024 was provided with the application. There was evidence in the application papers of the Applicant's letting agent providing pre-action protocol information in standard form to the Respondents on 17 November and 6 December 2023 by email.
4. Prior to the case management discussion ("CMD") we received from the Applicant's agent an Inventory of Productions with an updated rent statement dated 21 August 2024, showing few further rent payments and that total arrears for the period to 14 September 2024 were now £6,875.

### **The Hearing**

5. The CMD called on 17 September 2024 at 14:00 by remote telephone conference call. The Applicant was represented by Alexandra Wooley, solicitor, Bannatyne Kirkwood France & Co. The Respondents represented themselves. The application called alongside a conjoined application for rent arrears (CV/24/0542). Reference is made to the CMD Note issued in that application for any details relating to the arrears action which was defended and so continued to a further CMD.
6. The Applicant informed the Tribunal that the rent arrears were now £7,500 for the period to 14 October 2024. This was slightly in excess of the sum in the recent written statement as a result of a further month of rent having become due since the lodging of the updated statement. The Respondents confirmed that they did not dispute that arrears were £7,500 for the period to 14 October 2024.
7. We sought confirmation from the Applicant's agent that the application was still insisted upon, and sought confirmation from the Respondents as to their position. The Respondents made clear that they did not oppose eviction.
8. In respect of the Respondents' position:
  - a. They did not oppose eviction. The first named Respondent had already left the Property in February 2024. The second named Respondent was in contact with the local authority on rehousing.
  - b. The second named Respondent was hopeful that if she had an eviction order against her it would assist in her rehousing application. The first named Respondent was supportive of her attempts to seek rehousing.
  - c. The second named Respondent was on benefits, which had recently been changed, but this was not the reason for the arrears.

- d. The second named Respondent had started to withhold rent due to issues with repairs at the Property (detailed in full in the CMD Note for CV/24/0542).
  - e. At present, however, the Respondents did not dispute that there were arrears on paper at present and they did not oppose eviction.
9. We confirmed with the Respondents that they understood the implications of conceding eviction, in particular the possibility that they might ultimately be successful in their defence of the CV application and thus be in significantly less (or nil) arrears. They confirmed that they understood matters and the second named Respondent was satisfied to proceed with seeking rehousing, and thus did not oppose an eviction order. (By the conclusion of the CMD, the second named Respondent reported that she had just been contacted by the local authority to confirm that she had an offer of a one-bedroom flat which she was intending to accept.)
10. No motion for expenses was made by either party.

### **Findings in Fact**

11. On or about 14 July 2020 the Applicant let the Property as a Private Residential Tenancy to the Respondents under a lease with commencement on 15 July 2020 (“the Tenancy”).
12. In terms of clause 2 of the Tenancy Agreement, the Respondents required to pay rent of £625 a month in advance on the 15<sup>th</sup> day of each month.
13. On 24 November 2023, the Applicant’s agent drafted a Notice to Leave in correct form addressed to the Respondents, providing the Respondents with notice, amongst other matters, that they were in rent arrears for a period in excess of three consecutive months, and detailing arrears at that date of £2,500 (being four months’ rent).
14. The Notice to Leave provided the Respondents with notice that no application would be raised before the Tribunal prior to 25 December 2023.
15. The Applicant’s agent served a copy of the Notice to Leave on each of the Respondents by email on 24 November 2023.
16. Clause 14 of the Tenancy Agreement permits for service of notices by email to the Respondents at the email addresses provided by them.
17. The Applicant raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 12 of Schedule 3 Part 1 of the 2016 Act on 2 February 2024.
18. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon Dumfries & Galloway Council by the Applicant’s agent on 2 February 2024.

19. Despite limited payments having been made by the Respondents in regard to rent since the date of the Notice to Leave, the Respondents are in rent arrears as of 17 September 2024 in the amount of £7,500.
20. The sum of arrears is neither wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, other than any referable to an act or omission of the Respondents.
21. The first named Respondent has vacated the Property.
22. The second named Respondent is actively seeking public housing and has received a potential offer of rehousing on 17 September 2024.
23. The Applicant's agent provided pre-action protocol information in standard form to the Respondents on 17 November and 6 December 2023 by email.

### **Reasons for Decision**

24. The application was in terms of rule 109, being an order for eviction from a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been correctly drafted and served upon the Respondents.
25. Ground 12 of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:
  - (1) *...the tenant has been in rent arrears for three or more consecutive months. ...*
  - (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.*
26. The arrears information provided clearly showed that Ground 12 was satisfied in regard to the length of arrears and amount outstanding under the Notice, and that the arrears had not been paid. The Respondents accepted the rent amount and confirmed that the failure to pay was not related to an issue with benefits. Though the Respondents disputed that all the arrears were due in the CV

application, they did concede that an undisputed amount of arrears likely remained and declined to defend this application on any grounds relating to the level of arrears. In the absence of a determination to the contrary in the CV application, at present ground 12 is satisfied subject to paragraph 3(b) regarding reasonableness.

27. We require, in terms of the Act as currently amended, to consider the reasonableness of the application even in regard to persistent arrears. We were satisfied that the Applicant's reasons for seeking eviction were reasonable given the amount of the arrears and that few payments have been made since the date of the Notice to Leave. The Respondents are clearly keen to leave the Property, with the first named Respondent having already left and the second named Respondent actively seeking rehousing. In all the circumstances, we are satisfied that it is reasonable to evict on the basis of the information before us.
28. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time under Ground 12.

### **Decision**

29. In all the circumstances, we grant an order against the Respondents for eviction from the Property under section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* further to ground 12 of Schedule 3 of that Act.

### **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 to appeal from the First-tier Tribunal. That party must within 30 days of the date the decision was sent to**

# J Conn

17 September 2024

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Date