



**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**

**Chamber Ref: FTS/HPC/EV/24/0660**

**Re: Property at 6C St John Street, Stirling, FK8 1EB (“the Property”)**

**Parties:**

**Dr Robert Deuchar, 4 Town House Street, Denny, FK6 5DX (“the Applicant”)**

**Ms Evonne Stirling, 6C St John Street, Stirling, FK8 1EB (“the Respondent”)**

**Tribunal Members:**

**Mary-Claire Kelly (Legal Member) and Ahsan Khan (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 12 (rent arrears for three or more consecutive months) and ground 14 (anti-social behaviour) under schedule 3.**

**Background**

1. By application dated 8 February 2024 the applicant seeks an order for eviction, relying on ground 12 (rent arrears for three or more consecutive months), ground 12A (substantial rent arrears) and ground 14 (anti-social behaviour) in Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.
2. The application was conjoined with application reference FTS/HPC/CV/24/0661 seeking an order for payment in respect of rent arrears.
3. The applicant lodged the following documents with the application:
  - Copy tenancy agreement

- Letter to the respondent with Notice to Leave and Guidance dated 18 December 2023 with proof of delivery
  - Rent statement for duration of tenancy
  - Pre action letters to the respondent dated 18 December 2023, 5 February and 9 May 2024.
  - Notice under section 11 of the Homelessness Etc. (Scotland) Act 2003.
  - Signed precognition of the applicant
  - Photographs of the property
  - Email correspondence between the applicant and Police Scotland
4. A case management discussion (“cmd”) was assigned for 7 October 2024.

#### **Case management discussion – 7 October 2024- teleconference**

5. The applicant was represented by Ms Berrill, solicitor from Hill and Robb. The respondent was not present or represented. The Tribunal was satisfied that the respondent had received proper notice of the cmd and proceeded with the cmd in their absence in terms of rule 29
6. Ms Berrill sought an order for eviction relying on both grounds. In relation to ground 12 she stated that the respondent had not paid any rent since she moved into the property on 23 November 2022. The arrears at the date of the cmd were in excess of £17,000. Ms Berrill stated that the applicant had no information relating to the reasons why the respondent had not paid any rent since moving into the property. The rent account which had been submitted showed that the monthly rent due in respect of the property was £800.
7. In relation to ground 14 Ms Berrill referred to the signed precognition which set out incidents of antisocial behaviour in the property. The precognition set out that the applicant had received many noise complaints from neighbours in relation to the respondent’s behaviour in the tenancy. In addition there had been a flooding incident at the property which resulted in water ingress into the property below. The flooding continued for a week which resulted in the fire service forcing entry into the property to tackle the issue. Ms Berrill also referred to photographs which had been lodged which showed in separate incidents the door to the property had been kicked in. Ms Berrill also stated that complaints

from neighbours showed that there had been anti-social behaviour arising from noise and other conduct by the respondent. Neighbours had also stated that other individuals including someone suspected of criminal activity relating to drugs had been staying in the property.

8. Ms Berrill stated that when the respondent had moved into the property she had been residing with her 3 children. Ms Berrill had spoken to the local authority social work department who confirmed that the children were no longer residing in the property. She had also been advised that the respondent had applied for assistance from the local authority to find alternative accommodation. Ms Berrill advised that although she had been unable to confirm it the applicant had received information that the respondent was no longer residing in the property however, other individuals did continue to use the property.
9. Ms Berrill stated that the high level of arrears had a financial impact on the applicant who had not received any rent since the tenancy commenced. In addition the chaotic conduct of the respondent had been a considerable cause of stress to the applicant particularly taking into account the impact on her neighbours.

### **Findings in fact and law**

10. Parties entered into a tenancy agreement with a commencement date of 23 November 2022.
11. Monthly rent due in terms of the agreement is £800.
12. Arrears as at September 2024 amounted to £17000.
13. The respondent has not made any payments towards the rent or arrears since the tenancy commenced.
14. The applicant complied with the pre-action protocols set out in sch.3 para.12(4)(b) of the Private Housing (Tenancies) (Scotland) Act 2016.
15. Grounds 12 and 12A in schedule 3 of the 2016 Act has been established.
16. The respondent has engaged in relevant anti-social behaviour in terms of ground 14.
17. Ground 14 in schedule 3 of the 2016 Act has been established.

### **Reasons for the decision**

18. The Tribunal had regard to the application and the documents lodged by the applicant. The Tribunal also took into account Ms Berrill's submissions at the cmd.

19. Ground 12 states:

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

*(2) . . . . .*

*(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.*

20. The Tribunal was satisfied on the basis of the rent accounts that had been lodged that the respondent had been in arrears of rent for a period in excess of three months. The Tribunal was also satisfied on the same basis that the respondent was in substantial arrears of rent in respect of ground 12A.

21. Both ground 12 and 12A required the Tribunal to determine whether it is reasonable to grant an order. The Tribunal determined that the correspondence sent to the respondent complied with the pre-action protocols. The Tribunal had regard to the correspondence that had been lodged and accepted that the respondent had been provided with information relating to the rent arrears and guidance on how to access assistance in compliance with the pre-action requirements on multiple occasions.

22. The Tribunal was satisfied that the arrears at the property amounted to £17000 as at the date of the cmd. The respondent had not lodged any information which sought to demonstrate that the arrears were in any part due to issues with benefits.
23. The Tribunal took into account the information provided by Ms Berrill. The Tribunal noted the high level of arrears, which continued to rise and that no contact or payment had been made by the respondent since the commencement of the tenancy.
24. The Tribunal gave particular weight to the fact that the respondent had not taken any steps to oppose the application or lodge a defence.
25. The Tribunal gave weight to the fact that the respondent had resided in the property with her children but noted that the information provided by Ms Berrill indicated that the children no longer resided in the property. The Tribunal also took into account that there was a strong possibility given the information provided by the local authority to the applicant that the respondent no longer resided in the property.
26. In the absence of any opposition to the application and taking into account the high level of arrears the Tribunal considered that it was reasonable to grant an order for eviction on ground 12 and ground 12A.
27. In relation to ground 14. Ground 14 states:
- 14(1) It is an eviction ground that the tenant has engaged in relevant anti-social behaviour.*
- (2) The First-tier Tribunal may find that the ground named by subparagraph (1) applies if—*
- (a) the tenant has behaved in an anti-social manner in relation to another person,*
- (b) the anti-social behaviour is relevant anti-social behaviour,*
- (ba) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact, and*
- (c) either—*
- (i) the application for an eviction order that is before the Tribunal was made within 12 months of the anti-social behaviour occurring, or*

*(ii) the Tribunal is satisfied that the landlord has a reasonable excuse for not making the application within that period.*

*(3) For the purposes of this paragraph, a person is to be regarded as behaving in an anti-social manner in relation to another person by—*

*(a) doing something which causes or is likely to cause the other person alarm, distress, nuisance or annoyance,*

*(b) pursuing in relation to the other person a course of conduct which—*

*(i) causes or is likely to cause the other person alarm, distress, nuisance or annoyance, or*

*(ii) amounts to harassment of the other person.*

*(4) In sub-paragraph (3)—*

*“conduct” includes speech,*

*“course of conduct” means conduct on two or more occasions,*

*“harassment” is to be construed in accordance with section 8 of the Protection from Harassment Act 1997.*

*(5) Anti-social behaviour is relevant anti-social behaviour for the purpose of sub-paragraph (2)(b) if the Tribunal is satisfied that it is reasonable to issue an eviction order as a consequence of it, given the nature of the anti-social behaviour and—*

*(a) who it was in relation to, or*

*(b) where it occurred.*

*(6) In a case where two or more persons jointly are the tenant under a tenancy, the reference in sub-paragraph (2) to the tenant is to any one of those persons.*

28. The Tribunal was satisfied on the basis of the written precognition provided by the applicant, the photographic evidence and the email correspondence with Police Scotland that the respondent had engaged in relevant anti-social behaviour which occurred less than 12 months prior to the present application being submitted.

29. In respect of the reasonableness of granting an order the Tribunal took into account the severity of the impact of the anti-social behaviour on the respondent's neighbours. The Tribunal also took into account that the anti-social behaviour unit at the local authority, Police Scotland and the fire brigade

had been required to deal with the consequences of the respondent's anti-social behaviour. The respondent had not taken any action to explain her behaviour or take responsibility for it. Taken together with the respondent's failure to pay any rent since the tenancy commenced it was evident that she had little regard for the impact her conduct had on the applicant or the neighbouring properties.

30. Taking into account the factors at paragraphs 24 and 25 above the Tribunal considered it was reasonable to grant an order relying on ground 14.

### **Decision**

**The Tribunal determined to grant an order for eviction.**

### **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.**

# Mary-Claire Kelly

Legal Member/Chair

7 October 2024

Date