



**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/24/1610**

**Re: Property at 29 Old Station Place, Ballater, AB35 5RG (“the Property”)**

**Parties:**

**Mr John Dempster, 23 Recreation Road, Andover, Hampshire, SP10 1HL (“the Applicant”)**

**Miss Aileen Oliver, 29 Old Station Place, Ballater, AB35 5RG (“the Respondent”)**

**Tribunal Members:**

**Alison Kelly (Legal Member) and Tony Cain (Ordinary Member)**

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

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

**Background**

1. On 9<sup>th</sup> April 2024 the Applicant lodged an Application with the Tribunal under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondent from the property under Grounds 12 and 12A of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.
2. Lodged with the application were: -
  - i. Copy Private Residential Tenancy Agreement showing a commencement date of 1<sup>st</sup> September 2018 and a rent of £555 per month;
  - ii. Copy Notice to Leave dated 15<sup>th</sup> February 2024;
  - iii. Copy Sheriff Officer’s Certificate of Service for the Notice to Leave;
  - iv. Section 11 Notice and proof of service;
  - v. Rent Statement showing arrears of £8200 as at 1<sup>st</sup> April 2024;

- vi. Pre Action Requirement letters dated 10<sup>th</sup> November 2023, 11<sup>th</sup> January 2024 and 2<sup>nd</sup> February 2024.
3. The Application was served on the Respondent by Sheriff Officers on 3<sup>rd</sup> September 2024.
4. On 2<sup>nd</sup> October 2024 the Applicant's solicitor lodged an up to date rent statement showing arrears of £11500 as at 1<sup>st</sup> October 2024.

### **Case Management Discussion**

5. The Case Management Discussion ("CMD") took place by teleconference. The Applicant was represented by Miss Bain of Mackinnons, Solicitors. There was no attendance by the Respondent or any representative on her behalf.
6. The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. The Chairperson explained that the Applicant needed to provide sufficient evidence to establish the ground of eviction, and that it was reasonable for the Tribunal to grant the order.
7. Miss Bain sought an order for eviction in terms of ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016. She said that the rent arrears issue had started in October 2020 but was resolved in January 2021. However in February 2021 the account ran in to arrears again and has been in arrears ever since. She said that the current sum outstanding was £11500.
8. Miss Bain said that she was not aware of the failure or delay in payment of any benefit. At one point the rent payments had been coming directly from Universal credit, but those payments had stopped.
9. The Tribunal were satisfied that the ground had been established and asked to address the Tribunal on reasonableness.
10. Miss Bain explained that the Applicant was the sole earner in his household which consisted of himself, his wife and his teenage daughter. He was finding it difficult financially as they he was not receiving the rent payments.
11. Miss Bain went on to say that there had been contact from the Respondent's daughter, who mentioned that the Respondent had a problem with alcohol, and that she could not access social housing until she had either cleared the rent arrears or an order was granted by the Tribunal.

### **Findings in Fact**

- a. The parties entered into a Private Residential Tenancy Agreement in respect of the property;
- b. The tenancy commenced on 1<sup>st</sup> September 2018;

- c. A Notice To Leave, dated 15<sup>th</sup> February 2024, was served timeously and correctly;
- d. A section 11 notice was served on the local authority;
- e. The Applicant sent the Respondent three letters in accordance with the Pre Action Protocol;
- f. The Application was served on the Respondent by Sheriff Officer on 1<sup>st</sup> December 2023;
- g. The Respondent has been in arrears for three or more consecutive months;
- h. The arrears are not due to a delay or failure of payment of a relevant benefit;
- i. The Applicant is finding it difficult financially as he is not receiving the rent;
- j. The Respondent has not made any contact with the Applicant nor entered in to any arrangement to pay the arrears or ongoing rent.

## Reasons for Decision

12. It is usually mandatory to grant an application under Ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 provided that notices have been served correctly. However, Section 43 of Coronavirus (Recovery and Reform) (Scotland) Act 2022 amended the legislation as follows:

### **Private residential tenancies: discretionary eviction grounds**

*(1)The Private Housing (Tenancies) (Scotland) Act 2016 is modified as follows.*

*(2)In section 51(2) (First-tier Tribunal’s power to issue an eviction order), the words “or must” are repealed.*

*(3)In schedule 3 (eviction grounds)—*

*(a)in paragraph 1(2) (landlord intends to sell)—*

*(i)in the opening words, for “must” substitute “may”,*

*(ii)after paragraph (a), the word “and” is repealed,*

*(iii)after paragraph (b) insert “, and*

*“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*

*(b)in paragraph 2(2) (property to be sold by lender)—*

*(i)in the opening words, for “must” substitute “may”,*

*(ii)after paragraph (b), the word “and” is repealed,*

*(iii)after paragraph (c) insert “, and*

*“(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*

*(c)in paragraph 3(2) (landlord intends to refurbish)—*

*(i)in the opening words, for “must” substitute “may”,*

(ii) after paragraph (b), the word “and” is repealed,

(iii) after paragraph (c) insert “, and

“(d) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(d) in paragraph 4(2) (landlord intends to live in property)—

(i) for “must” substitute “may”,

(ii) the words from “the landlord” to “3 months” become paragraph (a),

(iii) after paragraph (a) insert “, and

“(b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(e) in paragraph 6(2) (landlord intends to use for non-residential purpose)—

(i) for “must” substitute “may”,

(ii) the words from “the landlord” to “home” become paragraph (a),

(iii) after paragraph (a) insert “, and

“(b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(f) in paragraph 7(2) (property required for religious purpose)—

(i) in the opening words, for “must” substitute “may”,

(ii) after paragraph (b), the word “and” is repealed,

(iii) after paragraph (c) insert “, and

“(d) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(g) in paragraph 8 (not an employee)—

(i) in the opening words of sub-paragraph (2), for “must” substitute “may”,

(ii) for sub-paragraph (2)(c) substitute—

“(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(iii) sub-paragraph (3) is repealed,

(iv) in sub-paragraph (4), for “sub-paragraphs (2) and (3)” substitute “sub-paragraph (2)”,

(h) in paragraph 10(2) (not occupying let property)—

(i) in the opening words, for “must” substitute “may”,

(ii) after paragraph (a), the word “and” is repealed,

(iii) after paragraph (b) insert “, and

“(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

- (i) in paragraph 12 (rent arrears), sub-paragraph (2) is repealed,
- (j) in paragraph 13(2) (criminal behaviour)—
- (i) in the opening words, for “must” substitute “may”,
- (ii) after paragraph (a), the word “and” is repealed,
- (iii) after paragraph (b) insert “, and
- “(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,
- (k) in paragraph 14(2) (anti-social behaviour), after paragraph (b), for “and” substitute—
- “(ba) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact, and”.

13. The Tribunal now has to decide if it is reasonable to grant the eviction order.

14. The Tribunal were of the view in this case that the Applicant had established Ground 12 by provision of the rent statement. The Tribunal therefore had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order. Given the high level of the arrears and the lack of contact by the Respondent or any attempt by her to negotiate a payment arrangement The Tribunal considered that it was reasonable to grant the order.

## 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.**

**Alison Kelly**

**10<sup>th</sup> October 2024**

**Legal Member/Chair**

**Date**