



**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/24/1745**

**Re: Property at 6a Houstoun Square, Johnstone, Renfrewshire, PA5 8DT (“the Property”)**

**Parties:**

**Mr Saqib Nisar, Villa 93, Casa Familia, Motor City, Dubai, United Arab Emirates (“the Applicant”)**

**Mr Gerald Gallagher, 6a Houstoun Square, Johnstone, Renfrewshire, PA5 8DT (“the Respondent”)**

**Tribunal Members:**

**Shirley Evans (Legal Member) and Janine Green (Ordinary Member)**

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

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at 6a Houstoun Square, Johnstone, Renfrewshire, PA5 8DT under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same.

**Background**

1. This is an action for recovery of possession of the Property raised in terms of Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).

2. The application was accompanied by a Private Residential Tenancy Agreement between the parties dated 30 and 31 March 2021, a Notice to Leave and letter to the Respondent both dated 7 February 2024, signed proof of delivery dated 10 February 2024, a rent statement to 17 April 2024, emails between the Applicant's letting agents and the Respondent dated 22 January 2024 and 4 March 2024 and an email dated 17 April 2024 addressed to Renfrewshire Council with a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003.
3. On 14 May 2024, the Tribunal accepted the application under Rule 9 of the Regulations.
4. On 21 August 2024 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 11 September 2024. The Tribunal advised parties that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 23 September 2024. This paperwork was served on the Respondent by Stuart Sinclair, Sheriff Officer, Glasgow on 22 August 2024 and the Execution of Service was received by the Tribunal administration.
5. The Respondent did not make any representations.

### **Case Management Discussion**

6. The Tribunal proceeded with a CMD on 23 September 2024 by way of teleconference. Ms Spence from McTurk & Muir Lettings Ltd appeared for the Applicant. There was no appearance by or on behalf of the Respondent despite the CMD starting 10 minutes late to allow him plenty of time to join the call. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in his absence. The case was heard together with a case for arrears under case reference number FTS/HPC/CV/24/1747.
7. The Tribunal had before it the Private Residential Tenancy Agreement between the parties dated 30 and 31 March 2021, a Notice to Leave and letter to the Respondent both dated 7 February 2024, signed proof of delivery dated 10 February 2024, a rent statement to 17 April 2024, emails between the Applicant's letting agents and the Respondent dated 22 January 2024 and 4 March 2024 and an email dated 17 April 2024 addressed to Renfrewshire Council with a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003. The Tribunal considered these documents.

8. Ms Spence advised that arrears had increased to £8900. The last payment to account was for £600 on 27 November 2023. She advised that there was no communication with the Respondent despite them sending weekly emails to him with the rent statement. They had called him on the mobile phone number he had given them, but at times this was cut off or the number was not recognised. She advised that she understood the Respondent was employed as a roofer. He had been off ill at some time and they had received payments from Universal Credit. She did not know when the Respondent went back to work. With reference to the email of 22 January 2024 the Respondent had promised to pay £200 per week. The Tribunal noted the monthly rent was £450 in terms of Clause 8 of the tenancy agreement. However, he paid nothing. On 4 March 2024 he emailed to advise he was waiting for a loan to be processed and would make a payment of £1500. A gas engineer had called at the Property in July to carry out gas servicing. No-one answered the door although he thought someone was in the Property.
9. The Tribunal referred Ms Spence to the Notice to Leave dated 7 February 2024 which had been signed for by the Respondent on 10 February 2024 and enquired whether the Respondent had been in contact with them after it had been served. Ms Spence clarified that apart from the email of 4 March 2024 they had had no contact with the Respondent. That also did not transpire understood the Respondent was in employment. A colleague had called by the Property in passing recently, but no one was at home. She advised the Respondent lived on his own and was believed to be in his 50s. They had last written to him at the end of last week as they wanted to keep communication open with him. She understood the Respondent still lived in the Property.

### **Reasons for Decision**

10. The Tribunal considered the issues set out in the application together with the documents lodged in support. The Tribunal also considered the following legislation in its determination -
- Private Housing (Tenancies) (Scotland) Act 2016
  - The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.
11. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on Ground 12A (substantial rent arrears).

12. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.
13. In terms of Section 54 of the 2016 Act a landlord may not make an application to the Tribunal for an eviction order against a tenant until the expiry of the relevant period in relation to that Notice. The relevant period begins on the day the tenant receives the Notice which in the case of Ground 12A of Schedule 3 is 28 days.
14. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states that it proceeds on Ground 12A of schedule 3 of the 2016 Act and states the amount of arrears at Part 2 of the Notice. The Notice to Leave specifies the date the Applicant as landlord expects to become entitled to make an application for an eviction order namely 8 March 2024. In terms of Section 62(4) of the 2016 Act, the Notice to Leave must specify the day falling after the day on which the notice period defined in section 54(2) will expire. In this case the Notice to Leave dated 7 February 2024 was received by the Respondent on 10 February 2024. In the circumstances the Tribunal is satisfied the Respondent has been given sufficient notice of 28 days. Accordingly, the Notice to Leave complies with Section 62.
15. The Tribunal considered the Respondent had not opposed the order for eviction. The Respondent's arrears were increasing and stood at £8900, the monthly rent being £450. The arrears amounted to approximately 18 months of arrears. However, Ground 12A is discretionary ground of eviction. As well as being satisfied the facts have been established to support the ground, the Tribunal has to be satisfied that it is reasonable to evict.
16. The Tribunal considered the issues set out in the application together with the documents lodged in support. The Applicant's letting agents had sent weekly emails to the Respondent regarding his arrears. The Respondent had not stuck to any repayment arrangements despite a promise to pay £200 per week towards the arrears and £1500 with a loan. Arrears were increasing with the last payment being on 27 November 2023. The Tribunal was persuaded by Ms Spence's submissions that Ground 12A had been established and that it was reasonable to evict. The Applicant had clearly done everything they could to avoid taking action and had tried unsuccessfully to keep the lines of communication open with the Respondent assist the Respondent. On the other hand, the Respondent did not oppose the application. He had ignored the Applicant's letting agents despite their weekly emails to him. The Respondent was believed to be in employment. The

Tribunal noted that notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Renfrewshire Council had been served. The Tribunal was satisfied on the basis of the documents lodged, together with submissions made by Ms Spence, that the factual basis of the application had been established. A case under Ground 12A of Schedule 3 of the 2016 Act was accordingly met. The balance of reasonableness in this case weighted towards the Applicant.

17. In the circumstances the Tribunal considered that in terms of Ground 12A of Schedule 3 the Respondent was in substantial rent arrears and that it is reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

### **Decision**

18. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

### **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.**

Andrew McLaughlin

2024

Shirley Evans