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/24/2018

Re: Property at 4 Inverewe Place, Dunfermline, KY11 8FH ("the Property")

Parties:

Mr Clive Guyton, Mrs Elaine Guyton, 8 Milesmark Court, Dunfermline, KY12 9PD ("the Applicant")

Mr Calumn Johnston, 4 Inverewe Place, Dunfermline, KY11 8FH ("the Respondent")

Tribunal Members:

George Clark (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application could be decided without a Hearing and issued an Eviction Order against the Respondent

Background

1. By application, dated 2 May 2024, the Applicant sought an Order for Possession of the Property under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). The Ground relied on was Ground 12 of Schedule 3 to the 2016 Act, namely that the Respondent has been in rent arrears for three or more consecutive months.

2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties, commencing on 1 August 2019 at a monthly rent of £550, a Notice to Leave, dated 27 March 2024, advising the Respondent that the Applicant was seeking an Eviction Order under Ground 12 of Schedule 3 to the 2016 Act and that an application to the Tribunal would not be made before 29 April 2024, a pre-action protocol letter dated 14 February 2024, signposting the Respondent to sources of possible help and advice, and a Rent Statement showing arrears at the date of application of

£3,377. The Applicant's representative subsequently provided an updated Rent Statement showing arrears of £5,391 at 1 September 2024. Nothing had been paid since £250 on 3 May 2024

3. On 2 September 2024, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 23 September 2024. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

4. A Case Management Discussion was held by means of a telephone conference call on the morning of 10 October 2024. The Applicant was present. The Respondent was not present or represented.

5. The Applicant told the Tribunal that no payments of rent had been received since the date of the application and that the arrears now stand at £5,957. He understood that the Respondent lives in the Property on his own and was not aware of any vulnerabilities the Respondent might have. He did not know whether the Respondent is presently in employment, but he was working and provided references at the start of the tenancy. The Respondent has indicated in a response to a text message from the Applicant that he may be moving out in the next few days, but the Applicant did not know whether that would happen.

Reasons for Decision

6. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

7. Section 51 of the 2016 Act states that the Tribunal is to issue an Eviction Order against the tenant under a Private Residential Tenancy if, on an application by the landlord, it finds that one of the Eviction Grounds named in Schedule 3 applies.

8. Ground 12 of Schedule 3 to the Act states that it is an Eviction Ground that the tenant has been in rent arrears for three or more consecutive months and that the Tribunal may find that Ground 12 applies if, at the beginning of the day on which the Tribunal first considers the application for an Eviction Order on its merits, the tenant 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 has been in in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, that 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, and the Tribunal is satisfied that it is reasonable on account of that fact to issue an Eviction Order.

9. The Tribunal was satisfied that the Respondent has been in rent arrears for three or more consecutive months and that the current arrears exceed one month's rent. No evidence had been presented to indicate that the Respondent's being in arrears might be wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

10. The Tribunal noted that the Respondent had made no representations for the Tribunal to take into consideration in deciding whether it would be reasonable to issue an Eviction Order and that he had not engaged with the Tribunal process. He had chosen not to attend or be represented at the Case Management Discussion. He has long-standing rent arrears and has paid nothing in the last 6 months. Accordingly, having considered all the information before it, the Tribunal decided that the level of arrears is such that it would be reasonable to issue an Eviction Order under Ground 12 of Schedule 3 to the 2016 Act.

11. The Tribunal's Decision 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.

George Clark

_____   **10 October 2024**
Legal Member/Chair   **Date**