



**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/24/2499**

**Re: Property at 98 0/1 Glasgow Road, Paisley, PA1 3NU (“the Property”)**

**Parties:**

**RJDP.LTD, Unit 3003, Abbeymill Business Centre, 12 Seedhill Road, Paisley, PA1 1JS (“the Applicant”)**

**Mr Alexander Kerr, 98 0/1 Glasgow Road, Paisley, PA1 3NU (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Mike Scott (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order**

**Background**

1. By application to the Tribunal the Applicant sought an eviction order against the Respondent in respect of the Property under Rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules of Procedure”) and section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant relied upon ground 12 of Schedule 3 of the 2016 Act. In support of the application the Applicant provided the following documentation:-
  - (i) Private Residential Tenancy Agreement between the parties dated 31 May 2024;
  - (ii) Notice to Leave dated 30 April 2024 citing ground 12, together with proof of service on the Respondent by email on that same date;

- (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Renfrewshire Council together with proof of service by email; and
  - (iv) Rent Statement.
2. By Notice of Acceptance of Application a Legal Member of the Tribunal with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. The application was therefore referred to a Case Management Discussion on 7 October 2024. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondent by Sheriff Officers in accordance with Rule 17(2) of the Rules of Procedure. Both parties were invited to make written representations in advance of the Case Management Discussion.
  3. On 16 September 2024 the Tribunal received representations from Renfrewshire Citizens Advice Bureau (“the CAB”) on the Respondent’s behalf. They provided an excerpt from the rent statement for 2024 together with a bank statement and correspondence from the Department of Work and Pensions (“DWP”) confirming the Respondent’s universal credit entitlement. They advised that the Respondent had been unable to work consistently due to an injury to his hand and had only resumed full time employment in June 2024. Since then he had made efforts to pay the rent and arrears. The CAB advised that the Applicant was refusing to consider payment offers and that outstanding repairs he had reported had not been progressed. The CAB confirmed that the current balance of arrears was £6,597.52. The Respondent had made recent payments to the account including £436.87 from the DWP in June 2024, £700 in July 2024 and £900 in August 2024. The Respondent would have nowhere to stay if evicted and would be destitute.
  4. On 18 September 2024 the Tribunal received additional written representations from the Applicant’s representative, Rentahome (Scotland) Ltd. They provided a rent statement confirming that the current balance outstanding was £6163.31 and explained that they had continually asked the Respondent for a payment plan which he had never adhered to. They confirmed that all repairs reported had been resolved immediately and attached a maintenance report for the property together with email correspondence between the Applicant’s representative, the Respondent and the CAB.

### **Case Management Discussion**

5. The Case Management Discussion took place on 7 October 2024 by teleconference. The Applicant was represented by Ms Lesley Morrison. The Respondent was not present.
6. The Tribunal considered contacting the Respondent by telephone to ascertain his intentions. However, whilst the Applicant had provided a contact telephone number for the Respondent in the application, the Tribunal did not have consent from the Respondent to communicate with him via those details. The Tribunal

then noted that the CAB had stated that they would not be representing the Respondent at the Case Management Discussion, but he intended on representing himself. The Tribunal had confirmation that the Respondent had received proper notification of the Case Management Discussion in terms of Rule 17(2) of the Rules of Procedure and he was clearly aware of it from the terms of the correspondence from the CAB. He had been given the opportunity to attend but had chosen not to do so and the Tribunal had no explanation from him as to why that was the case. The Tribunal was also aware that the Respondent could seek a recall of any orders granted in his absence, and that the arrears alleged in the application were significant, therefore any delay in the application could potentially prejudice the Applicant. Accordingly, taking all of those factors into account, the Tribunal determined to proceed with the Case Management Discussion.

7. The Tribunal went on to explain the purpose of the Case Management Discussion to Ms Morrison and asked her to explain the background to the application and the order she was seeking from the Tribunal.
8. Ms Morrison explained that the Applicant was seeking an eviction order under ground 12. The rent arrears had been ongoing for the last two years. Ms Morrison had attended the property on a regular basis to carry out inspections and had tried to support the Respondent. He had repeatedly said he would make payment plans but had not done so. Ms Morrison advised that the Respondent would go off the radar for three or four months at a time and not make any payments. He would then get in touch to offer payments which did not materialise.
9. Ms Morrison stated that she had in fact offered the Respondent a one bedroom flat in the same area at a cheaper rent, as the property he was in was a two bedroom and he resided alone with no dependents. She offered this alongside a payment plan for the arrears. The Respondent had declined the offer. Ms Morrison had been pleased when the Respondent sought assistance from the CAB as she believed they would provide third party assistance in agreeing a payment plan. However when Ms Morrison emailed the CAB on 6 November 2023 to seek an update on this she received no response. She referred to the email which had been submitted as part of the Applicant's additional representations.
10. Ms Morrison explained that the Respondent had suffered an accident over a year ago and had said that he was due to receive criminal injuries compensation which he would pay to the rent account. He then resumed employment and said he would make payments however no plan was put in place. The Respondent would make payments ad hoc, sending a text message with an amount that he was going to pay. Ms Morrison confirmed that the last payment to account from the Respondent was made on 3<sup>rd</sup> August 2024. The arrears now stood at £6793.
11. In response to questions from the Tribunal Ms Morrison confirmed that the Respondent was in his early 40s. He was a security guard in a car garage when he took on the tenancy and the Applicant had received references from that firm. However he was subsequently dismissed from that post. Ms Morrison

understood he was then doing security in night clubs, and recently he had been working at festivals down south. Ms Morrison advised that there were no outstanding universal credit payments that she was aware of. The last direct payment from the DWP was received on 9<sup>th</sup> September 2024, however these payments were currently set aside as Ms Morrison had concerns that the DWP may seek to recall them from the Applicant if they received information regarding the Respondent's employment.

## **Relevant Legislation**

12. The legislation the Tribunal must apply in its determination of the application are the following provisions of the Private Housing Tenancies (Scotland) Act 2016:-

### ***1 - Meaning of private residential tenancy***

*1) A tenancy is a private residential tenancy where—*

*(a) the tenancy is one under which a property is let to an individual (“the tenant”) as a separate dwelling,*

*(b) the tenant occupies the property (or any part of it) as the tenant's only or principal home, and*

*(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.*

*(2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.*

### ***51 First-tier Tribunal's power to issue an eviction order***

*(1) The First-tier 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.*

*(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.*

*(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.*

*(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.*

### ***52 Applications for eviction orders and consideration of them***

*(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.*

*(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—*

*(a) subsection (3), or*

*(b) any of sections 54 to 56 (but see subsection (4)).*

*(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.*

*(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.*

*(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—*

*(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or*

*(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.*

#### **54 Restriction on applying during the notice period**

*(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.*

*(2) The relevant period in relation to a notice to leave—*

*(a) begins on the day the tenant receives the notice to leave from the landlord, and*

*(b) in the case of a notice served before 3 October 2020 expires on the day falling—*

*(i) 28 days after it begins if subsection (3) applies,*

*(ii) three months after it begins if subsection (3A) applies,*

*(iii) six months after it begins if neither subsection (3) nor (3A) applies.*

*(c) in the case of a notice served on or after 3 October 2020, expires on the day falling—*

*(i) 28 days after it begins if subsection (3B) applies,*

*(ii) three months after it begins if subsection (3C) applies,*

*(iii) six months after it begins if neither subsection (3B) nor (3C) applies*

*(3) This subsection applies if the only eviction ground stated in the notice to leave is that the tenant is not occupying the let property as the tenant's home. [ground 10]*

*(3A) This subsection applies if—*

*(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—*

- (i) that the landlord intends to live in the let property, [ground 4]*
  - (ii) that a member of the landlord's family intends to live in the let property, [ground 5]*
  - (iii) that the tenant has a relevant conviction, [ground 13]*
  - (iv) that the tenant has engaged in relevant anti-social behaviour, [ground 14]*
  - (v) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour, [ground 15]*
  - (vi) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]*
  - (vii) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, [ground 17] or*
- (b) the only eviction grounds stated in the notice to leave are—*
- (i) the eviction ground mentioned in subsection (3), and*
  - (ii) an eviction ground, or grounds, mentioned in paragraph (a)*
- (3B) This subsection applies if the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—*
- (a) that the tenant is not occupying the let property as the tenant's home, [ground 10]*
  - (b) that the tenant has a relevant conviction, [ground 13]*
  - (c) that the tenant has engaged in relevant anti-social behaviour, or [ground 14]*
  - (d) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour. [ground 15]*
- (3C) This subsection applies if—*
- (a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—*
- (i) that the landlord intends to live in the let property, [ground 4]*
  - (ii) that a member of the landlord's family intends to live in the let property, [ground 5]*
  - (iii) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]*
  - (iv) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or [ground 17]*
- (b) the only eviction grounds stated in the notice to leave are—*
- (i) an eviction ground, or grounds, mentioned in subsection (3B), and*
  - (ii) an eviction ground, or grounds, mentioned in paragraph (a).*

## **62 Meaning of notice to leave and stated eviction ground**

(1) References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,

(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.

(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.

### **Schedule 3, Part 12**

(1) It is an eviction ground that 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 subparagraph (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.

## **Findings in Fact**

13. The parties entered into a Private Residential Tenancy Agreement dated 3 May 2022.
14. The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
15. In terms of Clause 8 of the said Tenancy Agreement the Respondent undertook to make payment of rent at the rate of £550 per calendar month.
16. On 30 April 2024 the Applicant delivered a Notice to Leave to the Respondent by email.
17. The Notice to Leave cited ground 12 of Schedule 3 of the 2016 Act and confirmed that proceedings would not be raised any earlier than 31 May 2024.
18. The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
19. As at the date of service of the Notice to Leave arrears in the sum of £6241.26 were outstanding.
20. As at the date of the Case Management Discussion arrears in the sum of £6793 were outstanding.
21. The Respondent's payments to the rent account are sporadic and ad hoc.
22. The last payment to the rent account from the Respondent was on 3 August 2024.
23. The last payment received by the Applicant was a direct payment from the DWP on 9 September 2024.
24. The Applicant has made substantial efforts to engage the Respondent regarding the rent arrears by offering to enter into payment plans and offering him a smaller property in the same area with a lower rent.
25. The Respondent has persistently failed to agree a payment plan with the Applicant to reduce the arrears. The arrears are continuing to increase.
26. The Respondent is in his forties and resides alone.
27. The Respondent is in receipt of universal credit. The Applicant received a direct payment from the DWP in the sum of £217.53 on 9 September 2024 however the Respondent's current employment may impact his past entitlement.
28. The arrears are not due to any failure or delay in payment of a relevant benefit.



## Reasons for Decision

29. The Tribunal was satisfied that it had sufficient information upon which to make a decision at the Case Management Discussion and that to do so would not be prejudicial to the parties. The Tribunal took into account the application paperwork, the additional written representations from both parties, and the submissions from Ms Morrison at the Case Management Discussion in reaching its decision.
30. The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicants intention to rely upon ground 12 of Schedule 3 of the 2016 Act. The Tribunal was satisfied that the Notice to Leave complied with the provisions of section 62 of the 2016 Act and therefore that application could be entertained.
31. The Tribunal therefore considered whether ground 12 of Schedule 3 of the 2016 Act had been met.
32. The Tribunal accepted, based on the rent statement submitted by the Applicant and Ms Morrison's submissions at the Case Management Discussion, that arrears of £6241.26 were outstanding when the Notice to Leave was served and had increased to £6793 as at the date of the Case Management Discussion. The arrears had been accruing over a period of two years. There was nothing before the Tribunal to contradict the Applicant's evidence in this regard and it appeared from the Respondent's representations that he did not dispute that arrears were due. The Tribunal was therefore satisfied that for three or more consecutive months the Respondent had been in arrears of rent.
33. The Tribunal then considered the question of reasonableness. In doing so, the Tribunal preferred the account of events put forward by Ms Morrison on the Applicant's behalf. The Applicant had submitted evidence to contradict the Respondent's representations, which was supported by Ms Morrison's submissions at the Case Management Discussion. The Tribunal found Ms Morrison to be straightforward and credible in her evidence.
34. The Tribunal did not therefore accept that the Applicant had refused to enter into a payment plan with the Respondent. The Tribunal believed that Ms Morrison had made repeated attempts to support the Respondent in sustaining the tenancy by offering to discuss payment plans. She had gone so far as to source a smaller and cheaper property for the Respondent in the same area to assist him but he had refused that offer. This called into question the Respondent's position as outlined in the correspondence from the CAB that he had no alternative accommodation available to him. The Tribunal gave significant weight to these material factors as relevant to the question of reasonableness.
35. The Tribunal also gave significant weight to the fact that the arrears were significant and there appeared no prospect of the Respondent having the means, or the inclination, to formalize a payment plan. His mention of a criminal injuries compensation claim was not supported by any evidence and there was no

indication as to what he might receive even if he had made a successful claim. The Tribunal further took into account the fact that the Respondent was in his forties, was believed to be in employment and had no dependents who would be at risk in the event of an eviction order being granted by the Tribunal.

36. With regard to paragraph (4) of ground 12, the Tribunal was satisfied, based on the submissions from Ms Morrison, that the arrears were not due, in whole or in part, to any delay in the payment of universal credit. The Respondent appeared to have an ongoing, or at least recent, entitlement to universal credit based on the payment that had been received by the Applicant on 9 September 2024. He had not suggested in his response to the application that any backdated payments were due. The Tribunal also considered that the steps taken by the Applicant, in particular by their representative Ms Morrison, to assist the Respondent in sustaining the tenancy went beyond what was required under the rent arrears pre-action protocol.
37. Taking the above factors into account, the Tribunal ultimately concluded that it would be reasonable to make an eviction order in the particular circumstances of this case.
38. Accordingly the Tribunal concluded that ground 12 had been met and determined to make an eviction order.
39. 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.**

# R O'Hare

**7 October 2024**

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**Legal Member**

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**Date**