



**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/24/2370**

**Re: Property at Flat 0/1, 22 Craigpark Drive, Dennistoun, Glasgow, G31 2NP (“the Property”)**

**Parties:**

**Mr Lawrence Bourke, Mrs Deirdre Bourke, 40 Fraser Road, Applecross, Perth, Australia, WA6153, Australia (“the Applicant”)**

**Mr David Aitchison, Flat 0/1, 22 Craigpark Drive, Dennistoun, Glasgow, G31 2NP (“the Respondent”)**

**Tribunal Members:**

**Alison Kelly (Legal Member) and Gerard Darroch (Ordinary Member)**

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

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

**Background**

1. On 21<sup>st</sup> May 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 Ground 12 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 17<sup>th</sup> December 2021 and a rent of £695 per month;
  - ii. Copy Notice to Leave dated 17<sup>th</sup> April 2024;
  - iii. Copy email dated 17<sup>th</sup> April 2024 to the Respondent serving the Notice to Leave;
  - iv. Section 11 Notice and proof of service;

v. Rent Statement

3. The Application was served on the Respondent by Sheriff Officers on 18th September 2024.

### **Case Management Discussion**

4. The Case Management Discussion (“CMD”) took place by teleconference. The Applicant was represented by Miss Blackwood of Looking To Rent. The Respondent attended and represented himself.

5. 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.

6. Miss Blackwood sought an order for eviction in terms of ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 21016. The Respondent said that he was not opposed to the order being granted.

7. Miss Blackwood said that the current arrears were £7012. The Tribunal were satisfied therefore that the Respondent had been in arrears for three consecutive months or more, and that the ground had been met.

8. The Respondent did say that he had been withholding some rent due to a rat infestation. Miss Blackwood said that at the time he reported the infestation. 4<sup>th</sup> June 2024, the Respondent was already in four months arrears. He accepted that.

9. The Respondent said that he was not opposed to the order being granted and that he would leave. He had already arranged to move in with his mother until he could find other accommodation. He said that the Council were useless and they had no accommodation. He had contacted them, and he had also contacted Renfrewshire Council. He took the tenancy when his son was living with him and they could afford it. His son had moved out to live with his mother and he struggled with the rent. He said there was no point in spinning things out by opposing the order.

### **Findings in Fact**

- a. The parties entered into a Private Residential Tenancy Agreement in respect of the property;
- b. The tenancy commenced on 17th December 2021;
- c. A Notice To Leave, dated 17<sup>th</sup> April 2024, was served timeously and correctly;
- d. A section 11 notice was served on the local authority;
- e. The Application was served on the Respondent by Sheriff Officer on 18<sup>th</sup> September 2024;

- f. The Respondent has been in arrears of rent arrears for three or more consecutive months;
- g. The Respondent is not opposed to the order being granted.

## Reasons for Decision

10. 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*

*“(d)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”.*

11. The Tribunal were of the view in this case that the Applicant had established Ground 12 by provision of the rent statement and confirmation of the up-to-date position regarding the arrears. The Tribunal therefore had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order. The Tribunal noted that the Respondent was not opposed to the order being granted, and in those circumstances 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

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**Legal Member/Chair**

21 October 2024

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**Date**