



**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/24/2545**

**Re: Property at 1/L 6 Grays Lane, Dundee, DD2 3AN (“the Property”)**

**Parties:**

**Mr Mark Little, 25 Green Julian Place, Inchtute, PERTH, PH14 9PA (“the Applicant”)**

**Mr Lloyd Spowart, 1/L 6 Grays Lane, Dundee, DD2 3AN (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Gerard Darroch (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;
  - (ii) Notice to Leave dated 2 May 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 Dundee City Council together with proof of service by email;

- (iv) Copy email from the Applicant to the Respondent in compliance with the rent arrears pre-action protocol;
  - (v) Bank statements; and
  - (vi) Rent statement.
2. By Notice of Acceptance of Application dated 20 June 2024 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 30 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 on 26 September 2024 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. No representations were received from the Respondent. On 10 October 2024 the Applicant emailed the Tribunal with an updated rent statement and recent bank statements.

### **Case Management Discussion**

4. The Case Management Discussion took place on 30 October 2024 by teleconference. The Applicant was personally present. The Respondent was not in attendance. The Tribunal noted that he had received proper notification of the Case Management Discussion in terms of Rule 17(2) of the Rules of Procedure and therefore determined to proceed with the Case Management Discussion in his absence.
5. The Tribunal went on to explain the purpose of the Case Management Discussion to the Applicant and asked him to explain the background to the application and the order he was seeking from the Tribunal. For the avoidance of doubt the following is a summary of what was discussed and does not constitute a verbatim account of the proceedings.
6. The Applicant confirmed that he was requesting an eviction order from the Tribunal. There had been no payments to the rent account by the tenant since December 2023, despite various promises of payment. The Applicant had tried to keep in touch with the Respondent but the Respondent did not answer his calls, instead responding via text message. It had now been almost ten months of unpaid rent. The Applicant explained that he had tried to support the Respondent. When rent was late he would get in touch with the Respondent and ask if he needed more time to pay. The Applicant confirmed that the Respondent was in his twenties and resided alone.

7. The Applicant explained that the Respondent was employed by Payprint. He had gone through a couple of different jobs during the term of the tenancy but the Applicant was not aware of any long periods of unemployment. On one occasion the Respondent had advised him that he had lost his job. The Applicant had recommended the Respondent speak with council or charities in Dundee and had provided the Respondent with a list of these. The Applicant explained that in December 2023 the Respondent had advised the Applicant that he was starting work at Amazon. However the Applicant was subsequently advised by the Respondent's parents that he had left Amazon and was working at Payprint. The Respondent's parents had also told the Applicant that the Respondent was simply not choosing to pay his rent, instead spending his money on recreational activities. They could not assist the Respondent any further.
8. The Applicant confirmed that he was not aware of any benefit entitlement on the Respondent's part. The Applicant had checked with the local authority and there were no open or effective claims pending. The Applicant was also unaware of any particular health issues or vulnerabilities.
9. The Tribunal adjourned to deliberate, at which point the Applicant left the call, before resuming the Case Management Discussion and confirming its decision.

## **Relevant Legislation**

10. 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**

11. The parties entered into a Private Residential Tenancy Agreement which commenced on 17 October 2020.
12. The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
13. In terms of Clause 7 of the said Tenancy Agreement the Respondent undertook to make payment of rent at the rate of £400 per calendar month.
14. On 2 May 2024 the Applicant delivered a Notice to Leave to the Respondent by email.
15. The Notice to Leave included ground 12 of Schedule 3 of the 2016 Act and confirmed that proceedings would not be raised any earlier than 2 June 2024.
16. The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
17. As at the date of service of the Notice to Leave arrears in the sum of £1600 were outstanding following the Respondent's failure to pay rent for the months of January, February, March and April 2024.
18. As at the date of this decision arrears in the sum of £4000 are outstanding.
19. The Respondent has failed to make any payments to the rent account since 15 December 2023.
20. The Applicant sent information regarding the rent arrears, the tenancy and details of advice agencies to the Respondent by email on 13 February 2024. The Applicant has offered to enter into payment plans with the Respondent.
21. The Respondent is employed. The Respondent is in his twenties and resides alone.

22. The arrears are not due to any failure or delay in payment of a relevant benefit.

### **Reasons for Decision**

23. 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 Respondent had been given the opportunity to attend the Case Management Discussion, or make written representations, and had chosen not to do so.
24. 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.
25. The Tribunal therefore considered whether ground 12 of Schedule 3 of the 2016 Act had been met.
26. The Tribunal accepted, based on the rent statement submitted by the Applicant and his submissions at the Case Management Discussion, that arrears of £1600 were outstanding when the Notice to Leave was served. The Tribunal also accepted that the arrears had increased to approximately £4000 as at the date of the Case Management Discussion. The Applicant had provided a rent statement in support of this. The Tribunal was therefore satisfied that for three or more consecutive months the Respondent had been in arrears of rent as at the date of sending the Notice to Leave and the date of the Case Management Discussion.
27. The Tribunal then considered the question of reasonableness. The Tribunal found the Applicant to be straightforward and open in his submissions. He gave no reason for the Tribunal to doubt him and the Respondent had put forward no evidence to contradict the position put forward by the Applicant. The Tribunal therefore accepted his submissions as fact.
28. The Tribunal therefore accepted that the Respondent had paid no rent since December 2023. There was no reasonable explanation as to why this was the case. The Tribunal further accepted that the Respondent had repeatedly offered to make payments to the Applicant but had failed to do so. The Applicant was now carrying a large balance of arrears, and the Tribunal believed that he would have suffered financially as a result.
29. The Tribunal believed that the Applicant had made repeated attempts to support the Respondent regarding the arrears. He had tried to help the Respondent when being advised that the Respondent had lost his job. He had tried to engage the Respondent's parents to assist him. He had written to the Applicant with the information required under the rent arrears pre-action protocol. The Tribunal therefore considered that the steps taken by the Applicant to assist the



Respondent in sustaining the tenancy were sufficient to evidence compliance with the rent arrears pre-action protocol.

30. The Tribunal was also satisfied that the arrears were not due, in whole or in part, to any delay in the payment of a relevant benefit. The Applicant had confirmed that he was unaware of any benefit entitlement, having checked with the local authority.
31. The Tribunal therefore gave significant weight to the fact that the arrears were significant having accrued over a period of ten months, the Respondent appeared to have funds to pay the rent through his employment but had spent the money for other purposes, and there appeared no realistic prospect of him making any offers to the Applicant to pay additional sums to ensure the arrears were repaid within a reasonable period of time. There were no relevant factors before the Tribunal that outweighed these in terms of the assessment of reasonableness.
32. Accordingly the Tribunal ultimately concluded that ground 12 had been met and it would be reasonable to make an eviction order.
33. 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

**30 October 2024**

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**Legal Member/Chair**

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**Date**