



**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/24/2245**

**Re: Property at 16 Ashgrove Crescent, Ecclefechan, Lockerbie, DG11 3EA (“the Property”)**

**Parties:**

**Mrs Fiona Carruthers, Dunnekelly, Burnbank Street, Ecclefechan, Lockerbie, DG11 3DH (“the Applicant”)**

**Ms Lisa McGregor, 16 Ashgrove Crescent, Ecclefechan, Lockerbie, DG11 3EA (“the Respondent”)**

**Tribunal Members:**

**Shirley Evans (Legal Member) and Mary Lyden (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 16 Ashgrove Crescent, Ecclefechan, Lockerbie, DG11 3EA 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 14 April 2020, a rent statement showing arrears of £3600 to 20 April 2024, a Notice to Leave and Recorded Delivery receipt dated 5 April 2024, a Recorded Delivery Proof of service dated 6 April 2024, various text messages, and a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003 addressed to Dumfries and Galloway Council with Recorded Delivery Proof of service dated 23 May 2024.
3. On 11 July 2024, the Tribunal accepted the application under Rule 9 of the Regulations.
4. On 10 October 2024 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 31 October 2024. The Tribunal advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 15 November 2024. This paperwork was served on the Respondent by Christopher Andrew, Sheriff Officer, Edinburgh on 15 October 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 15 November 2024 by way of teleconference. Mr Edment from McJarrow and Stevenson, Solicitors appeared for the Applicant. His colleague Mrs Gordon was also in attendance. There was no appearance by or on behalf of the Respondent despite the CMD starting 10 minutes late to allow her 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 her absence. The case was heard together with a case for rent arrears under case reference number FTS/HPC/CV/24/2246.
7. The Tribunal had before it the Private Residential Tenancy Agreement between the parties dated 14 April 2020, the rent statement showing arrears of £3600 to 20 April 2024, the Notice to Leave and Recorded Delivery receipt dated 5 April 2024, the Recorded Delivery Proof of service dated 6 April 2024, various text messages and the Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003 addressed to Dumfries and Galloway Council with Recorded Delivery Proof of service dated 23 May 2024. The Tribunal considered these documents.

8. Mr Edment submitted he had just received information that two removal vans had recently been seen outside the Property, that the Respondent had not been at the Property the last two nights and that he understood the Respondent had indicated she had locked the doors and would post the keys through the letterbox.
9. The Tribunal enquired what grounds the application was proceeding. Mr Edment advised that he was proceeding on the basis that the Respondent had failed to give access and for rent arrears. He was no longer proceeding on the basis that the Applicant had ceased to be a registered Landlord as she was now registered. Arrears had increased to £5850 with the monthly rent being £450 and the last payment to account being made in September 2023. The Tribunal referred Mr Edment to the rent statement lodged and pointed out the last payment of rent appeared to be of £450 on 20 February 2024. He submitted that the Respondent made appointments and then would fail to give access which had led to difficulties getting the EICR. On being questioned by the Tribunal he confirmed his client had not raised an action for access against the Respondent. When further questioned by the Tribunal regarding how rent had been paid he stated he was not aware the Respondent was on benefits. The Tribunal also queried whether the Applicant had complied with the pre-action requirements. Mr Edment stated the Applicant had repeatedly sent letters to the Respondent and had attended the Property about the arrears but had now given up as she realised there was no real prospect of recovering the rent. The Tribunal queried whether he was aware of any change in circumstances which may have accounted for the rent not being paid. Mr Edment advised he was not aware of any change of circumstances but that as the Respondent did not engage with the Applicant it was impossible to say. He stated the Council had also not been able to engage with the Respondent.

### **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 Grounds 11(breach of tenancy agreement) and 12 (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 Grounds 11 and 12 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 Grounds 11 and 12 of schedule 3 of the 2016 Act and states the amount of arrears of £2700 and that the Respondent had refused access 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 10 May 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 was received by the Respondent on 6 April 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. No specific information had been given regarding the access issue and the Tribunal was not satisfied that the Applicant had made a case out under Ground 11 for failure to give access. The Respondent's arrears were increasing and stood at £5850, the monthly rent being £450. The arrears amounted to about thirteen months arrears. The Tribunal was satisfied that she had made a case out under Ground 12 in relation to the arrears. However, Ground 12 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 Tribunal was persuaded by Mr Edment's submissions that Ground 12 had been established and that it was reasonable to evict. The Applicant had tried unsuccessfully to keep the lines of communication open with the Respondent to get her to engage by sending letters regarding the arrears. It appeared to the Tribunal that the Respondent had not engaged at all with the Applicant. The Applicant could not be expected to continue to bear a loss of rental income when she had had no

indication from the Respondent as to when or if she would start to pay rent let alone start to pay off the rent arrears. On the other hand, the Respondent did not oppose the application. On the information given to the Tribunal it appeared the Respondent had moved out of the Property. That was a deciding factor in considering reasonableness. The Tribunal noted that notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Dumfries and Galloway Council had been served. The balance of reasonableness in this case weighted towards the Applicant.

17. In the circumstances the Tribunal considered that in terms of Ground 12 of Schedule 3 the Respondent was rent arrears for over three months 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.**

Shirley Evans

**15 November 2024**

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**Legal Member**

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**Date**