



**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/24/3004**

**Re: Property at 7F Queen Elizabeth Gardens, Clydebank, G81 3BX (“the Property”)**

**Parties:**

**James Calder, 52 Duntocher Road, Clydebank, G81 3LN (“the Applicant”)**

**Mr Izunna Jackson, 7F Queen Elizabeth Gardens, Clydebank, G81 3BX (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Helen Barclay (Ordinary Member)**

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

**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 dated 2 July 2024 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”) 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 21 June 2019;
  - (ii) Notice to Leave dated 3 May 2024 stating that proceedings will not be raised any earlier than 3 June 2024 together with proof of delivery by email;

- (iii) Section 11 notice to West Dunbartonshire Council together with proof of sending by email;
  - (iv) Rent Statement; and
  - (v) Emails from Clyde Property to the Respondent in compliance with the rent arrears pre-action protocol.
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 (“CMD”) on 4 December 2024, to take place by teleconference. Notification was sent to the parties in accordance with Rule 17(2) of the Rules of Procedure.
  3. Said notification together with a copy of the application paperwork was served upon the Respondent by Sheriff Officers on 25 October 2024.
  4. Both parties were invited to make written representations in advance of the CMD. On 13 November 2024 the Tribunal received a time to pay application in respect of a conjoined application FTS/HPC/CV/24/3005 from the Respondent. On 20 November 2024 the Tribunal received an email from the Applicant’s representative with a response to the time to pay application together with an updated rent statement. No other written representations were received from the Respondent.

### **Case Management Discussion**

5. The CMD took place on 4 December 2024 by teleconference. The Applicant was represented by Ms Alexandra Wooley of Bannatyne Kirkwood France and Co. The Respondent did not attend. The Tribunal noted that he had received notification of the CMD in accordance with Rule 17(2) of the Rules and had been given the opportunity to submit written representations and participate in the CMD. The Tribunal therefore determined to proceed with the CMD in his absence.
6. The Tribunal asked Miss Wooley for her submissions on the application. For the avoidance of doubt the following is a summary of what was discussed and does not constitute a verbatim account of the CMD.
7. Miss Wooley advised that the application related to a private residential tenancy which commenced in June 2019. The Respondent had fallen into significant rent arrears which had existed for a period of three years, having accrued since January 2022. The total balance stood at £5925.60, with the last payment to the account being a payment of £612.85 on 28 November 2024. The Respondent had been sent a notice to leave on 3 May 2024 which expired on 3 June 2024. The Applicant was now seeking an eviction order.
8. Miss Wooley submitted that it would be reasonable for an eviction order to be granted. She made reference to the pre-action letters from the Applicant’s agent

to the Respondent dated 15 June 2023 and 8 March 2024 which had been submitted with the application. The arrears reflected almost ten months of rent and were longstanding. The Applicant had a mortgage over the property with approximately £45000 outstanding. The uncertainty of the rent payments and the existence of the arrears had been impacting the Applicant's ability to pay the mortgage and cover other property costs including repairs and factoring. Whilst it was encouraging that the Respondent had engaged with the process by submitting a time to pay application in the conjoined application, the Applicant still wished to recover the property. Miss Wooley highlighted that if an eviction order was granted the local authority would have an obligation to provide the Respondent with emergency accommodation.

9. The Tribunal asked about the Respondent's personal circumstances. Miss Wooley confirmed that he resided alone, which was reflected in the time to pay application. She did not know his age. The Respondent had not advised the Applicant of any health conditions or other vulnerabilities that may make it more difficult for the Respondent to obtain alternative accommodation. Miss Wooley advised that the information the Respondent had provided in the time to pay application, which suggested that he had a business which had experienced problems during the coronavirus pandemic, was entirely new to the Applicant. The Respondent had not previously mentioned this as a reason for the unpaid rent. He had on one occasion advised the Applicant that he was experiencing financial difficulties but had not given any detail. Miss Wooley confirmed that this was the only property that the Applicant rented out.
10. The Tribunal adjourned to deliberate, during which time Miss Wooley left the call, before resuming the CMD and confirming its decision.

### **Relevant Legislation**

11. 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**

12. The Applicant let the property to the Respondent under a tenancy agreement which commenced on 21 June 2019.
13. The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
14. In terms of Clause 8 of the said tenancy agreement the Respondent undertook to make payment of rent at the rate of £595 per calendar month.
15. The Applicant sent a rent increase notice to the Respondent which increased the rent to £612.85 per month from 21 July 2023.
16. On 3 May 2024 the Applicant delivered a notice to leave to the Respondent by email.
17. The Respondent consented to delivery of notices by email under the terms of the tenancy agreement between the parties.
18. 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 3 June 2024.
19. The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.

20. As at the date of service of the Notice to Leave arrears in the sum of £3248.50 were outstanding.
21. As at the date of this decision arrears in the sum of £5925.60 are outstanding.
22. The Applicant has a mortgage over the property with approximately £45000 outstanding. The arrears have impacted on the Applicant's ability to maintain both the mortgage payments and property costs.
23. The Applicant does not own any other rental properties.
24. The Respondent is self-employed.
25. The Respondent's payments to the rent account have been sporadic and inconsistent.
26. The Respondent resides alone.
27. The Applicant's agent wrote to the Respondent on 15 June 2023 and 8 March 2024 with information regarding the tenancy and arrears, and details of advice and support. The Applicant's agent offered to enter into payment plans with the Respondent regarding the arrears.
28. The arrears are not due to any known failure or delay in the payment of a relevant benefit.

### **Reasons for Decision**

29. The Tribunal determined that it had sufficient information upon which to make a decision at the CMD and that to do so would not be prejudicial to the parties. The Respondent had made no representations regarding the application, with the exception of submitting a time to pay application in the conjoined case, and had not participated in the CMD. Accordingly the Tribunal did not identify any facts in dispute, nor any issues to be resolved, that would require a hearing to be fixed. The Tribunal was satisfied that it could make relevant findings in fact based on the information provided by the Applicant.
30. The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicant's 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 sections 54 and 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 documents submitted by the Applicant and the verbal submissions at the CMD, that rent arrears of £3248.50 were outstanding when the notice to leave was sent to the Respondent. The Tribunal also accepted that the sum had increased to £5925.60 as at the date of the CMD. The Respondent had not put forward any representations to contradict the evidence from the Applicant in this regard. The Tribunal was therefore satisfied



that the Respondent had been in arrears for three or more consecutive months, both at the date of service of the notice to leave and as at the date of the CMD.

33. The Tribunal then considered the reasonableness of making an eviction order which required the Tribunal to identify those factors relevant to reasonableness and determine what weight to apply to these.
34. The Tribunal took into account the fact that the arrears were significant and the Respondent had repeatedly failed to meet the rent due. He had referred in the aforementioned time to pay application to difficulties with his business as a result of the coronavirus pandemic, however as he had not attend the CMD the Tribunal had been unable to obtain further information from him on this point. The Tribunal noted that in fact the arrears had increased significantly in recent months, as evidenced by the rent statement produced by the Applicant. At the start of the year they stood at £1097.10. By the date of the CMD they were almost £6000. The Tribunal found it difficult to accept that issues during the coronavirus pandemic were the root cause of the Respondent's failure to make payments. Furthermore no evidence had been produced by the Respondent to suggest that the arrears were due to any failure or delay in the payment of a relevant benefit and it did not appear that he had a current entitlement to the housing element of universal credit. The Tribunal therefore applied significant weight to the level of arrears and the pattern of non-payment as a relevant factor.
35. The Tribunal considered the effect of the arrears on the Applicant as a relevant factor. The Applicant had clearly been impacted financially. He was not a professional landlord, with this being his only rental property. The Tribunal could reasonably assume that the uncertainty surrounding the rent payments would be a source of significant stress, particularly in light of the Applicant's liabilities in terms of his mortgage and other property costs. This was also a factor to which the Tribunal applied significant weight.
36. The Tribunal considered the extent of the Applicant's compliance with the rent arrears pre-action protocol. The Tribunal was satisfied, based on the correspondence produced by the Applicant between the Applicant's agent and the Respondent, that the Applicant's agent had provided the Respondent with the information required under the protocol on 15 June 2023 and 8 March 2024.
37. The Tribunal then considered the Respondent's circumstances, noting that he resided alone with no dependents who would be at risk in the event that an eviction order was granted. He himself had no known health issues or vulnerabilities. This allayed any concerns the Tribunal may have had regarding the impact of eviction on the occupants of the property. The Tribunal also had regard to the local authority's statutory obligations were the Respondent to be made homeless as had been highlighted by Miss Wooley at the CMD.
38. Accordingly, taking the above factors into account as relevant to the assessment of reasonableness, the Tribunal ultimately concluded that the balance weighed in favour of making an eviction order and ground 12 had been met.
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.**

Ruth O'Hare

**4 December 2024**

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**Legal Member/Chair**

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**Date**