

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**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/24/3337**

**Re: Property at 188 Foundry, Winterthur Lane, Dunfermline, Fife, KY12 9GB (“the Property”)**

**Parties:**

**Kingdom Initiatives Limited, Saltire Centre, Pentland Drive, Glenrothes, KY6 2DA (“the Applicant”)**

**Ms Kirsten Kirk, 188 Foundry, Winterthur Lane, Dunfermline, Fife, KY12 9GB (“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 188 Foundry, Winterthur Lane, Dunfermline, Fife, KY12 9GB 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 forth and from the Property and to make the same void and redd that the Applicant or others in their 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 November 2022, a rent statement to 1 June 2024 showing arrears of £3908.73, a Notice to Leave with Sheriff Officer's Execution of Service dated 11 March 2024, a rent increase notice dated 25 April 2023, letters from the Applicant to the Respondent dated 30 January, 29 February, 26 March and 8 May 2024 and an email dated 19 July 2024 addressed to Fife Council with a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003.
3. On 12 August 2024, the Tribunal accepted the application under Rule 9 of the Regulations.
4. On 7 November 2024 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 28 November 2024. The Tribunal advised parties that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 17 December 2024. This paperwork was served on the Respondent by Stephen McCallum, Sheriff Officer, Kirkcaldy on 8 November 2024 and the Execution of Service was received by the Tribunal administration.
5. The Respondent did not make any representations.
6. On 13 December 2024 the Applicant's solicitor lodged an up to date rent statement to 1 December 2024 showing arrears of £7380.73, a letter dated 26 April 2024 with a rent increase notice.

### **Case Management Discussion**

7. The Tribunal proceeded with a CMD on 17 December 2024 by way of teleconference. Ms Brechany from T C Young, solicitors appeared for the Applicant. 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 arrears under case reference number FTS/HPC/CV/24/3339.
8. The Tribunal had before it the Private Residential Tenancy Agreement between the parties dated 14 November 2022, the rent statements to 1 June and 1 December 2024, the Notice to Leave with Sheriff Officer's Execution of Service dated 11 March 2024, the rent increase notice dated 25 April 2023, letters from the Applicant to the Respondent dated 30 January, 29 February,

26 March, 26 April and 8 May 2024, the rent increase notice dated 26 April 2024 and the email dated 19 July 2024 addressed to Fife Council with a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003. The Tribunal considered these documents.

9. Ms Brechany submitted that she was seeking an order for eviction based on rent arrears. The Notice to Leave had been served by Sheriff Officers on 11 March 2024. The rent had been increased to £585.90. She submitted that in terms of Clause 8 of the tenancy agreement the Respondent had agreed to pay rent to the Applicant. Arrears have increased to £7380.73. Arrears amounted to more than one month's rent. The Respondent had been in arrears for more than three consecutive months.
10. Ms Brechany further submitted that since the Notice to Leave had been served the Applicant had continued to try to engage with the Respondent. On 27 July 2024 they had offered support by way of a letter. On 16 August 2024 they had called the Respondent. They had left a voicemail. They called again on 27 August 2024 and had again left a voicemail. On 1 November 2024 they had carried out a house visit. They had attempted to visit before this also. They had carried out a joint visit with Fife Council. Fife Council had advised in June 2024 that they were closing down the S11 case due to the Respondent's non engagement.
11. With reference to the rent statement Ms Brechany submitted that arrears started to significantly increase from February 2023. The last payment was of £526.70 on 17 May 2024. The Respondent is 28 years of age and is the sole occupant. The Applicant understood the Respondent was employed as a home carer. The Applicant understood that she may have been entitled to Universal Credit but as the Respondent had never engaged with them they could not get her to complete the necessary forms for discretionary housing payment. Ms Brechany submitted that arrears had a significant impact on the Applicant's ability to keep rents at an affordable level, it impacted on their ability to maintain their housing stock and development of new houses as they could not always rely on their parent company Kingdom Housing Association to assist them. In the circumstances it was reasonable to evict.
12. In answering questions from the Tribunal Ms Brechany confirmed she had understood the Respondent was in employment when she became a tenant but that the Applicant had not retained the data in that regard. She understood the Respondent lived alone with no dependents.

### **Reasons for Decision**

13. 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.
14. 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 Ground 12 (rent arrears).
15. 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.
16. 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 Ground 12 of Schedule 3 is 28 days.
17. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states that it proceeds on Ground 12 of schedule 3 of the 2016 Act and states the amount of arrears 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 9 April 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 dated was delivered by Sheriff Officers on the Respondent on 11 March 2024. Following upon the Upper Tribunal decision of *Smith v MacDonald & Munro [2021] UT 20* a Notice to Leave is held to be served on the day it is delivered by Sheriff Officers and there was no requirement to provide an additional 48 hours in terms of section 62(5) of the 2016 Act. Accordingly, sufficient notice had been given. 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.

18. The Tribunal considered the Respondent had not opposed the order for eviction. The Respondent's arrears were increasing and stood at £7380.73, the monthly rent being £585.90. However, Ground 12 is a 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.
19. The Tribunal considered the issues set out in the application together with the documents lodged in support. The Tribunal was persuaded by Ms Brechany's submissions that Ground 12 had been established and that it was reasonable to evict. The Applicant had clearly done everything they could to avoid taking action and had tried unsuccessfully to keep the lines of communication open with the Respondent to assist the Respondent. Even after the Notice to Leave had been served they continued to attempt to get the Respondent to engage with them, but to no avail. On the other hand, the Respondent did not oppose the application. She had not engaged at all with the Applicant. The Tribunal noted that notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Fife Council had been served. The balance of reasonableness in this case weighted towards the Applicant.
20. In the circumstances, the Tribunal considered that in terms of Ground 12 of Schedule 3 the Respondent was in rent arrears and that it is reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

### **Decision**

21. 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

17 December 2024

Legal Member

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Date