



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of Rule 17(4) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) in respect of an application under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the Rules**

**Chamber Ref:** FTS/HPC/EV/24/2687

**Re:** Property at Ground Floor Right (Flat B), 34 Mid Stocket Road, Aberdeen, AB15 5JJ (“the Property”)

**Parties:**

Emslie Properties Limited, PO Box 29487, Banchory, Aberdeenshire, AB31 9AN (“the Applicant”) per their agents Raeburn Christie Clark & Wallace LLP 12-16 Albyn Place, Aberdeen, AB10 1PS (“the Applicant’s Agents”)

Mr Paul Hampson, Ground Floor Right (Flat B), 34 Mid Stocket Road, Aberdeen, AB15 5JJ (“**the Respondent**”)

**Tribunal Members:**

Karen Moore (Legal Member) and Elaine Munroe (Ordinary Member)

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

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory ground being established and the statutory procedure having been carried out, it is reasonable to grant the Order sought and so the Tribunal granted the Order.

**Background**

1. By application dated 12 June 2024 (“the Application”), the Applicant’s Agents applied to the Tribunal for an Order for eviction and possession of the Property based on Ground 12 of Schedule 3 to the 2016 Act, that the tenant has been in rent arrears for three or more consecutive months.
2. The Application comprised the following:

- i) copy private residential tenancy agreement between the Parties dated 19 October 2022 showing a monthly rent of £450.00;
  - ii) copy Notice to Leave in terms of Ground 12 of Schedule 3 to the Act dated 7 May 2024 with proof of service;
  - iii) copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to Aberdeen City Council being the relevant local authority with proof of receipt;
  - iv) copy rent statement showing arrears of £2,700.00 due and owing at June 2024 and with no payments received since December 2023;
  - v) pre-action requirements (PARs) letters sent to the Respondent.
3. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (the "CMD") was fixed for 17 December 2024 at 10.00 by telephone conference. The CMD was intimated to both Parties, and, in particular, was intimated to the Respondent by Sheriff Officer service on 7 November 2024.
4. Prior to the CMD, the Applicant's Agents amended the amount of rent due and owing to £4,950.00 and intimated this amendment to the Respondent. The Applicant's Agents reserved the right to make a further amendment increasing the rent due in the event that the December 2024 instalment was unpaid.

#### **CMD**

5. The CMD took place on 17 December 2024 at 10.00 by telephone. The Applicant was not present and was represented by Mr. Doran of the Applicant's Agents. The Respondent was not present and was not represented. He did not submit written representations.
6. Mr. Doran confirmed that the Applicant sought an eviction Order. He advised that there had been no contact from the Respondent since the PARS letters and Notice to Leave were issued and no payments had been made since December 2023. Mr. Doran confirmed that the rent currently due and owing is £5,400.00. The Tribunal amended the Application to this extent.
7. With regard to the circumstances of the Parties, Mr. Doran advised that the Applicant has a portfolio of sixteen properties and rely on rent payments for the business cash flow
8. With regard to the Respondent, Mr. Doran advised that he had been in employment when the tenancy began and appears that he may still be in employment. No contact has been made by him in spite of the PARs letters and other attempts to engage with him.

## Findings in Fact

9. From the Application and the CMD, the Tribunal made the following findings in fact: -
- i) There is a private residential tenancy of the Property between the Parties commencing on 19 October 2022;
  - ii) The monthly rent is £450.00;
  - iii) There were rent arrears of £2,700.00 at May 2024, which amounts to 6 months' rent at that time;
  - iv) The Respondent has not made any payments in respect of rent since December 2023;
  - v) Rent due and owing by the Respondent amounts to £5,400.00 to date;
  - vi) The Respondent is and has been in rent arrears for three or more consecutive months since March 2024;
  - vii) A valid Notice to Leave was issued by the Applicant to the Respondent;
  - viii) PAR letters were issued on behalf of the Applicant to the Respondent;
  - ix) The Respondent is refusing to pay the rent due without reason;

## Issue for the Tribunal

10. The issue for the Tribunal was whether or not it should grant an Order for eviction in terms of Ground 12 of Schedule 3 to the Act as set out in the Application. Ground 12 states: "*12(1)It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. (2),,(3) The First-tier Tribunal may find that the ground named by sub-paragraph (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. (5)For the purposes of this paragraph (a)references to a relevant benefit are to (i)a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971), (ii)a payment on account awarded under regulation 91 of those Regulations, (iii)universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent, (iv)sums payable by virtue of section 73 of the Education (Scotland) Act 1980, (b)references to delay or*

*failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant. (6)Regulations under sub-paragraph (4)(b) may make provision about (a)information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy), (b)steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy, (c)such other matters as the Scottish Ministers consider appropriate.”*

### **Decision and Reasons for Decision**

11. The Tribunal had regard to all the information before it and to its Findings in Fact.
12. Having found that the Respondent has been in rent arrears for three or more consecutive months, the Tribunal found that the eviction Ground has been met.
13. The Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal “*may do anything at a case management discussion .....including making a decision*”. The Tribunal took the view that it had sufficient information to make a decision and so proceeded to determine the Application.
14. The statutory ground and procedure being established, and the Application not being opposed, the issue for the Tribunal was to determine if it is reasonable to grant the Order.
15. The Tribunal, having no evidence in respect of state benefits, was satisfied that the Respondent being in arrears of rent is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
16. The Tribunal noted that the Applicants had followed the statutory procedures and had followed the Government Guidance on pre-action protocols for notices issued after 1<sup>st</sup> October 2022.
17. The Tribunal then had regard to the circumstances of the Parties.
18. The Tribunal must establish, consider and properly weigh the “whole of the circumstances in which the application is made” (Barclay v Hannah 1947 S.C.

245 at 249 per Lord Moncrieff) when deciding whether it is reasonable to grant an order for possession.

19. The Tribunal then looked to balance the rights and interests of both parties.
20. The Tribunal accepted that the Applicant as landlords is entitled to rely on the rental income in order to meet the running costs of the Property and is entitled and obliged to manage its portfolio to achieve best value for the company. The Tribunal had regard to the fact that the Respondent has not engaged in any way with the Applicants and their representatives in respect of the rent arrears and has not made any payments of rent in over a year. The Tribunal took the view that the level of rent arrears and pattern of non-payment is not tenable for either Party.
21. With regard to alternative accommodation, the Tribunal had regard to the fact that, if evicted and made homeless, the Respondent would have protection in terms of Part II of the Housing (Scotland) Act 1987 and so would be able to access advice and assistance on homelessness.
22. Accordingly, the Tribunal was satisfied that it is reasonable to issue an eviction order.
23. This Decision is 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.**

# K. Moore

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Legal Member/Chair

17 December 2024.

Date