



**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/24/2884**

**Re: Property at 94 Summerhill Drive, Aberdeen, AB15 6TZ (“the Property”)**

**Parties:**

**Ms Gillian Rae, VillaT52, 9 Jumeirah Park, PO Box 5003325 (“the Applicant”)**

**Ms Tracey Attram, 94 Summerhill Drive (top floor), Aberdeen, AB5 6TZ (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Frances Wood (Ordinary Member)**

**Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) concluded that it would not be reasonable to make an eviction order in this case. The tribunal therefore determined to refuse the application.

**Background**

- 1** This is an application for an eviction order under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”).
- 2** The application was referred to a case management discussion (“CMD”) to take place by teleconference on 24<sup>th</sup> March 2025. The tribunal gave the parties notification of the CMD in terms of Rule 17(2) of the Rules. The Respondent received notification by sheriff officers on 10 February 2025.
- 3** Both parties were given the opportunity to make written representations in advance of the CMD. On 6 March 2025 the Applicant’s representative, Aberdeen Considine Solicitors, submitted copy correspondence from the Applicant’s letting

agent to the Respondent, and an updated rent statement. The Respondent did not submit any written representations to the tribunal.

## **The CMD**

- 4 The CMD took place by teleconference on 24 March 2025. Ms Elaine Elder of Aberdeen Considine Solicitors represented the Applicant. The Respondent joined the call.
- 5 The tribunal had the following documents before it:-
  - (i) Form E application form dated 25 June 2024;
  - (ii) Excerpt from the online landlord register confirming the Applicant's landlord registration;
  - (iii) Title sheet ABN382;
  - (iv) Private residential tenancy agreement dated 9 September 2021;
  - (v) Notice to leave dated 19 March 2024 and proof of delivery by email;
  - (vi) Rent statement up to June 2024;
  - (vii) Statement of Gillian Rae;
  - (viii) Marriage certificate between Christopher Rae and Gillian Stevenson;
  - (ix) Section 11 notice to Aberdeen City Council and proof of delivery by email;
  - (x) Rent statement up to February 2025; and
  - (xi) Copy correspondence from the Applicant's letting agent to the Respondent in compliance with the rent arrears pre-action protocol.
- 6 The tribunal explained the purpose of the CMD and asked parties for their submissions on the application. For the avoidance of doubt the following is a summary of the key elements of the discussion relevant to the tribunal's determination of the application, and does not consist of a verbatim account.
- 7 Ms Elder explained that the Applicant sought an eviction order. A notice to leave had been sent to the Respondent in March 2024, with an expiry date of 19 April 2024. The Applicant had no option but to raise the tribunal application after the Respondent remained in the property. Ms Elder advised that there had been some recent developments in that the Respondent had made a lump sum payment of £1900 to the rent account, which had reduced the arrears to £295. However, the Applicant was maintaining her motion for an eviction order. Ms Elder outlined the history of the rent account, noting that the Applicant had previously written off arrears in the sum of £600 in order to assist the Respondent and had revoked a rent increase of 3%. She had also taken steps in accordance with the rent arrears pre-action protocol. There had been no payments received from the Respondent for a prolonged period of time and no contact from the Respondent with proposals for repayment.
- 8 The tribunal heard submissions from the Respondent. She explained that she had fallen into arrears towards the end of 2023. She had been in full time employment with a local supermarket but her job was made redundant. Her employer had been unable to secure her another full time position, only part-time hours. She had been receiving protected pay for a period of time but that had eventually stopped in around February or March 2024. Her income had reduced

as a result. She had to pay to get taxis to work as her car had broken down, and she could not take public transport due to her working hours. She suffered from depression and high blood pressure. She had lost sight of her rent, and what payments she had missed. When she received the notice to leave she had explained everything to the Applicant's letting agent. She had sent an email proposing to pay rent plus arrears at £125 per month. She had then secured new employment with Scotrail which started in July 2024. She began paying her rent plus £125 per month. She conceded that she had forgotten about her payment in December, due to her working hours, however she had paid £1,000 in February to make up for it. She had since released money from her pension to pay £1900 and would pay off the remaining £295 by next Friday.

- 9 The Respondent expressed surprise that the Applicant was seeking an eviction order. The Respondent had been in the property since 2021. She lived by herself and had no family in the area. She was originally from Leeds but had moved to Aberdeen to be with her partner. That relationship had since ended. The Respondent confirmed that she was aged 61. If an eviction order was granted she would be homeless. She could not lose her home, as it would likely mean she would lose her job. Her new job was at a much higher salary, more than three times her previous wage. She had passed her probationary period and was now in a permanent role. She had other bills to pay but could comfortably afford the rent for the property moving forward. She intended to get ahead of her rent payments in future. The Respondent confirmed that she had been in regular contact with the Applicant's letting agent regarding her arrears and had emails to support this.
- 10 Ms Elder advised that she had no information regarding any contact between the Respondent and the Applicant's letting agent. The tribunal asked if Ms Elder wished the opportunity to seek clarification from the Applicant, however Ms Elder advised that the Applicant's instructions to her were to seek an eviction order in view of the history of the case.
- 11 The tribunal adjourned the CMD to deliberate, at which point parties left the call, before resuming the discussion and confirming its decision.

## **Relevant legislation**

- 12 The Tribunal considered the following provisions of the Private Housing (Tenancies) (Scotland) Act 2016:-

### ***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**

### **12 Rent arrears**

*“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.”*

## **Findings in Fact**

- 13.** The Applicant is the registered owner of the property.
- 14.** The Applicant and Respondent entered into a tenancy agreement in respect of the property, which commenced on 16 September 2021.
- 15.** The tenancy between the parties was a private residential tenancy as defined by section 1 of the Private Housing (Tenancies) (Scotland) Act 2016.
- 16.** In terms of Clause 8 of the said tenancy agreement the Respondent undertook to make payment of rent at the rate of £375 per month.
- 17.** On 19 March 2024 the Applicant's letting agent sent the Respondent a notice to leave by email.
- 18.** In terms of Clause 4 of the said tenancy agreement the Respondent consented to the use of email for the delivery of notices under the 2016 Act and in relation to the tenancy agreement.
- 19.** The notice to leave cited ground 12 of schedule 3 of the 2016 Act and stated that proceedings for possession would not be raised any earlier than 19 April 2024.
- 20.** As at the date of service of the notice to leave rent arrears in the sum of approximately £1460 were outstanding.
- 21.** On 24 June 2024 the Applicant's representative, Aberdeen Considine Solicitors, emailed Aberdeen City Council with a notice under section 11 of the Homelessness etc (Scotland) Act 2003 intimating that proceedings would be raised against the Respondent for recovery of the property.
- 22.** As at the date this application was made rent arrears in the sum of £1845 were outstanding.
- 23.** As at the date of this decision arrears in the sum of £295 are outstanding.
- 24.** The arrears are not known to be due to any failure or delay in the payment of a relevant benefit.
- 25.** The Applicant's letting agent has written to the Respondent informing her of the arrears and her rental obligations, has offered to enter into payments plans regarding the rent and arrears, and has directed the Respondent to agencies for advice and support.



26. The Applicant previously wrote off arrears of around £600 to assist the Respondent and has revoked a previous rent increase.
27. The Respondent fell into arrears due to a change in her employment situation. The Respondent lost her full time position and was reduced to part-time hours.
28. The Respondent secured new employment in July 2024 with Scotrail. The Respondent's job with Scotrail is now permanent. The Respondent's income has increased as a result.
29. The Respondent contacted the Applicant's letting agent to advise of her new employment and offered to make payments of rent plus £125 per month to the arrears.
30. The Respondent commenced said payments in September 2024. The Respondent has since maintained said payments, with the exception of December 2024. The Respondent made an additional payment in February to make up the shortfall.
31. The Respondent has released money from her pension to pay towards her rent arrears in the sum of £1900.
32. The Respondent is aged 61 and lives alone. The Respondent has no family in the local area.

### **Reasons for Decision**

33. The tribunal was satisfied it had sufficient information before it to make relevant findings in fact and reach a decision on the application having regard to the application paperwork and the submissions heard at the CMD. In terms of Rule 17(4) and Rule 18(1) of the Rules the tribunal determined that it could make a decision at the CMD as there were no issues to be resolved that would require a hearing and the tribunal was satisfied that to make a decision would not be contrary to the interests of the parties.
34. Based on the application paperwork the tribunal was satisfied that the tenancy between the parties was a private residential tenancy, and that the Respondent had been given a notice to leave that complied with the provisions of the 2016 Act. The tribunal was also satisfied that the Applicant had given the local authority notice under section 11 of the Homelessness etc (Scotland) Act 2003. The tribunal therefore considered whether ground 12 of schedule 3 of the 2016 Act had been met in this case.
35. The tribunal was satisfied based on the rent statement produced by the Applicant, and the submissions from the parties at the CMD, that the rent account had been in arrears for three or more consecutive months. The tribunal therefore considered whether it was reasonable to make an eviction order on

account of the facts in this case, which required the tribunal to identify those factors relevant to reasonableness and determine what weight to give to them.

36. The tribunal gave the most weight in this case to the level of arrears as at the date of the CMD. They had reduced to £295. It was difficult for the tribunal to accept that an eviction order based on arrears of that level was reasonable. Whilst the tribunal took into account the Applicant's circumstances, including the concessions she had previously made during the tenancy, in terms of writing off arrears and revoking a rent increase, ultimately the tribunal accepted the Respondent's account of events as narrated in her submissions at the CMD. The tribunal accepted that she had fallen into difficulties with her rent due to changes in her employment, which was exacerbated by poor mental health. The tribunal noted the actions she had since taken to remedy the situation. She had secured more lucrative and permanent employment, and had made significant efforts to reduce her arrears balance by accessing her pension fund. The tribunal found her evidence on these points to be upfront and comprehensive, and in line with the rent statement produced. She gave no reason for the tribunal to doubt the credibility of her submissions. The tribunal was therefore satisfied that she was now in a position to meet her future rental obligations and sustain the tenancy moving forward.
37. Accordingly the tribunal concluded that the balance of reasonableness weighed in favour of not making an eviction order in this case. The tribunal therefore determined that ground 12 was not met and determined to refuse the application.
38. 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

---

Legal Member/Chair

---

31 March 2025  
Date