



**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/24/3020**

**Re: Property at 59 Bathville Road, Kilbirnie, KA25 6AQ (“the Property”)**

**Parties:**

**LHP Solutions Ltd, Clyde Offices, 2nd Floor, 48 West George Street, Glasgow, G2 1BP (“the Applicant”)**

**Mr Gary Wilkinson, 59 Bathville Road, Kilbirnie, KA25 6AQ (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Elizabeth Williams (Ordinary Member)**

**Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the provisions of section 51 and grounds 12 and 12A of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) have been met in this case. The Tribunal therefore made an eviction order.

**Background**

- 1 The Applicant applied to the Tribunal for an eviction order 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 2016 Act. The Applicant relied upon grounds 12 and 12A of schedule 3 of the 2016 as the grounds for possession in this case.
- 2 The application was referred to a Case Management Discussion (“CMD”) to take place by teleconference on 6 March 2025. Notification of the CMD was given to the parties in accordance with Rule 17(2) of the Rules. Said notification was served upon the Respondent by sheriff officers on 29 January 2025. Both parties were given the opportunity to make written representations.

## The CMD

- 3 The CMD took place on 6 March 2025 by teleconference. Mrs Katie Jalil and Mr Rafiq Jalil joined the call as representatives of the Applicant. Mrs Jalil confirmed that she would primarily address the Tribunal. The Respondent was also in attendance.
- 4 The Tribunal had the following documents before it:-
  - (i) Form E application form;
  - (ii) Title Sheet AYR120316 confirming the Applicant as the registered owner of the property;
  - (iii) Proof of the Applicant's landlord registration in the form of an excerpt from the online landlord register;
  - (iv) Private residential tenancy agreement between the parties dated 24 May 2024;
  - (v) Notice to leave 2 May 2024 together with proof of service on the Respondent by email;
  - (vi) Section 11 notice to North Ayrshire Council together with proof of delivery by email; and
  - (vii) Rent Statement.
- 5 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 those submissions relevant to the Tribunal's determination of the application and does not constitute a verbatim account of the discussion.
- 6 Mrs Jalil explained that the application had been submitted to the Tribunal due to the rapidly increasing rent arrears. The Respondent had stated that he was withholding his rent due to repairs. Mr Jalil explained that there had been various repairs reported that had been addressed by the Applicant, including a leak from the roof and problems with the boiler. The Applicant had tried to access the property on a number of occasions, but regularly faced cancelled appointments. There had been threats towards members of staff from the Respondent. Mrs Jalil confirmed that the last payment of rent was received in June 2023. The arrears now stood at £9000. The Applicant continued to send the Respondent emails with updates regarding his arrears.
- 7 The Respondent denied the allegations of threatening behaviour. He outlined various historic and ongoing repairing issues, including vermin and leaks from the roof. Nothing had ever been done. He accepted that no rent had been paid since June 2023, and that arrears of £9000 had accrued. He had been withholding his rent, having received advice that he could legally do so. The Respondent confirmed that he resided at the property alone and was aged 46. He did not want to stay in the property. He did not wish to have to continue his dealings with the Applicant. He had spoken to the council and had been advised that he required an eviction order from the Tribunal before they would assist him with rehousing. He wanted the eviction order to be granted on that basis.

- 8 The Tribunal adjourned the CMD to deliberate, at which point parties left the call, before resuming the CMD and confirming its decision.

## **Relevant Legislation**

- 9 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, Parts 12 and 12A**

*“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.

**12A** (1) It is an eviction ground that the tenant has substantial rent arrears.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) the tenant has accrued rent arrears under the tenancy in respect of one or more periods,

(b) the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy when notice to leave is given to the tenant on this ground in accordance with section 52(3), and

(c) the Tribunal is satisfied that it is reasonable to issue an eviction order.

(3) In deciding under sub-paragraph (2) whether it is reasonable to issue an eviction order, the Tribunal is to consider—

(a) whether the tenant being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit,

(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers under paragraph 12(4)(b) (and continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022).

*(4) For the purpose of this paragraph—*

*(a) references to a relevant benefit are to—*

*(i) a rent allowance or rent rebate under the Housing Benefit Regulations 2006 (S.I. 2006/213),*

*(ii) a payment on account awarded under regulation 93 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.”*

## **Findings in Fact**

11. The Applicant is the registered owner of the property.
12. The Applicant and Respondent entered into a tenancy agreement in respect of the property, which commenced on 24 May 2021.
13. The tenancy between the parties was a private residential tenancy as defined by section 1 of the Private Housing (Tenancies) (Scotland) Act 2016.
14. In terms of Clause 8 of the said tenancy agreement the Respondent undertook to make payment of rent at the rate of £450 per month.
15. On 2 April 2024 the Applicant sent the Respondent a notice to leave by email.
16. In terms of Clause 4 of the said tenancy agreement the Respondent consented to the service of notices under the tenancy agreement by email.
17. The notice to leave cited grounds 12 and 12A of schedule 3 of the 2016 Act and stated that proceedings for possession would not be raised any earlier than 3 May 2024.
18. As at the date of service of the notice to leave arrears in the sum of £4050 were outstanding.
19. On 2 May 2024 the Applicant emailed North Ayrshire 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.



20. The arrears have increased to £9000 as at the date of this decision.
21. The last payment to the rent account was a payment of £350 on 29 June 2023.
22. The Respondent has been withholding his rent since June 2023 to effect the completion of repairs.
23. The Respondent is aged 46 and resides alone.
24. The Respondent does not wish to remain in the property.
25. The Respondent has spoken with the council regarding rehousing. The Respondent has been advised that he requires an eviction order from the Tribunal before they will assist him.

### **Reasons for Decision**

26. 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 to do so would not be contrary to the interests of the parties. Whilst there was clearly a dispute between the parties on aspects of this case, ultimately the Respondent had confirmed his consent to the granting of an eviction order.
27. 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 grounds 12 and 12A of schedule 3 of the 2016 Act had been met in this case.
28. The Tribunal accepted based on the rent statement produced by the Applicant and the submissions from the parties at the CMD that there were rent arrears in the sum of £9000 as at the date of the CMD. 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.
29. The Tribunal noted the dispute between the parties in respect of the history of repairs at the property and the conduct allegations. The Tribunal could not make any findings regarding these matters at the CMD, and considered that it did not require to do so on the basis of the Respondent's position regarding this application.

30. The Tribunal considered that the overriding factor in its consideration of reasonableness was the fact that the Respondent did not wish to stay in the property. He wanted to be rehoused by the council. The making of an eviction order would assist him with that. He did not object to an eviction order on that basis. The Tribunal considered that it would be in the best interests of both parties for an eviction order to be granted in this case. It was clear that the relationship between them had broken down and it would not serve any purpose for the situation to continue any further, particularly having regard to the level of rent arrears that had accrued over a prolonged period of time.
31. The Tribunal therefore determined that both grounds 12 and 12A of schedule 3 of the 2016 Act been met and made an eviction order.
32. 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

**6 March 2025**

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**Legal Member/Chair**

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**Date**