

**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/24/4611**

**Re: Property at 408 Bellshill Road, Motherwell, ML1 3SR (“the Property”)**

**Parties:**

**Mr Roy Wolfin, Flat 7/1, 336 Meadowside Quay Walk, Glasgow, G11 6AW (“the Applicant”)**

**Mr Dawid Nykiel, 408 Bellshill Road, Motherwell, ML1 3SR (“the Respondent”)**

**Tribunal Members:**

**Alison Kelly (Legal Member) and David Fotheringham (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for eviction should be granted.**

**Background**

1. On 4<sup>th</sup> October 2024 the Applicant lodged an Application with the Tribunal under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondent from the property under Ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.
2. Lodged with the application were: -
  - i. Copy Private Residential Tenancy Agreement showing a commencement date of 29<sup>th</sup> April 2021 and a rent of £400 per month;
  - ii. Copy Notice to Leave dated 27<sup>th</sup> August 2024;
  - iii. Certificate of Service by Sheriff Officer confirming service of Notice to Leave on 27<sup>th</sup> August 2024;

- iv. Section 11 Notice and proof of service;
  - v. Four Pre Action Requirement letters
  - vi. Copy Rent Statement showing arrears of £4251.13 as at 29<sup>th</sup> September 2024;
- 3. The Application was served on the Respondent by Sheriff Officers on 4<sup>th</sup> March 2025.
  - 4. On 20<sup>th</sup> March 2025 the Respondent sent a letter to the Tribunal providing an explanation as to why he was in rent arrears and asking for an opportunity to pay the debt.
  - 5. On 16<sup>th</sup> April 2025 the Applicant's agent sent an email to the Tribunal attaching an up to date rent statement, showing arrears of £6651.13.

### **Case Management Discussion**

- 6. The Case Management Discussion ("CMD") took place by teleconference. The Applicant was represented by Mr Girdwood of Guardian Letting and Sales. There was no attendance by the Respondent or any representative on his behalf.
- 7. Given that the Respondent had written to the Tribunal after having received service of the papers, the Tribunal was satisfied that the Respondent had received reasonable notice of the date, time and place of the hearing in terms of Rule 24(1) and decided to proceed in his absence.
- 8. The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. The Chairperson explained that the Applicant needed to provide sufficient evidence to establish the ground of eviction, and that it was reasonable for the Tribunal to grant the order.
- 9. Mr Girdwood sought an order for eviction in terms of ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016. He said that the Respondent was now in arrears of rent in the amount of £6651.13, being well over one year of arrears. He said that, apart from what the Respondent said in his letter, he was not aware of any application being made by the Respondent for benefits. The Applicant had never received a payment from benefits towards the Respondent's rent. Mr Girdwood said that the Respondent had sent a copy of the letter he sent to the Tribunal to Mr Girdwood direct, and he had had the opportunity to read it. He thought that it was a delaying tactic by the Respondent. Mr Girdwood said that he had sent four Pre Action Requirement letters before the Tribunal application was raised, and he had tried to get the Respondent to enter in to a payment arrangement.

10. Mr Girdwood said that the property was a two bedroomed flat and that the Respondent lived there alone. The property had not been adapted for the Respondent in relation to any disability of the Respondent

## Findings in Fact

- a. The parties entered into a Private Residential Tenancy Agreement in respect of the property commencing 29<sup>th</sup> April 2021 and a rent of £400 per month;
- b. A Notice To Leave, dated 27<sup>th</sup> August 2024, was served timeously and correctly;
- c. The rent arrears when the Notice to Leave was served were £3451.13
- d. A section 11 notice was served on the local authority;
- e. The Applicant complied with the Pre Action Requirements;
- f. The Application was served on the Respondent by Sheriff Officer on 4<sup>th</sup> March 2025;
- g. On 27<sup>th</sup> August 2024 the Respondent was in rent arrears in the amount of £3451.13;
- h. The current arrears are £6651.13;
- i. The Respondent's being in arrears of rent over the period in question is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit;
- j. The Respondent lives alone in the property;
- k. The property has not been adapted in relation to any disability;
- l. The Respondent has not made any payment towards rent since March 2024;
- m. The Respondent has not entered, or attempted to enter in to, a payment arrangement to deal with the arrears.

## Reasons for Decision

11. Ground 12 states as follows:

*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.*

12. The Tribunal is satisfied that the Respondent has been in arrears for three or more consecutive months. The Tribunal is satisfied that there is no need to fix a Hearing. The Respondent, despite sending correspondence to the Tribunal setting out his position did not attend the CMD in relation to the matter. The Tribunal, having fully considered the information before it, is satisfied that it is reasonable to grant the order. The Respondent is now in arrears of rent equating to more than a full year of payments. He has made no proposal to pay ongoing rent or to deal with the arrears. The level of arrears makes it reasonable in and of itself to grant the order.

## **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.**

**A. Kelly**

**Legal Member/Chair**

**Date 28/04/2025**