



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 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/24/5142

Re: Property at 6 Charles Street, E, City Centre, Aberdeen, AB25 3TU (“the Property”)

Parties:

Mr David Wood, 51 Tollohill Place, Aberdeen, AB12 5EA (“the Applicant”)

Mr Conor Rhys Abernethy, 6 Charles Street, E, City Centre, Aberdeen, AB25 3TU (“the Respondent”)

Tribunal Members:

Ruth O'Hare (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 provisions of ground 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) had been met and it would be reasonable to make an eviction order on account of the facts in this case.

The Tribunal therefore made an eviction order under section 51 of the 2016 Act.

Background

- 1 This is an application for an eviction order under section 51 of the 2016 Act and rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”). The Applicant relied upon ground 12 of schedule 3 of the 2016 Act.
- 2 The application was referred to a case management discussion (“CMD”) to take place by teleconference on 28 April 2025. The application was conjoined with an application under Rule 111 of the Rules seeking a payment order in respect of unpaid rent. Notification of the CMD was sent to the parties in accordance with

Rule 17(2) of the Rules. Said notification was served upon the Respondent by sheriff officers on 4 March 2025.

- 3 Both parties were invited to make written representations. No written representations were received from the Respondent. On 14 April 2025 the Tribunal received an email from the Applicant's representative, Trinity Factoring Services Limited, with an updated rent statement, correspondence to the Respondent, and a statement regarding the Applicant's financial position.

The CMD

- 4 The CMD took place on 28 April 2025 by teleconference. The Applicant was represented by Ms Rachel MacDonell of Trinity Factoring Services Ltd. The Respondent did not attend. The Tribunal delayed the start time of the CMD for a short period before determining to proceed in his absence.
- 5 The Tribunal had the following documents before it:-
 - (i) Form E application form dated 5 November 2024;
 - (ii) Land Certificate ABN104147 confirming the Applicant as the registered owner of the property;
 - (iii) Excerpt from the online landlord register confirming the Applicant's landlord registration;
 - (iv) Private residential tenancy agreement between the parties dated 26 November 2021;
 - (v) Email correspondence between the Applicant's representative and the Respondent regarding rent arrears;
 - (vi) Section 11 notice to Aberdeen City Council and proof of delivery by email;
 - (vii) Notice to leave dated 30 September 2024 and proof of delivery by email;
 - (viii) Rent increase notice dated 19 April 2023;
 - (ix) Written mandate from the Applicant authorising the Applicant's representative, Trinity Factoring Services Ltd to represent him;
 - (x) Rent statement; and
 - (xi) The Applicant's written representations dated 14 April 2024.
- 6 The Tribunal proceeded to hear submissions from Ms MacDonell on the Applicant's behalf. The following is a summary of the key elements of the discussion and does not constitute a verbatim account of the proceedings.
- 7 Ms MacDonell advised that the Applicant sought an eviction order. The tenancy had commenced on 29 November 2021. The rent account had been in arrears since July 2023. The Respondent had made numerous promises to pay the arrears but had not done so. The Respondent was in receipt of universal credit and the housing element was now being paid to the Applicant directly. However, the Applicant wished to recover possession of the property due to the history of the case. The Applicant had costs of approximately £655 per month, which were not being met by the rent payments. There was also the risk that the universal credit payments could stop at any time. Ms MacDonell advised that the information she had regarding the Respondent's circumstances was limited, but

she understood he was approximately 28 years old. He had no known disabilities and was believed to be the sole occupant of the property.

Findings in Fact

- 8 The Applicant and Respondent entered into a tenancy agreement in respect of the property which commenced on 29 November 2021.
- 9 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
- 10 In terms of Clause 8 of the said tenancy agreement the Respondent undertook to pay rent at the rate of £385 per calendar month.
- 11 On 19 April 2023 the Applicant's representative, Trinity Factoring Services Ltd, sent a rent increase notice to the Respondent under section 22(1) of the 2016 Act. The said notice increased the rent to £396 per calendar month from 28 July 2023.
- 12 The Applicant sent a notice to leave to the Respondent by email on 30 September 2024. The notice to leave cited ground 12 and stated that proceedings for possession would not be raised any earlier than 31 October 2024.
- 13 The Respondent consented to the delivery of notices by email under Clause 4 of the said tenancy agreement.
- 14 On 5 November 2024 the Applicant's representative emailed a notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Aberdeen City Council.
- 15 The Respondent is in arrears of rent. As at the date of this decision, rent arrears of £1825 are outstanding.
- 16 The rent arrears are not due to any known failure or delay in the payment of a relevant benefit.
- 17 The Applicant's representative has written to the Respondent regarding the rent arrears. The Applicant's representative has offered to entered into payment plans with the Respondent and has directed him to agencies for advice and support.
- 18 Despite repeated requests the Respondent has refused or delayed to make payment of the outstanding rent.
- 19 The Applicant incurs costs of approximately £655 per month pertaining to the property.

- 20 The Respondent resides in the property alone. The Respondent is approximately 28 years old.

Relevant Legislation

- 21 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 11 and 12

11 Breach of tenancy agreement

(1) It is an eviction ground that the tenant has failed to comply with an obligation under the tenancy.

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

(a) the tenant has failed to comply with a term of the tenancy, and

(b) the Tribunal considers it to be reasonable to issue an eviction order on account of that fact.

(3) The reference in sub-paragraph (2) to a term of the tenancy does not include the term under which the tenant is required to pay rent.

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.”

Reasons for Decision

- 22** 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. The Respondent had been given

the opportunity to make written representations and attend the CMD but had chosen not to do so.

- 23** 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.
- 24** The Tribunal was satisfied based on the rent statement produced by the Applicant, and the submissions from Ms MacDonell 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 pertaining to ground 12.
- 25** The Tribunal accepted that the rent account had been in arrears since July 2023, and that the Applicant had made various attempts to engage with the Respondent in order to resolve the matter. The Tribunal therefore concluded that it could apply significant weight to the history of the arrears in this case.
- 26** The Tribunal considered the Respondent's circumstances. The information the Tribunal had before it was limited in this regard and based on the submissions from Ms MacDonell in the absence of the Respondent. The Tribunal accepted that the Respondent was the sole occupant of the property and had no dependents. There were no known disabilities on his part, and no children who would be at risk were an eviction order to be granted. Whilst the general impact of eviction on the Respondent was a cause for concern, the Tribunal considered it could give most weight to the rent arrears in this case.
- 27** Accordingly, taking the above into account as factors relevant to the issue of reasonableness, the Tribunal concluded that ground 12 had been met. The Tribunal therefore made an eviction order.
- 28** 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

Legal Member/Chair

28 April 2025

Date