



**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/24/3857**

**Re: Property at 79 Redburn Wynd, Helensburgh, G84 7EG (“the Property”)**

**Parties:**

**Lormor Ltd, Aucheneck House, Stockiemuir, G63 9NQ (“the Applicant”)**

**Ms Kirsty McCarroll or Morris, 79 Redburn Wynd, Helensburgh, G84 7EG (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Mary Lyden (Ordinary Member)**

**Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the provisions of ground 12 of the Private Housing (Tenancies) (Scotland) Act (“the 2016 Act”) had been met and it would be reasonable to make an eviction order.

The Tribunal therefore made an eviction order under section 51 of the said Act. The Tribunal further determined to suspend execution of the order for a period of two months.

**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 as the ground for possession, citing unpaid rent.
- 2 The application was referred to a case management discussion (“CMD”) to take place by teleconference on 19 May 2025. The Tribunal gave notification of the CMD to the parties in terms of Rule 17(2) of the Rules. Said notification was served upon the Respondent by sheriff officers on 18 March 2025.

- 3 Both parties were invited to make written representations in advance of the CMD. No written representations were received.

### **The CMD**

- 4 The CMD took place on 19 May 2025 at 10am by teleconference. Ms Sharyn Mackie of Endrick Property represented the Applicant. The Respondent also joined the call.
- 5 The Tribunal had the following documents before it:-
  - (i) Form E dated 21 August 2024;
  - (ii) Title sheet DMB98276;
  - (iii) Excerpt from the online landlord register confirming the Applicant's landlord registration;
  - (iv) Private residential tenancy ("PRT") agreement between the parties dated 29 April 2022;
  - (v) Notice to leave dated 27 February 2024 together with proof of service upon the Respondent by sheriff officers;
  - (vi) Notice under section 11 of the Homelessness etc (Scotland) Act 2003 together with proof of delivery by email;
  - (vii) Rent statement;
  - (viii) Copy letter from Endrick Property to the Respondent in accordance with the rent arrears pre-action protocol; and
  - (ix) Copy emails between Endrick Property and the Respondent regarding rent arrears.
- 6 The Tribunal heard submissions from the parties on the application. For the avoidance of doubt the following is a summary of the key elements of the discussion and does not constitute a verbatim account.
- 7 Ms Mackie confirmed that the Applicant's owner, Mr Campbell Graham, had approached her agency in March 2022. He had asked them to create a PRT between the Applicant and the Respondent in respect of the property, and to manage the property on the Applicant's behalf. Ms Mackie understood that the Respondent and Mr Graham's daughter were friends. The Applicant and Respondent both signed the PRT, which commenced on 1 March 2022. Ms Mackie had advised the Applicant that the property should be let at £1,500 per month, however the Applicant had agreed a lower rent of £1,100 with the Respondent, as reflected in the tenancy agreement. The Respondent had stopped paying rent in April 2023. The arrears now stood at £28,200. Ms Mackie had attempted to contact the Respondent by email, letter and phone. The Respondent had indicated she would agree a payment plan for the rent and arrears, however she did not state what she would pay, and how. At one point she indicated she would borrow money from friends. The Respondent had also stated that she was earning £4,000 per month. The Applicant was at a loss as to why rent had gone unpaid. The Applicant now felt that things had gone on for too long. Mr Graham was 80 years old and the situation had caused him

significant stress. He had been hopeful at the start that a payment plan could be agreed with the Respondent. However the arrears were now having a significant impact on him.

- 8 Ms Mackie confirmed that the property was a three bedroom property. She understood that the Respondent may be living in the property with her daughter. It was a large property for a small household. The property was a new build property and it had been handed over to the Respondent upon completion. The Applicant had purchased the property in order to rent it to the Respondent. They had between 8 and 10 other rental properties. Ms Mackie confirmed that there was no mortgage over the property.
- 9 The Respondent confirmed that the property had been bought for herself and her three children. She had obtained the keys from the developer when it was completed in December 2021. It was a four bedroom brand new house. She had been involved in selecting the fixtures and fittings. Her daughter was best friends with Mr Graham's daughter. She had considered the Graham family to be family friends. She was taken aback when the Applicant engaged Ms Mackie's agency to manage the property. The Applicant had advised her that the property would always be her home. She didn't think the rent would be so high. She had agreed a lower rent of £1,100 per month with the Applicant. However, Mr Graham had indicated that she should not worry if she couldn't pay the rent at times. The Respondent would not have taken on the property if she knew it was going to be a tenancy situation.
- 10 The Respondent stated that she was employed as a mental health nurse. Her family had gone through a difficult period recently. She resided with her 23 year old daughter, 18 year old son and her 9 year old daughter. Her son had been diagnosed with severe mental health conditions and she was his carer. Her husband had passed away suddenly in September 2024 at the age of 36. The family dog had also passed away. This had left the family in a dark place. They were all struggling with their mental health. The Respondent had been off work. She had no permanent contract with the NHS, she was part of the nurse bank. If she did not work, she did not get paid. She had been trying to work when she could. The Respondent explained that she had always been in employment. The Respondent's daughter was also employed in retail but was currently off work and in receipt of statutory sick pay. The Respondent explained that she wanted to agree a payment plan to pay off the rent and arrears. She did not specify what she was offering in terms of a payment proposal.
- 11 The Respondent explained that she had looked into universal credit, but her earnings were too high. She had also spoken to the council and had showed them the application paperwork. They had refused to help her because of the rent arrears. She had been trying to get further advice. She knew that she would have to move out of the property. If the rent was lower, the payments would be more manageable.
- 12 The Tribunal adjourned the CMD to deliberate, at which point parties left the call, before resuming the CMD and confirming the outcome.

## **Relevant legislation**

13 The Tribunal considered the following provisions of the 2016 Act:-

### ***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**

- 14 The Applicant is the registered owner of the property. The Applicant is a registered landlord.
- 15 The Applicant and Respondent entered into a tenancy agreement for the property, which commenced on 1 March 2022.
- 16 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
- 17 In terms of Clause 8 of the said tenancy agreement the Respondent undertook to pay rent of £1,100 per month.
- 18 The Respondent has not paid any rent since 4 April 2023.
- 19 On 28 February 2024 the Applicant delivered a notice to leave to the Respondent. The notice to leave was served upon the Respondent by sheriff officers.
- 20 The notice to leave included ground 12 and stated that the Applicant would not make an application to the Tribunal any earlier than 1 April 2024.
- 21 The notice to leave was in the form prescribed by schedule 5 of the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.



- 22 On 12 August 2024 the Applicant emailed a notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Argyll and Bute Council.
- 23 As at the date of this decision arrears in the sum of £28,200 are outstanding.
- 24 The Applicant's representative has corresponded with the Respondent to remind her of her rental obligations and has offered to enter into a payment plan. The Applicant's representative has given the Respondent information regarding the arrears and has directed her to agencies for advice and support.
- 25 The rent arrears are not known to be due to any failure or delay in the payment of a relevant benefit. The Respondent has been advised that she does not qualify for universal credit due to her earnings.
- 26 The Applicant purchased the property for the Respondent to reside in as a tenant. The Applicant owns several rental properties.
- 27 The Respondent resides in the property with her daughter aged 23, son aged 18 and daughter aged 9. The Respondent is a carer for her son who has mental health conditions.
- 28 The Respondent is employed as a mental health nurse. The Respondent does not have a permanent contract.
- 29 The Respondent's husband passed away in September 2024. The Respondent's mental health, and the mental health of her family, have been affected by his passing.
- 30 The Respondent's daughter is employed. The Respondent's daughter is currently off work and in receipt of statutory sick pay.

### **Reasons for Decision**

- 31 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.
- 32 Based on the application paperwork the Tribunal was satisfied that the tenancy between the parties was a private residential tenancy, and that the Applicant had given the Respondent 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 of their intention to recover possession of the property. The Tribunal

therefore considered whether ground 12 of schedule 3 of the 2016 Act had been met in this case.

- 33 The Tribunal was satisfied based on the rent statement produced by the Applicant, and the submissions from Ms Mackie 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.
- 34 The Tribunal gave significant weight to the level of rent arrears, which now stood at £28,200, and the fact that the Respondent had failed to pay any rent for over two years. This was not in dispute. There was no suggestion that the arrears were a result of any failure or delay in the payment of a relevant benefit. The Tribunal also took into account the Applicant's compliance with the rent arrears pre-action protocol, as evidenced by the correspondence produced from the Applicant's representative and the submissions from Ms Mackie at the CMD regarding her attempts at contact.
- 35 The Tribunal also gave great weight to the impact of the rent arrears on the Applicant. Whilst there was no mortgage over the property, the Applicant had a right to receive the rental income as the property owner. They had been tolerant of the situation, allowing ample opportunity for the Respondent to agree a payment plan for the rent and arrears. It was clear that the eviction order was a last resort.
- 36 The Tribunal carefully considered the Respondents' circumstances. The Tribunal took into account her explanation as to why the rent had stopped and had sympathy with the recent challenges she had faced following the death of her husband. However, her reasons did not, in the view of the Tribunal, amount to an arguable defence. There was no credible explanation as to why she had failed to make even a token payment to the rent account in over two years, particularly when she had maintained employment over that period. She appeared unclear as to what she was able to offer in terms of a payment plan. The Tribunal therefore considered it could reasonably conclude that the tenancy was simply no longer affordable for her and her family.
- 37 The Tribunal noted the Respondent's explanation as to the circumstances surrounding the creation of the tenancy. However, the Respondent had signed the tenancy agreement. She had agreed to take on a PRT for the property at a rent of £1,100 per month. She had generally paid rent at that rate for the initial months of the tenancy. The Tribunal therefore considered it could give little weight to the Respondent's submissions on this point.
- 38 The Tribunal also had regard to the Respondent's family circumstances, particularly their mental health and the Respondent's caring responsibilities for her son. The Tribunal noted that there was a young child in the household. Whilst the Tribunal had concerns about the risk of homelessness to the family, the Tribunal considered that these could be mitigated by a suspension in the execution of the order to allow the Respondent further time to secure

alternative accommodation. The Tribunal was also aware that the making of the eviction order would place additional obligations on the local authority to provide the Respondent with advice and assistance, with a view to securing housing elsewhere.

39 Accordingly, the Tribunal considered it could give most weight to the level of rent arrears in this case and the prolonged period over which rent had gone unpaid. The Tribunal therefore concluded that ground 12 had been met and made an eviction order, with execution of the order suspended for a period of two months.

40 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.**

**Legal Member: Ruth O'Hare**

**Date: 19<sup>th</sup> May 2025**