



**Notes on a Case Management Discussion 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/24/4124**

**Re: Property at 3 Mid Artrochie Cottage, Ellon, AB41 8JR (“the Property”)**

**Parties:**

**Mr John Buchan, Auchmacoy Estate, Ellon, AB41 8RB (“the Applicant”)**

**Mr Tarrin Bremner, Miss Rowena Tabernacle, 3 Mid Artrochie Cottage, Ellon, AB41 8JR (“the Respondent”)**

**Tribunal Members:**

**Alison Kelly (Legal Member) and Jane Heppenstall (Ordinary Member)**

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

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

**Background**

1. On 5<sup>th</sup> September 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 1<sup>st</sup> October 2022 and a rent of £800 per month;
  - ii. Copy Notice to Leave dated 19<sup>th</sup> June 2024;
  - iii. Sheriff officers Certificates of Service in relation to the Notice to Leave;
  - iv. Section 11 Notice and proof of service;  
Rent Statement showing arrears of £8787.25 in September 2024.

3. On 6<sup>th</sup> March 2025 the Applicant's solicitor lodged a Second Inventory of Productions including a Rent Increase Notice increasing the rent to £900 per month from 1<sup>st</sup> September 2024, and an up to date rent statement showing the arrears as at March 2025 standing at £11587.25.

### **Case Management Discussion**

4. The Case Management Discussion ("CMD") took place by teleconference. The Applicant was represented by Mr Doran of Raeburn Christie Clark and Wallace, Solicitors. The Respondents attended and represented themselves.
5. 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.
6. Mr Doran moved for an eviction order to be granted. He said that it was being sought under Ground 12 and he narrated that the Notice to Leave had been served, the section 11 Notice served, and the Pre Action Requirements followed. He said that the rent had originally been £800 per month but had been raised to £900 per month as at 1<sup>st</sup> September 2024, following service and acknowledgement of a Rent Increase Notice. He said that the current arrears were £10,687.25, a payment having been made on 6<sup>th</sup> March 2025. Mr Doran said that as far as he was aware the local authority would not re-house the Respondents until they had an eviction order from the Tribunal. He said that there had been numerous payment plans in place but the Respondents had not stuck to them. He said that they had made a further proposal yesterday and he had told them that it would be accepted as far as the arrears were concerned but that the Applicant would still be looking for an eviction order. He went on to say there had recently been complaints of anti-social behaviour towards neighbours, and there was a large amount of rubbish outside the property.
7. The Second Named Respondent spoke on behalf of both Respondents. She said that they were opposed to the order being granted. She agreed that the sum of £10,687.25 was outstanding. She said that they were in receipt of Universal Credit now and were getting the rent element. She said that both Respondents had suffered poor mental health, and their three children had been in care for around a year, being returned to them on 21<sup>st</sup> October 2024. She said that during that time they were apparently only entitled to the rent element for a one bedroomed property and that applications for discretionary housing payments had been refused.
8. The Second Named Respondent said that they had a skip to let them deal with the rubbish, and that a neighbour had made malicious calls to the social work department about them. She said that they were on a housing list where they had to bid for properties, and they had not yet been successful. She said that they had thought the extra £100 was towards arrears, not a rent increase. They have offered to pay a further £300 per month on top of the rent. The children are aged 4, 5 and 6.

9. The Tribunal decided that as there was a dispute about reasonableness the matter would require to proceed to a Hearing, and this would take place by teleconference. Both parties have brought matters to the attention of the Tribunal that go to the heart of reasonableness and need to be fully explored at a Hearing.
10. The Tribunal suggested that the Respondents seek advice from a professional agency or solicitor regarding the refusal of benefits while the children were in care. The case was adjourned to a Hearing.

### **Subsequent to CMD**

11. The Tribunal issued a Direction to the parties as follows:

*The Applicant is required to provide:*

1. *Full details in writing regarding the allegations of anti social behaviour and the state of the property which they wish to advance in relation to reasonableness*

*The said documentation should be lodged with the Chamber no later than close of business on 10<sup>th</sup> May 2025.*

*The Respondents are required to provide:*

1. *Full details in writing confirming why the rent arrears were accrued, what benefits they had during that time period and what steps they took to make application for benefits or payments to cover the rent*
2. *Documentary evidence to support the written statement for example copies of letters or emails regarding benefits and the living arrangements for the children during that time*
3. *Full details in writing of what steps they have taken to find alternative accommodation and what they have been told about how they can secure accommodation*
4. *Documentary evidence to support the written statement for example copies of letters or emails regarding rehousing*

*The said documentation should be lodged with the Chamber no later than close of business on 10<sup>th</sup> May 2025.*

12. On 9<sup>th</sup> May 2025 the Applicant's solicitor lodged a Submission in terms of the Direction.
13. The Respondents did not comply with the Direction.

14. On 8<sup>th</sup> August 2025 the Respondents sent an email to the Tribunal advising that they were leaving the property and would hand the keys back on 11<sup>th</sup> August.
15. On 26<sup>th</sup> August 2025 the Applicant's solicitor lodged a Written Submission confirming that the arrears now stood at £14587.75.

## Hearing

16. The Hearing took place by teleconference. The Applicant was represented by Mr Doran of Raeburn Christie Clark and Wallace, Solicitors. The Respondents did not attend and were not represented.
17. Mr Doran moved for the eviction order to be granted. He said that the Applicant was not sure if they Respondents had left the property. They had not handed the keys back. He said that the rent arrears now stood at £15487.25.

## Findings in Fact

- a. The parties entered into a Private Residential Tenancy Agreement in respect of the property with rent of £800 per month;
- b. The tenancy commenced on 1<sup>st</sup> October 2022;
- c. The rent was raised to £900 per month on 1<sup>st</sup> September 2024;
- d. A Notice To Leave, dated 19<sup>th</sup> June 2024, was served timeously and correctly;
- e. A section 11 notice was served on the local authority;
- f. The Respondents may have vacated the property but have not handed the keys back;
- g. The current rent arrears are £15487.25;
- h. The Respondents are currently in rent arrears for three or more consecutive months.

## Reasons for Decision

18. Ground 12 of schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 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.*

19. The Tribunal is satisfied that ground has been met. The Respondents owe around 16 months of rent payments. They have been given an opportunity to sort out the benefits position, but they did not respond to the Direction and they have not attended the Hearing. On that basis and also taking in to account the level of arrears, the Tribunal is satisfied that it is reasonable 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.**

# Alison J Kelly

**Legal Member/Chair**

**Date 12<sup>th</sup> September 2025**