



**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/20/0167**

**Re: Property at 606 Charleston Drive, Dundee, DD2 4AB (“the Property”)**

**Parties:**

**Mr Gerard Quinn, Mr Brian Smith, 10 Kerrington Crescent, Broughty Ferry, Dundee, DD6 2TN (“the Applicant”)**

**Ms Abigail Mawutor, 606 Charleston Drive, Dundee, DD2 4AB (“the Respondent”)**

**Tribunal Members:**

**Valerie Brømner (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Eviction Order should be granted in terms of Ground 12 of Schedule 3 of the 2016 Act in that the Respondent has been in arrears of rent of an amount in excess of month’s rent for a period in excess of three months and this is not due to a failure to a payment of a relevant benefit.**

**Background**

This is an application for an Eviction Order in terms of Rule 109 of the Tribunal Rules.

The Application was lodged with the Tribunal on 16<sup>th</sup> January 2020 and was accepted by the Tribunal on 27<sup>th</sup> January 2020.

## **Case Management Discussion**

The Applicants did not attend the case management discussion but were represented by Mr Wilkie of the Property Management Company. The Respondent did not attend the Case Management Discussion but the Application and supporting papers had been served at her address by Sheriff Officer on 13<sup>th</sup> February 2020. Mr Wilkie requested that the Tribunal proceed in the absence of the Respondent and this motion was granted in terms of Rule 29 of the Tribunal rules given that the papers had been properly served on her.

The Tribunal had the Application, tenancy agreement, Notice to Leave and e mail giving intimation of this Notice, e mail intimating the Notice to Leave, Notice in Terms of the Homelessness etc Scotland Act together with an email intimating the Notice and a rent statement.

Mr Wilkie advised that he believed from text messages he had received from the Respondent which the Tribunal was shown, that the Respondent had vacated the property on Tuesday 10<sup>th</sup> March 2020. He had yet to receive the keys back and the Respondent had left items within the property and an arrangement had been made for her to attend and return the keys and uplift her property. It was not certain that this meeting would take place and Mr Wilkie wished to proceed with the Application as the Respondent's departure was not finalised.

The background here was that the Respondent had been referred by Dundee Homefinders in respect of the tenancy and the rent of £450 per month was to be paid by Housing benefit then universal credit. There had been a change in the Respondent's circumstances which had affected the amount of benefit received which had caused the build up of arrears. Mr Wilkie advised the Tribunal that various efforts had been made to assist the Respondent including putting her in touch with a charity but the problem was that she had no income and benefit payments were not covering the rent. The Respondent had been in arrears of rent since the beginning of the tenancy.

An arrangement had been entered into to allow a year from the start of the agreement for the Deposit to be paid but the Tribunal had not had sight of that paperwork. After discussion Mr Wilkie agreed to proceed under Ground 12 only in respect of rent arrears.

The Tribunal having considered the application and supporting papers granted an eviction order in terms of Ground 12 , the Respondent having been in substantial rent arrears over a period in excess of 3 months.

### **Findings in Fact**

- 1.The Applicants and Respondent entered into a Private Residential Tenancy agreement with effect from 19 December 2017 and the rent payable was £450 per calendar month.
- 2.The rent was payable initially by the Respondent by Housing benefit then Universal credit. The arrears built up almost immediately and as at 18<sup>th</sup> November 2019 stood at £1185.74.
- 3.The arrears are not due to a failure or delay in the payment of a relevant benefit.
- 4.A Notice to Leave in proper form was served on the Respondent within the appropriate Notice period was given.
- 5.A Notice in term of the Homelessness etc ( Scotland ) Act 2003 was sent to the local authority in respect of this application.

### **Reasons for Decision**

The Tribunal was satisfied that the Notice to leave Served was in proper form and that sufficient Notice had been given to the Respondent of the date when the Applicants could apply to the Tribunal. In fact the date given in Part 4 of the Notice was a day more than was required. The Applicants' representative asked this this be regarded as a minor error and the Tribunal was prepared to accept that in terms of S73 of the 2016 Act. Given the amount of the arrears here which had accrued over the entire period of the tenancy the Tribunal was required to make an order in terms of Ground 12.

### **Decision**

The Tribunal determined that an Eviction Order should be granted in terms of Section 51 of the 2016 Act, under Ground 12 of Schedule 3 in that the Respondent has been in arrears of rent of an amount in excess of month's rent for a period in excess of three months and this is not due to a failure to a payment of a relevant benefit.

## **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.**

Miss Valerie Bremner

13/03/2020

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**Legal Member/Chair**

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**Date**