Housing and Property Chamber
First-tier Tribunal for Scotland

**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18 of the Housing (Scotland) Act 1988**

**Chamber Ref: FTS/HPC/EV/20/0971**

**Re: Property at 51 Old Mill Road, East Kilbride, G74 4EY ("the Property")**

**Parties:**

**Ms Julie Asher, 32 Invercargill, East Kilbride, G75 8RF ("the Applicant")**

**Mr Kenneth Gauld, 51 Old Mill Road, East Kilbride, G74 4EY ("the Respondent")**

**Tribunal Members:**

**Alison Kelly (Legal Member)**

**Decision**

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

**Background**

The Applicant lodged an application with the Tribunal in December 2019 under Rule 65 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 "the Procedure Rules"), seeking an order for eviction under Grounds 8, 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988**.**

Lodged with the Application were:

1. Copy Title Sheet
2. Notice to Quit dated 9/10/19
3. AT6 dated 9/10/2019
4. Rent Schedule
5. Sheriff Officer Certificate of Service
6. Section 11 Notice

In the Statement of Claim lodged by the Applicant it was explained that there was no written tenancy agreement, but that there had been a tenancy in relation to the property by which the Respondent had rented the property since 11th December 2009. The Statement of Claim explains that the tenancy is an assured tenancy as it fits within the definition given in section 12(1) of the Housing (Scotland) Act 1988.

On 5th August 2020 the Applicant sent an email to the Tribunal attaching an amended Statement of Claim, an updated rent statement and a Certificate of Service by Sheriff Officers of those documents.

**Case Management Discussion**

The CMD took place by teleconference.

The Applicant, Ms Asher, dialled in personally, and Miss Millar of Gilson Gray, Solicitors, dialled in on behalf of the Applicant. Mr Gauld, the respondent, also dialled in.

The Chairperson had each party introduce themselves and explained the purposes of a CMD in terms of Rule 17. She made it clear that if she had sufficient information she could make a final decision at the CMD. She confirmed with each party that they understood. She asked Mr Gauld if he had taken legal advice. He confirmed that he had not.

Miss Millar was asked to present her case. She explained that there was no written tenancy agreement, but that the tenancy commenced on 11th December 2009 on a month to month basis. The ish date accordingly was the 11th of the month. She explained that the initial rent had been £420 per month, rising to £440 per month on 11th September 2013. She explained that the tenancy was an assured tenancy in terms of section 12 of the Housing (Scotland) Act 1988 and gave the statutory definition. She said that the Respondent had stopped paying rent in May 2018 and that at the time the notices were served the arrears were £7040. Notice to Quit and AT6 were served by Sheriff Officers correctly and timeously. The AT6 reproduced the grounds of eviction and gave a full explanation. The Respondent could be in no doubt as to why action was being taken. Miss Miller was aware that Ground 8 was mandatory, but only if the Tribunal was satisfied that the arrears were not as the result of delay in payment of a relevant benefit. She advised that no benefit claim had ever been intimated to the Applicant. There had been no attempt by the respondent to discuss or resolve the issue of arrears.

Miss Miller said that a fresh statement of claim and up to date rent statement had been served by Sheriff Officer on 5th August. It showed that the current arrears were £11880. She sought eviction and expenses.

The Chairperson asked Miss Miller if the Coronavirus (Scotland) Act 2020 had any effect on the proceedings. Miss Millar submitted that it only applied to actions where the notices were served after 7th April 2020.

The Chairperson asked Mr Gauld for his position. He said that the company he worked for had gone in to liquidation in 2015. He had lived on savings and contributions from his mother, and continued to pay the rent until 2018. He pointed out that over the years he had paid about £44000 in rent. He had hoped that he would get another job but he had not been able to. He had never claimed benefits and had no intention of doing so. He described it as an "unfortunate situation". The Chairperson asked if he agreed with all of the points made by Miss Miller and he said that he did. He accepted the start date of the tenancy. He accepted that he had received service of all notices, including the amended statement of claim and up to date rent statement.

The Chairperson asked if the Respondent accepted that £11880 was due. He said that he did not. He said that he had paid a deposit of £840 and that should be deducted. He said that he thought he would have been evicted long before now. He said that notices had been served in 2018, but that the Applicant had not proceeded with a Tribunal application. He seemed to be under the impression that as she had not proceeded he should not have had to pay the rent. This was a ludicrous argument. The Chairperson pointed out that he had an obligation to pay rent while he occupied the property and that the Applicant could not be in any way responsible for his arrears.

Miss Miller took instruction and confirmed that the Applicant was content to agree that the level of arrears was £11000. Mr Gauld reluctantly agreed.

The Chairperson confirmed that she was prepared to grant the order as the grounds had been met. She explained to the Respondent that she did not need to consider whether or not it was reasonable to evict as Ground 8, if satisfied, was a mandatory ground. She advised him that if she had had to consider reasonableness then she would still have been content to grant the order.

Miss Miller moved for expenses. The Chairperson did not consider it appropriate in terms of Rule 40 to award expenses as the action had to be brought in terms of the legislation, and notices required to be served, and refused the motion.

**Findings In Fact**

1. The parties entered in to an assured tenancy agreement in relation to the property;
2. The tenancy ran on a month to month basis commencing on 11th December 2009;
3. The monthly rent was £440;
4. Notice to Quit and AT6 had been served correctly and timeously;
5. The arrears when the action was raised were £7040;
6. The arrears at the date of the CMD were £11880, restricted by the Applicant to £11000;
7. The arrears had not been accrued because of a delay in payment of a state benefit;
8. The provisions of the Coronavirus (Scotland) Act 2020 do not apply as the Notices were served prior to 7th April 2020;

**Reasons For Decision**

Ground 8 is a mandatory ground, in that the Tribunal must grant eviction if the ground has been met. The Legal Member was satisfied that the ground had been met. This case was raised before the Coronavirus (Scotland) Act 2020 was enacted and so is not covered by that Act. The ground remains mandatory in this case.

Due to the level of the arrears, and the time which has elapsed since any rent was paid, Grounds 8, 11 and 12 have been satisfied.

**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 Kelly

13TH August 2020

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**Legal Member/Chair** **Date**