

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**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/19/1061**

**Reference number: FTS/HPC/EV/19/1061**

**Re: Property at 51d Braeface Rd, Cumbernauld, G67 1HQ ("the Property")**

**The Parties:**

**Mrs Aileen Shirra, Mr Alexander Shirra, 11 Scott Crescent, Cumbernauld, G67 4LF ("the Applicants")**

**Ms Kylie McMahon, 51d Braeface Rd, Cumbernauld, G67 1HQ ("the Respondent")**

**Tribunal Members:**

**Joel Conn (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that**

**Background**

1. This is an application by the Applicants for an eviction order in regard to a Private Residential Tenancy ("PRT") in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended ("the Procedure Rules"). The PRT in question was by the Applicants to the Respondent commencing on 17 December 2018.
2. The application was dated 4 April 2019 and lodged with the Tribunal on that date.
3. The application relied upon a Notice to Leave dated 18 March 2019 in terms of section 50 of the Private Housing (Tenancies) (Scotland) Act 2016, intimated upon the Respondent by email on that date in accordance with the provisions of the PRT. The Notice relied upon Ground 12 of Schedule 3 Part 1 of the 2016

Act, being that "the tenant has been in rent arrears for three or more consecutive months". A statement was attached to the notice detailing arrears of £1,650. The rent due under the PRT is £550/month. The Notice intimated that an application to the Tribunal would not be made before 17 April 2019.

4. Evidence of a section 11 notice in terms of the Homelessness Etc. (Scotland) Act 2003 served upon North Lanarkshire Council on 4 July 2019 was provided with the application. This was further to a Direction that a notice in correct form be provided. A letter, containing the material information, was provided to the Council earlier on 5 April 2019 and was the subject of discussion at the case management discussion of 3 July 2019

### **The Hearing and subsequent consideration**

5. On 3 July 2019, at a case management discussion ("CMD") of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting at the Glasgow Tribunals Centre I was addressed by the Applicants' agent, John Rafferty of Kelvin Valley Properties.
6. There was no appearance for the Respondent but she had sent in a number of emails that day stating that she could not attend due to a medical appointment. (No letter from a doctor was provided.) The emails gave comments on the lease and the arrears.
7. The Applicants' agent confirmed that the application for eviction was still insisted upon. A revised rent statement was provided. Due to an amount of backdated Housing Benefit being received, the arrears at 3 July 2019 were now said to be £1,148.98 but that arrears were now climbing again as the Housing Benefit payment was only £396.24 every four weeks (against the rental obligation of £550 a month). No order for expenses was sought.
8. There were a number of preliminary matters regarding the application (such as amendment of the Applicants, the irregular section 11 notice, and the application being lodged prior to the expiry of the Notice to Leave). I granted orders relating to these at the CMD. In particular, I was satisfied that the Notice to Leave provided the Respondent with sufficient notice of the Applicants' intentions, when it is considered that the application was not accepted until 28 May 2019 and, that in terms of section 52(4) of the Act, it was reasonable for the application to advance though in breach of section 54.
9. Turning to the Respondent's position, as disclosed in her emails, I issued a Direction seeking further information from the Respondent by 16 July 2019. The CMD was continued to 16 August 2019 but within the Note of Discussion from the CMD I made clear that I would consider issuing a Decision and Order earlier, and discharge the continued CMD, if the information sought in the Direction was not provided on time.
10. The Direction, with a Note of Discussion from the CMD, was sent to the Respondent by Recorded Delivery post in the days following the CMD of 3 July

2019. (The Respondent was sent an email by the Tribunal Clerk on 4 July 2019 to advise that the papers regarding the outcome of the CMD would be sent by Recorded Delivery.) The Respondent did not, however, sign for the letter or seek it from her delivery office. She did, however, sign on 12 July 2019 for a subsequent letter from the Tribunal notifying her of the date and time of the continued CMD. On 19 July 2019, having been informed that the deadline in the Direction had passed without any further information from the Respondent, but that the Direction and Note of Discussion had not been signed for, I instructed the Tribunal Clerk to reissue the Direction and Note by ordinary post and to the Respondent's email address, giving an extended deadline for response of 29 July 2019. As of the morning of 30 July 2019, no response or further documentation has been received from the Respondent.

11. In consideration of the above, I was satisfied to discharge the continued CMD of 16 August 2019 and issue this Decision based on the information provided in the application, at the CMD, and from the Respondent by email.

### **Findings in Fact**

12. On 17 December 2018, the Applicants let the Property to the Respondent under a Private Residential Tenancy with commencement on that same date ("the Tenancy").
13. In terms of clause 3 of the PRT, the parties agreed that email would be required for communication of notices in terms of the Tenancy.
14. On 18 March 2019, the Applicants' agent drafted a Notice to Leave in correct form addressed to the Respondent, providing the Respondent with notice that she was in rent arrears over three consecutive months and giving a statement detailing arrears at that date of £1,650.
15. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior to 17 April 2019.
16. By email on 18 March 2019, the Applicants' agent sent a copy of the Notice to Leave to the Respondent.
17. The Applicants raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 12 of Schedule 3 Part 1 of the 2016 Act.
18. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon North Lanarkshire Council on the Applicants' behalf.
19. As of 3 July 2019, the Respondent remained in arrears of rent in the amount of £1,148.98.
20. The sum of arrears remaining as of 3 July 2019 is neither wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

## Reasons for Decision

21. The application was in terms of rule 109, being an order for eviction of a PRT. I was satisfied on the basis of the application and supporting papers that the Notice to Leave had been correctly served upon the Respondent.

22. Ground 12 is a mandatory ground provided that:

“(1) ...the tenant has been in rent arrears for three or more consecutive months.

“(2) ...at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant—

(i) is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day, and

(ii) has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, and

(b) the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.”

The arrears statement provided at the CMD clearly showed that Ground 12 was satisfied in regard to the length of arrears and amount outstanding. Reading the Respondent's emails generously, two questions arose. The first was whether, in terms of Ground 12(4), “it is reasonable to issue an eviction order [due to] 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”. The second was that the Respondent made reference to repairs not being carried out.

23. Turning to the second point first, the Respondent's position was very vague. There was no information as to which repairs she complained of, when they had been requested, and what rent was being withheld. The Applicants' agent was satisfied that the Respondent had never claimed to withhold rent due to issues with repairs. The Direction sought further information from the Respondent in this regard but none was provided. In the circumstances, I was not satisfied to hold that any part of the rent was not due, or was validly withheld, due to any breach on the part of the Applicants.

24. In regard to whether the arrears arose due to an issue with benefits, again the Direction sought further information but none was provided. The Respondent made vague references to a “discretionary” claim. The Applicants' agent recalled the Respondent claiming that sums were due back to her from a previous tenancy but it was not clear whether that was the same issue. Certainly, the Respondent gave no evidence that a “discretionary” payment was being considered (or even competent) or what the amount would be. The monthly rental payment outstripped the benefit she received. The Applicants' agent submitted that he had checked and no Universal Credit application was pending for the Respondent. In all the circumstances, although it appeared that at some point arrears arose due to a delay in processing Housing Benefit,

backdated benefit had now been received and a sizable sum in arrears remained, with arrears continuing to rise. In all the circumstances before me, I was satisfied that Ground 12 was well founded by the Applicants.

25. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. Further rule 18 allows a decision to be made without a hearing. I am satisfied that the Respondent has had an adequate opportunity to engage fully with the application and has failed to do so. On the basis of the information held, I am thus satisfied to grant an order for eviction at this time without conducting the continued CMD.

### **Decision**

26. In all the circumstances, I discharge the continued CMD of 16 August 2019 and grant an order against the Respondent for eviction from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 in normal terms.

### **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.**

Joel Conn

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Legal Member/Chair

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Date

31 July 2019