



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/EV/19/1199**

**Re: Property at 38 High Station Road, Falkirk, Scotland, FK1 5QX (“the Property”)**

**Parties:**

**Mrs Shehnaz Ijaz, 4 Achray Drive, Lion Thorn, Falkirk, FK1 5UN (“the Applicant”)**

**Ms Jade Jones, 38 High Station Road, Falkirk, Scotland, FK1 5QX (“the Respondent”)**

**Tribunal Members:**

**Graham Harding (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the applicant was entitled to an order for the eviction of the respondent from the property in terms of Ground 12 of Schedule 3 Part 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”)**

**Background**

1. By application dated 18 April 2019 the applicant applied to the Tribunal for an order for the eviction of the Respondent from the property on the grounds that the Respondent was in arrears of rent over a period of three months; that the applicant intended to sell the property; that the Applicant intended to refurbish the property and that the Respondent was in breach of her tenancy agreement.
2. The Applicant provided the Tribunal with a copy of Form UC47, correspondence with her MP, Notice to Leave and delivery receipt and email correspondence. The Applicant subsequently provided the Tribunal with a copy of the Tenancy agreement and a Section 11 notice in support of her application.

3. By Notice of Acceptance dated 28 June 2019 a legal member of the Tribunal with delegated powers accepted the application and Case Management Discussion was assigned.

4. Intimation of the Case Management Discussion was sent to the applicant by post on 3 July 2019 and was served on the Respondent by Sheriff Officers on 4 July 2019.

#### The Case Management Discussion

5. A Case Management Discussion was held at STEP Stirling on 12 August 2019. The applicant attended personally supported by her daughter Raeese Ijaz. The respondent did not attend nor was she represented. The Tribunal on being satisfied that proper intimation of the Case Management Discussion had been given to the Respondent determined to proceed in her absence in accordance with Rule 29 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the 2017 Regulations").

6. The Applicant explained that the Respondent had moved into the property on 24 December 2018 in terms of a Private Residential Tenancy Agreement. The rent was £360.00 per month. The Respondent had paid the first month's rent but had then not paid any rent in January, February, March or April. The Applicant said she had sent a form UC47 to the Department of Work and Pensions in order to have the rent paid directly to her but because the Respondent had falsified receipts to show she had been paying rent the applications had been unsuccessful until eventually her MP had become involved and rent had been paid direct since about 26 April 2019. However the arrears remained outstanding and amounted to £1440.00.

7. The Applicant confirmed she was no longer intending to sell the property and that this ground was no longer insisted upon.

8. The Applicant said that the refurbishment that she intended to carry out at the property was essentially redecoration. She was unable to explain why it would be necessary for the Respondent to vacate the property for redecoration to take place.

9. The applicant advised the Tribunal that she was seeking to rely on Ground 11 of Schedule 3 Part 3 of the 2016 Act as the Respondent was not paying her rent and also because there had been complaints by neighbours about her behaviour and because she had made threats against the Applicant. The Applicant had not provided any documentary evidence to support this ground.

10. The Applicant had previously confirmed in correspondence with the Tribunal that the Notice to Leave had been sent to the Respondent by recorded delivery post on 16 March 2019 and would be deemed to have been received on 18 March 2019. The earliest date for making an application to the Tribunal was stated on the Notice to be 18 April 2019 and this was the date the application was made.

11. In response to a query from the Tribunal the Applicant confirmed that she would be prepared to have an order granted at the Case Management discussion restricted

to Ground 12 of Schedule 3 Part 3 of the 2016 Act rather than have the case continued to a full hearing on Grounds 3 and 11 and asked the Tribunal to make an order for the eviction of the Respondent in terms of Ground 12 of Schedule 3.

#### Findings in Fact

12. The parties entered into a Private Residential tenancy Agreement that commenced on 24 December 2018 at a rent of £360.00 per calendar month.

13. The Respondent paid the first month's rent and then failed to make any payments of rent thereafter.

14. The Applicant served a Notice to Leave by recorded delivery post on the Respondent on 16 March 2019. At that time the Respondent was in arrears of rent of £1080.00.

15. After complaining to the Department of Work and Pensions and her MP the Applicant had rent paid to her direct with effect from about 26 April 2019. By that time the Respondent had accrued rent arrears of £1440.00.

16. Although rent has been paid since April 2019 the rent arrears have not been reduced. The arrears have been in existence over more than three months and more than the equivalent of one month's rent is outstanding at the date of the Case Management Discussion.

#### Reasons for Decision

17. The Tribunal was satisfied that the Respondent had been served with a Notice to Leave and that intimation of the proceedings had been given to Falkirk council.

18. The Tribunal did not consider that the Applicant had provided an adequate explanation as to why it would be necessary to evict the Respondent in order to carry out a refurbishment of the property when it appeared that the refurbishment would primarily consist of redecoration. The Tribunal was therefore of the view that if the Applicant intended to rely on this ground it would be necessary to continue the case to a hearing.

19. The Tribunal did not accept that failing to pay rent was included as a term to satisfy the requirements of Ground 11 of Schedule 3 of the 2016 Act as this was specifically excluded in sub-paragraph (3) of that paragraph. Furthermore the Applicant had provided no substantive evidence to support her claim that the Respondent had breached any other term of the agreement and therefore if the Applicant had wished to rely on this ground it would again have been necessary to continue the proceedings to a hearing.

20. The Tribunal was satisfied that the Respondent had failed to pay rent in January, February, March and April and was therefore in arrears of rent over 3 consecutive months and the tribunal was also satisfied that notwithstanding the direct payments of rent now being made to the applicant there was still at the date of the Case Management discussion more than the equivalent of one month's rent outstanding. It

did not appear that there was any benefit claim that had not been paid and it was therefore a mandatory ground for granting the order sought in terms of Ground 12 of Schedule 3 Part 3 Sub-paragraph(2) of the 2016 Act.

#### Decision

The Tribunal found the Applicant entitled to an order for the eviction of the Respondent from the property in terms of Ground 12 of Schedule 3 Part 3 of the 2016 Act.

#### 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.**

Graham Harding

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Legal member/Chair

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Date

12 August 2019