



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

**Chamber Ref: FTS/HPC/EV/19/3246**

**Re: Property at 2 Mansefield House, Annan Road, Gretna, DG16 5DQ (“the Property”)**

**Parties:**

**Dumfries & Galloway Homes Ltd, Huntingdon, 27 Moffat Road, Dumfries, DG1 1NN (“the Applicant”)**

**Mr Martyn Thomas, 2 Mansefield House, Annan Road, Gretna, DG16 5DQ (“the Respondent”)**

**Tribunal Members:**

**George Clark (Legal Member) and Gerard Darroch (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be granted and issued an Eviction Order against the Respondent.**

**Background**

By application, received by the Tribunal on 10 October 2019, the Applicant sought an Eviction Order against the Respondent in terms of Section 51 of the Housing (Scotland) Act 2016 (“the Act”). The Ground relied on was Ground 12 of Schedule 3 to the Act, namely that the Respondent had been in rent arrears for three or more consecutive months.

The application was accompanied by copies of a Private Residential Tenancy Agreement between the Parties at a rent of £100.23 per week, the first rental payment being due on 5 November 2018, and a Notice to Leave dated 16 August 2019, stating that an Eviction Order would be sought under Ground 12 of Schedule 3 to the Act and that the application to the Tribunal would not be submitted before 16 September 2019. The Applicant also provided proof of delivery of the Notice to Leave on 17 August 2019 and a Rent Statement showing arrears at 15 August 2019 of £2,451.38 and a later

Rent Statement showing arrears at 8 October 2019 of £3,153.49. Both statements showed that the rent had been continuously in arrears since November 2018.

On 2 December 2019, the Respondent made written representations to the Tribunal. In the main, they related to his personal circumstances, but he also made reference to the fact that he was withholding rent, as the Applicant had failed to carry out repairs to the Property.

A Case Management Discussion scheduled for 10 December 2019 was continued to 31 January 2020, as the Applicant's solicitors confirmed that terms had been agreed between the Parties

Following the Case Management Discussion on 31 January 2020, at which the Applicant denied having received from the Respondent notification of any repairs issues, other than a disagreement as to whether a carpet had been satisfactorily cleaned after a fire, the Tribunal decided to refer the application to a Hearing and issued a Direction requiring the Respondent to produce a schedule of all outstanding repairs he relied on to justify his withholding rent, dates on which they were brought to the Applicant's attention and any action that had been taken by the Applicant. The Applicant provided the Tribunal with a Repairs Log and a Property Management Report in respect of the Property.

On 16 March 2020, the Applicant requested and was granted a postponement of the Hearing, scheduled for 31 March 2020, as the witness to be called was unwell. COVID-19 restrictions meant that the rescheduled Hearing could not take place until 31 July 2020. On 13 July 2020, the Applicant's solicitors advised the Tribunal that the Parties had entered into a repayment agreement and asked for the Hearing to be adjourned to a later date, pending monitoring of the agreement. The Tribunal agreed to that request. On 16 September 2020, the Applicant's solicitors told the Tribunal that the Respondent had defaulted on the repayment arrangement and requested the Tribunal to set a new date for the Hearing. Intimation of the new date for the Hearing, to be held by conference call, was sent to the Parties on 8 October 2020, including details of how to join the conference call.

On 27 October 2020, the Applicant's solicitors provided the Tribunal with an updated Rent Statement showing arrears at that date of £7,549.72, with continuous arrears since November 2018.

### **The Hearing**

The Hearing took place by means of a telephone conference call on the morning of 11 November 2020. The Applicant was represented by Ms Claire Mullen of TC Young LLP, solicitors, Glasgow. The Respondent did not participate and was not represented. Ms Mullen stated that the arrears now stood at £7,750.18 and that the requirements of Ground 12 of Schedule 3 to the Act had been met. She asked the Tribunal to issue an Eviction Order against the Respondent.

### **Reasons for Decision**

Section 51 of the Act states that the Tribunal is to issue an Eviction Order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the Eviction Grounds named in Schedule 3 to the Act applies. Ground 12 of Schedule 3 of the Act provides that it is an Eviction Ground that the tenant has been in rent arrears for three or more consecutive months and that the Tribunal must find that Ground 12 applies if, at the beginning of the day on which the Tribunal first considers the application for an Eviction Order on its merits, the tenant 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 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 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 Tribunal noted that the Respondent had not provided the schedule required of him following the Case Management Discussion on 31 January 2020 and that the Applicant had provided a repairs log and Property Management Report.

The Tribunal was satisfied that the rent arrears were in excess of one month, that the rent had been in arrears for a continuous period of three months prior to the date of the Hearing. No evidence had been presented to suggest that the Respondent's being in arrears of rent was wholly or partly a consequence of a delay or failure in the payment of a relevant benefit. Accordingly, the requirements of Ground 12 of Schedule 3 to the Act had been met and the Tribunal was bound to issue an Eviction Order against the Respondent.

The application was not affected by the provisions of the Coronavirus (Scotland) Act 2020, as the Notice to Leave on which the Applicant relied was served before 7 April 2020.

The decision of the Tribunal was unanimous.

### **Decision**

The Tribunal determined that the application should be granted and issued an Eviction Order against the Respondent.

### **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.**

George Clark

  

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**Legal Member/Chair**

**11 November 2020**  
**Date**