

**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 ('the 2016 Act')**

**Chamber Ref: FTS/HPC/EV/18/2593**

**Re: Property at 2D Ferguson Street, Johnstone, PA5 8SY ("the Property")**

**Parties:**

**Mr David Lang, 34 Riccarton Avenue, Paisley, PA2 6BG ("the Applicant")**

**Miss Andrea Lambert, 2D Ferguson Street, Johnstone, PA5 8SY ("the Respondent")**

**Tribunal Members:**

**Sarah O'Neill (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for recovery of possession should be granted in favour of the applicant.**

**Background**

An application was received on 28 September 2018 under rule 109 of Schedule 1 to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 ("the 2017 rules") seeking recovery of possession of the property under Ground 11 as set out in schedule 3 of the 2016 Act.

The application included: the tenancy agreement; and a copy of the notice to leave required under section 50 (1) (a) of the 2016 Act. It also included a rent statement, showing the rent due as at 1 September 2018 to be £1355.

Notice of the case management discussion, together with the application papers and guidance notes, had been served personally on the respondent by sheriff officers on behalf of the tribunal on 4 January 2019.

An email was received from Kevin Montgomery, housing adviser at Renfrewshire Citizens Advice Bureau on 9 January 2019, enclosing a mandate completed by the respondent, advising that he would be representing her at the case management discussion. A further email was received from Mr Montgomery on 17 January, stating that he was now unable to represent the respondent at the case management discussion.

No written representations were received from either the respondent or her representative before the case management discussion.

### **The Case Management Discussion**

A case management discussion was held on 23 January 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. The applicant was present and gave evidence on his own behalf. He was accompanied by his wife, Mrs Moira Lang, who was there as his supporter.

The respondent was not present and was not represented. The tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a case management discussion had been duly complied with. The papers had been served on the respondent personally by sheriff officer on behalf of the tribunal. It was also clear from the emails sent by Mr Montgomery to the tribunal that the respondent was aware of the case management discussion. The tribunal delayed the start of the discussion by 15 minutes, in case the respondent had been detained. She did not appear, however, and no telephone calls or messages had been received from her. The tribunal therefore proceeded with the case management discussion in the absence of the respondent.

### **Preliminary issues**

The tribunal asked the applicant to clarify how the notice to leave dated 14 August 2018 had been served on the respondent. The date specified in the notice to leave as the end of the notice period was 11 September 2018. The tribunal chairperson noted that the tenancy agreement stated at section 4 that communication between the parties, including notices to be served by one party on the other, would be made in writing by email. The applicant said that the respondent had stopped responding by email, and he had therefore hand delivered the notice to leave to the respondent on 14 August by posting it through the letterbox. He had produced a photograph of that date of the letter addressed to the respondent outside the front door of the property. The tribunal accepted that the notice had been served on the respondent, exactly 28 days before the specified end date. It was clear from the other evidence that the respondent was aware of the proceedings.

The tribunal also noted that the application form stated that the applicant was seeking an order on the basis of ground 11 – which relates to a breach of the tenancy agreement other than the payment of rent. The notice to leave, however, specified ground 2- rent arrears, and it was clear from the terms of the application that this was in fact the ground under which the applicant wished to seek an order. The applicant said that this had been a mistake, and asked the tribunal for leave to amend the application to state that it was being made on the basis of ground 12

under Schedule 3 of the 2016 Act. The tribunal agreed to the amendment in terms of rule 13 of the 2017 rules, bearing in mind the overriding objective in terms of rule 2 of the 2017 rules. It considered that the reasons for the application were clear, in terms of the Notice to Leave and other paperwork which formed part of the application.

### **Findings in Fact**

The tribunal made the following findings in fact:

- The applicant is the owner of the property.
- There was a private residential tenancy in place between the applicant and the respondent. The respondent had first moved into the property with her former partner, Craig Hughes, on or around 28 March 2018 under a previous tenancy which had been in his name. After he had moved out, the parties had agreed a new tenancy in her name, which commenced on 1 July 2018.
- The monthly rent payable in terms of the current tenancy agreement was £520 per month.
- As the respondent had been in the property for less than six months at the time the notice to leave was served, and also as the only eviction ground stated in the notice to leave was ground 12, the relevant period was 28 days in terms of section 54 (2) (b) of the 2016 Act. The tribunal was satisfied that the notice to leave had been validly served on the respondent
- As at the date of case management hearing, the respondent was in arrears of rent by an amount of at least one month's rent. She had been in arrears of rent for a continuous period up to and including the day of the case management hearing.

### **Reasons for Decision**

Ground 12 as set out in Schedule 3 of the 2016 Act states:

'12(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if-

- (a) 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.'

In terms of section 51 (1) and Schedule 3 of the 2016 Act, if the tribunal is satisfied that ground 12 is established, then the tribunal is required to make an order for possession.

The tribunal is satisfied on the evidence before it that the requirements for ground 12 are established. The respondent produced an updated rent statement at the case management discussion showing that as at the date of the case management discussion, the respondent owed a total of £1225 in rent arrears. The statement showed that she had been in continuous arrears since the start of her current tenancy in July 2018. She had therefore been in arrears continuously for three or more consecutive months.

When asked by the tribunal whether he was aware of any issues relating to housing benefit or universal credit which may be relevant to the respondent's rent arrears, the applicant said that he was not aware of any such issues. He said that he thought that the respondent may be in receipt of housing benefit, but did not know for sure, as it had not been paid direct to him. He said that he had asked the respondent to sign an agreement allowing him to share information with the council, but she has refused to do so. He therefore had no access to information about her benefits situation.

In the absence of written representations from the respondent, there was therefore no evidence before the tribunal of any housing benefit, universal credit or other benefit issues to be considered in terms of Ground 12 (2) (b) in Schedule 3 of the 2016 Act.

### **Decision**

The tribunal therefore grants an order in favour of the applicant against the respondent for recovery of possession of the property under Ground 12 of Schedule 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.**

S. O'Neill

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**Legal Member/Chair**

23/11/19  
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**Date**