



**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/19/3738**

**Re: Property at 37 Kirkton Street, Carluke, South Lanarkshire, ML8 4AD (“the Property”)**

**Parties:**

**Mr Brian Curley, C/o 3 Stewarton Street, Wishaw, North Lanarkshire, ML2 8AA (“the Applicant”)**

**Mrs Maureen Hamilton, 37 Kirkton Street, Carluke, South Lanarkshire, ML8 4AD (“the Respondent”)**

**Tribunal Members:**

**George Clark (Legal 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 decided without a Hearing and issued an Eviction Order against the Respondent.**

**Background**

By application, received by the Tribunal on 21 November 2019, the Applicant sought an Eviction Order against the Respondent. The Grounds relied on were Grounds 11, 12, 14 and 15 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”).

The application was accompanied by copies of a Notice to Leave dated 15 October 2019, advising the Respondent of the Applicant’s intention to apply for an Eviction Order on Grounds 11(breach of an obligation under the tenancy other than the requirement to pay rent), 12 (rent arrears for three or more consecutive months), 14 (anti-social behaviour) and 15 (association with a person who has a relevant conviction or has engaged in relevant anti-social behaviour) of Schedule 3 to the 2016 Act and that the application to the Tribunal would not be made before 13 November 2019, and a Rent Statement showing arrears as at 18 November 2019 of £2,370. The Applicant also provided copies of letters sent by the Applicant’s

representatives, Select Premier Letting Ltd, Wishaw, to the Respondent on 25 July 2019 regarding alleged anti-social behaviour and 11 September 2019 regarding an alleged breach of Section 13 of the tenancy agreement by the Respondent in permitting persons aged 16 or over to occupy the Property as their only or principal home with the Respondent without having told the Applicant in writing the names of the persons and their relationship to the Respondent.

On 24 December 2019, the Tribunal advised the Parties of the date, time and venue for a Case Management Discussion and the Respondent was invited to make written representations by 14 January 2020. The Respondent did not make any written representations to the Tribunal.

### **Case Management Discussion**

A Case Management Discussion was held at Glasgow Tribunals Centre on the afternoon of 28 January 2020. The Applicant was represented by Mr Thomas Dobbin, a Director of Select Premier Letting Ltd, Wishaw. The Respondent was present and was supported by her husband, Mr David Hamilton and accompanied by her son, Mr William Hamilton and a friend, Mr Paul Connelly. Mr Dobbin advised the Tribunal that payments of rent had been received since the date of the application, but the arrears still stood at £2,370. He also provided the Tribunal with a copy of the Private Residential Tenancy Agreement between the Parties, commencing on 18 October 2018 at a monthly rent of £750. He accepted an error in the Rent Statement in that it indicated the first rent payment was due on 18 September 2017. It should have been 18 October 2018.

The Respondent told the Tribunal that it had been agreed between the Parties around June 2019 that the rent would be reduced to £600 per month. Mr Dobbin accepted that there had been discussions but he stated that no formal agreement had been reached and that any such agreement would have been dependent upon the other issues in the application relating to anti-social behaviour being resolved.

The Tribunal did not ask the Applicant's representative to provide further evidence in relation to Grounds 11, 14 and 15 of Schedule 3 to the 2016 Act.

### **Reasons for Decision**

Rule 17 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

Section 51 of the 2016 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 to the 2016 Act states 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 is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

The Tribunal was unable to make a finding as to whether there had been an agreement to reduce the rent, but held that the question had no effect on the outcome of the application. The rent until at least June 2019 was £750 per month and the Respondent had not paid the rent that should have been paid on 28 November 2018. In addition, the rent paid on 28 January 2019 had been £20 short and there were further underpayments of £50 in each of April and May 2019. Accordingly, the rent had been at least one month in arrears since 28 November 2018, so the requirements for Ground 12 had been satisfied. No evidence had been provided to suggest the delay or failure had been in any way attributable to a delay or failure in the payment of a relevant benefit. Accordingly, the Tribunal was bound to issue an Eviction Order

As the Tribunal had decided to issue an Eviction Order under Ground 12 of Schedule 3 to the 2016 Act, which is a mandatory ground, it was unnecessary for the Tribunal to consider further the application under Grounds 11, 14 and 15 of the Schedule.

### **Decision**

The Tribunal determined that the application should be decided without a Hearing 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.**

G Clark

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**Legal Member/Chair**

28 January 2020  
**Date**