

**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 and Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Rules”)**

**Chamber Ref: FTS/HPC/EV/19/1929**

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**Re: Property at 136 Melbourne Avenue, Westwood, East Kilbride, G75 8DP (“the Property”)**

**The Parties:**

**Mrs Lynda Thomson, 114 Juniper Avenue, Greenhills, East Kilbride, G75 9JS (“the Applicant”)**

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**Citizens Advice Bureau, Almada Tower, 67 Almada Street, Hamilton, ML3 0AL (“the Applicant’s Representative”)**

**Miss Amanda Jane Wilson, 136 Melbourne Avenue, Westwood, East Kilbride, G75 8DP (“the Respondent”)**

**Tribunal Members:**

**Susanne L. M. Tanner Q.C. (Legal Member)**

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

**(i) The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) was satisfied that Ground 12 in Schedule 3, Part 3 to the 2016 Act was established by the Applicant, in that (i) as at 23 October 2019, the Respondent is in arrears of rent greater than the amount payable as one month’s rent under the tenancy; (ii) the Respondent has been in arrears of rent for a continuous period of three months up to and including 23 October 2019; and (iii) the Respondent being in arrears over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit; and made an order for the Respondents’ eviction from the Property.**

## Reasons

### 1. Procedural Background

- 1.1. The Applicant made an application to the tribunal on 21 June 2019 in terms of Section 51 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”) (“the Application”).
- 1.2. In the Application, the Applicant seeks the Respondent’s eviction from the Property in terms of Section 51 of the 2016 Act, under Ground 1, the Applicant intends to sell the Property; Ground 3, the Applicant intends to refurbish the Property and Ground 12, that the Respondent has been in rent arrears for three or more consecutive months,
- 1.3. The Applicant lodged with the Application:
  - 1.3.1. a copy of the Private Residential Tenancy agreement between the Applicant and the Respondent dated 17 July 2018 (and signed by a Guarantor on 19 October 2018);
  - 1.3.2. a copy of Landlord registration approval dated 18 September 2017;
  - 1.3.3. Bank statements for the Applicant for the period 9 August 2018 to 6 June 2019;
  - 1.3.4. Notice to leave to the Respondent dated 26 March 2019;
  - 1.3.5. Proof of service on the Respondent by Sheriff Officers of Notice to Leave on 29 March 2019; and
  - 1.3.6. Section 11 notice sent to the local authority.
- 1.4. On 27 June 2019, the Applicant submitted a signed copy of the Application.
- 1.5. On 1 July 2019, the tribunal’s administration obtained the Title Sheet for the Property which shows that the Applicant has been the registered proprietor since 9 January 2004.
- 1.6. On 11 July 2019, the Application was accepted for determination by a tribunal. Both parties were notified by letters dated 26 August 2019 of the date, time and place of Case Management Discussion (“CMD”) in relation to the Application. The

Respondent was invited to make written representations in response to the Application no later than 16 September 2019. Both parties were advised that they were required to attend the CMD. The parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application which may involve making or refusing an eviction order. The parties were also advised that if they do not attend the CMD this will not stop a decision or order being made if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair. The letter was served on the Respondent by Sheriff Officers on 28 August 2019.

- 1.7. On 17 September 2019, the Applicant submitted additional information in the form of a cover letter and two copy letters sent by her to the Respondent and to the guarantor under the tenancy.
- 1.8. The CMD was postponed to 23 October 2019 at 1000h and parties were notified by letter dated 18 September 2019.
- 1.9. The Respondent did not make any contact with the tribunal's administration or submit any written representations.

**2. Case Management Discussion ("CMD"): 23 October 2019 at 1000h at Glasgow Tribunals Centre, 20 York Street, Glasgow, G2 8GT**

- 2.1. The Applicant attend with her daughter Ms Laura Thomson as a supporter. Ms Erica Young from Citizens Advice Bureau, Hamilton, attended as a Representative for the Applicant and the tribunal's administration added her details to the case management system.
- 2.2. The Respondent did not appear at the CMD or make any contact with the tribunal. The tribunal was satisfied that the requirements of Rule 24(1) of the tribunal's rules giving of notice of a hearing have been duly complied with and proceeded with the application upon the representations of the party present and all the material before it.
- 2.3. The Applicant's Representative submitted that Ground 12 of Schedule 3 has been met as the Respondent is over three months in rent arrears and has made no effort to bring that balance down. She further submitted that there is no evidence that there is any delay or failure in payment of housing benefit.
- 2.4. The tribunal chair enquired as to whether the Applicant has been in receipt of Housing Benefit during the tenancy. The Applicant stated that her understanding is that from the start of the tenancy, the Respondent has been

in receipt of Housing Benefit, paid directly to the Respondent. The Applicant stated that since the Respondent has fallen into arrears, she has tried to contact the council to have Housing Benefit paid directly to her, but she has not submitted anything in writing to the Council.

2.5. The Applicant further stated that she does not think that the Respondent is still residing in the Property. She stated that she lived nearby. She has not been aware of any activity or lights on at the Property. Since the Application was made to the tribunal on 21 June 2019, neighbours have told the Applicant that they saw the Respondent moving things out of the Property. The Applicant thinks that that was around two months ago in August 2019.

2.6. The tribunal chair noted that Clause 3 of the tenancy agreement provides for all notices under the tenancy to be sent out by email to the email addresses provided in Clauses 1 and 2 and that no proof of service on the Respondent by email had been lodged with the Application. The tribunal chair asked if the Applicant's Representative or the Applicant had such evidence.

2.7. The Applicant stated that the NTL was sent to the Respondent by email by a solicitor that she originally instructed, Chloe Barr at Clarity Simplicity. The Applicant thought that she had lodged an email with her Application.

2.8. The tribunal chair asked the Applicant's Representative what her position was about service of the NTL. The Applicant's Representative said that she was not overly concerned about whether the NTL had been properly served in terms of the PRT. She did not notice that proof of service by email had not been lodged with the Application and was not expecting the tribunal to ask her about this as she thought that it was a straightforward Application.

2.9. The Applicant stated that she filled out the Application form herself after having had advice from the solicitor. She first consulted the Citizens Advice Bureau on 19 June 2019.

2.10. Additional documents were then produced by the Applicant at the CMD which had been lodged in relation to the related civil application CV/19/1932:

2.10.1. **Applicant's Documents number 1:** A letter from Chloe Barr, Trainee Solicitor, Simplicity Clarity, Solicitors, to the Respondent at the Property address, dated 2 May 2019;

2.10.2. **Applicant's Documents number 2:** An email bearing to be from the Respondent to Chloe Barr dated 15 May 2019;

2.10.3. **Applicant's Documents number 3:** An email from Chloe Barr to the Respondent's email address dated 21 May 2019.

- 2.11. None of the documents produced is evidence that the NTL was served on the Respondent by email in terms of the PRT.
- 2.12. The Applicant stated that although she did not have proof that the NTL was served by email, the NTL was served by Sheriff Officers on 29 March 2019 by them depositing it through the letterbox at the Property and referred to the proof of service lodged with the Application.
- 2.13. The Applicant's Representative submitted that it can be inferred from the correspondence now lodged in this application that the NTL has been received by the Respondent as the Respondent acknowledges "a letter" which relates to possible eviction.
- 2.14. The tribunal chair allowed the Applicant and her Representative an adjournment for the Applicant to check her emails, discuss matters with her Representative and to contact the Applicant's former solicitor, if required.
- 2.15. After the adjournment, the Applicant submitted further documents:
- 2.15.1. **Applicant's Documents number 4:** A bundle containing an email from Chloe Barr to the Applicant dated 25 March 2019 attaching a Terms of Engagement letter to the Applicant dated 22 March 2019; Terms of Business; and a fee note dated 22 March 2019.
- 2.16. The Applicant's Representative submitted that within the letter in the above documents, Chloe Barr had stated that she could serve a NTL by email as provided for in the PRT. The Applicant's Representative stated that at present the Applicant does not have proof of service of the NTL by email. The email was to be sent from the office of the solicitor but there is no evidence that that was done. The Applicant's Representative accepted that is not proof of service of the NTL but stated that subsequent correspondence shows that the Respondent was aware of the possibility of eviction proceedings. She submitted that the correspondence in **Applicant's Documents number 2** suggests that the Respondent was replying to a letter of 2 May 2019 about pending eviction.
- 2.17. When asked by the tribunal chair about her submissions in relation to Section 52 of the 2016 Act, the Applicant's Representative stated that she had not prepared this case or brought the 2016 Act with her because the Application had seemed quite straightforward.

- 2.18. The Applicant's Representative further submitted that paragraph 3 of the letter in **Applicant's Documents number 4** states that the solicitor was intending to serve the Notice to Leave by email.
- 2.19. The Applicant's Representative requested time to consider the position with reference to the provisions of the Private Housing (Tenancies) (Scotland) Act 2016. The tribunal adjourned again at 1104h to allow her to do so.
- 2.20. The CMD resumed at 11.12h.
- 2.21. The Applicant advised that during the adjournment she had tried to contact her solicitor but had been unable to do so.
- 2.22. The tribunal chair asked the Applicant's Representative whether she wished to adjourn to obtain the document or to make further submissions. She confirmed that she wished to make further submissions.
- 2.23. The Applicant's Representative referred to Section 52 of the Act, subsection (4), that the tribunal may entertain an application in breach of Section 54 if it considers that it is reasonable to do so. She submitted that given the intention of the solicitor and the acknowledgement by the Respondent of the nature of legal proceedings for eviction, including reference to rent arrears and the grounds, that it would be reasonable for the tribunal to proceed without proof of the service of the notice by email.
- 2.24. The tribunal chair accepted the submissions of the Applicant's Representative, with reference to the documents referred to, and was satisfied that it could entertain the Application.
- 2.25. The Applicant then confirmed that she wished to amend the Application. There are three grounds in the Notice to Leave and the Application. The only ground the Applicant wishes to rely on is rent arrears for more than three months.
- 2.26. The tribunal chair allowed the Application to be amended to restrict it to Ground 12 only.
- 2.27. The Applicant stated that the monthly rent was £450.00 throughout the tenancy. There was an initial deposit of £450.00 which was lodged with My Deposits Scotland. The Applicant stated that she was advised to ask for that back. It has been paid back to her in full. She stated that the Respondent had asked for the Applicant to use that for some of her arrears.

- 2.28. The Applicant lodged a bundle of bank statements showing the position to date, **Applicant's Documents number 5**. There have been no payments by the Respondent in the period to date.
- 2.29. The Applicant's Representative stated that despite the Respondent agreeing to a payment plan, as referred to in the lodged correspondence, no further payments had been made.
- 2.30. The Applicant lodged a revised version of the Rent Statement, **Applicant's Document number 6**, showing dates and amounts due, amounts paid by the Respondent and a total for rent arrears. The deposit was deducted from the total rent arrears. A copy was added to the related CV case.
- 2.31. The Applicant's Representative submitted that Ground 12 has been met. On 13 August 2018 first months' rent was paid, in addition to deposit. Rent was paid September, October, November 2018. In December rent of £100 was paid so the first rent arrears were £350. No attempt was made to make up the shortfall. Rent was paid on 13 January 2019. The Respondent was still £350 in rent arrears on 13 January 2019. The total rent arrears as at today's date, 23 October 2019 is £4,400, less the £450 paid back by the deposit company, leaving arrears of £3950.00.

### **3. The tribunal makes the following findings-in-fact:**

- 3.1. The Applicant has been the registered proprietor of the Property since 9 January 2004.
- 3.2. There is a Private Residential Tenancy between the Applicant and the Respondent for the Property dated 17 July 2018.
- 3.3. The start date for the tenancy was 12 August 2018.
- 3.4. The rent is £450.00 per calendar month payable on 12<sup>th</sup> of each month.
- 3.5. The Notice to Leave to the Respondent dated 26 March 2019 includes notice that the ground upon which eviction is sought is Ground 12 of Schedule 3 of the 2016 Act.
- 3.6. The Notice to Leave was served on the Respondent by Sheriff Officers on 29 March 2019.

3.7. The Applicant received repayment of the Respondent's full deposit in respect of rent arrears.

3.8. The rent arrears as at 23 October 2019 are £3950.00 which are in excess of one month's rent.

3.9. There have been rent arrears for more than three consecutive months.

3.10. The rent arrears are not a consequence of a delay or failure in the payment of Housing Benefit to the Respondent.

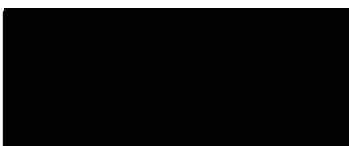
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#### **4. Findings in fact and law**

4.1. Because the tribunal is satisfied that the facts required in para 12 of Schedule 1 to the 2016 Act have been established, the tribunal must find that Ground 12 applies and make an order for the Respondent's eviction from the Property.

#### **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.



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**Susanne L. M. Tanner Q.C.**  
**Legal Member/Chair**

**23 October 2019**