



**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/19/2664**

**Re: Property at 27 Tulloch Court, Dingwall, IV15 9GU (“the Property”)**

**Parties:**

**Mr Peter Stewart, Mrs Yvonne Stewart, Clach Bhuidhe, Greenhill, Culbokie,  
Dingwall, Ross-shire, IV7 8JZ (“the Applicants”)**

**Ms Marta Nowak, 27 Tulloch Court, Dingwall, IV15 9GU (“the Respondent”)**

**Tribunal Members:**

**Valerie Bremner (Legal Member)**

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

**Background**

This is an application for an eviction order in terms of the Private Housing (Tenancies) (Scotland) Act 2016 first made on 27th August 2019.

The Application was accepted by the Tribunal on 10th October 2019 and a Case Management Discussion was fixed for 17th December 2019.

The Applicants Mr Peter Stewart and Mrs Yvonne Stewart attended the case management discussion on 17th December 2019 and represented themselves. Also present was Mr James Stewart as a supporter only. The Respondent did not attend nor was she represented. The Tribunal had sight of a certificate confirming service by advertisement by the Tribunal of the Case Management Notification Letter

containing details of the matter, for the period between 15th November 2019 and 17th December 2019. The Applicants requested the Tribunal to proceed in the absence of the Respondent and given that the Application and papers had been served by Advertisement the Tribunal agreed to proceed in her absence in terms of Rule 29 of the Tribunal Rules of Procedure.

## Discussion

The Tribunal had sight of the application, a tenancy agreement, a Benefit Decision Notice, a Universal Credit Request by the landlord for payment management or arrears deduction from benefit, a Notice to Leave in terms of the 2016 Act, a series of emails, a letter, a Notice in terms of Homelessness etc (Scotland) Act 2003 and confirmation of receipt of said Notice.

The Applicant relied on Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 and it was suggested that the Respondent had been continuously in arrears of rent since December 2018. The Tribunal was advised by the Applicants that the Private Residential Tenancy agreement commenced on 18 March 2018. The Respondent had occupied the property since 2009 firstly with her partner then when he left in 2014, she stayed alone there with her two children but the Tenancy under consideration had not commenced until 18 March 2018. The rent was £465 per month but it was agreed that it would be paid four weekly at the rate of £429 and this was to be paid by benefit payment. Rent had been paid by benefit until December 2018 (aside from one period of a few months earlier in 2018 when arrears had accrued but these had been repaid from benefit on the Respondent's behalf).

From December 2018 rent was no longer paid. No rent had been received from the Respondent or on her behalf since that date. The Applicant Mrs Stewart had made enquiries with Highland Council and confirmed that no claim for universal credit was in place by the Respondent after 16 December 2018 and that no more Housing Benefit would be paid. Mrs Stewart had made attempts to resolve the matter by seeking to manage the payments or deduct arrears from any benefits awarded to the Respondent but had been unable to do this as no universal credit claim was in place. Mrs Stewart had written to both Highland Council and Citizens Advice setting out the benefit issues in the hope that the matter could be resolved in a way that would allow the tenancy to continue.

Mrs Stewart advised the Tribunal that the Respondent's first language was Polish but that she listened to and understood spoken English, some written English and used text messaging in English. Her two children spoke English and Mr Stewart had spoken with at least one of them on her visits to the property. The tenancy agreement for the property which the Respondent had signed was in English. Being aware of a possible language issue Mrs Stewart ensured she text her in advance of visits and sometimes had a friend of the Respondent translate what she was saying for the Respondent.

The Applicant Mrs Stewart had attended at the property with the Notice to Leave on 17<sup>th</sup> May 2019 to hand this over in hard copy, one of the agreed methods of communication in the tenancy agreement. She had sent a text message to the Respondent to say that she was coming. When she arrived she handed the papers to the Respondent and the Respondent's friend who was present translated for the Applicant Mrs Stewart to ensure that the Respondent understood what the papers meant for her. Mrs Stewart advised that when she left that day she had also contacted the Respondent's mother in law to advise her of what was happening in order that she could assist. Mrs Stewart was in no doubt that the Respondent understood the position she was in as regards the Notice to Leave and that the Applicants would be taking steps to recover the property within a particular timeframe.

The Applicant Mrs Stewart had sent copies of the Notice to Leave to a Housing Options Officer at Highland Council and was advised that the Notice would be translated for the Respondent. Mrs Stewart further understood that agencies had contacted the Respondent to assist her in obtaining new housing but that she had not attended arranged meetings.

The Notice to Leave appeared to be in the correct form and had been properly and timeously served. The date in the Notice by which the Application to the Tribunal could be made appeared to be one day later than the date required. After discussion The Tribunal was prepared to accept that this was a minor error as set out in S73 of the Act and did not affect the validity of the Notice to Leave as it gave additional notice of the date when Tribunal proceedings could commence. The relevant Notice in terms of the Homelessness etc (Scotland) Act 2003 had also been sent to Highland Council. The Tribunal was satisfied that the eviction grounds were met and that it was reasonable that an Eviction order should be granted.

### **Findings in Fact**

1. The Applicant and Respondent entered into a Private Residential Tenancy at the property with effect from 18th March 2018.
2. The rent for the property is £ 465 per month which was to be paid 4 weekly at the rate of £429.

3.The Respondent is in arrears with the rent at the property and has been continuously in arrears since December 2018.

4.There was no claim for universal credit by the Respondent to assist with rent payments after December 2018.

4.A Notice to Leave in the appropriate terms and stating the eviction ground and giving information supporting the ground was served on the Respondent on 17<sup>th</sup> May 2019.

5.A Notice in terms of Section 11 of the Homelessness etc ( Scotland ) Act 2003 was served in respect of this Application.

### **Reasons for Decision**

The Tribunal was satisfied that the terms of section 51 of the Private Housing (Tenancies) ( Scotland) Act 2016 are met and Ground 12 of the eviction grounds in Schedule 3 of the Act is met in that the Respondent is in rent arrears at the property for more than 3 consecutive months.

The Tribunal considered the issue of whether the arrears had accrued in any way as a result of a failure or delay in payment of relevant benefit. Whilst it was clear that for some reason a new claim for universal credit was required to be made by the Respondent in order to have the rent paid after 16<sup>th</sup> December 2018, this claim had not been made for reasons the Tribunal was unaware of. There was clear information before the Tribunal to suggest that the rent payments stopped as there was no claim for universal credit, rather than a failure or delay in the payment of this benefit. It was also clear that the Respondent had been in receipt of housing benefit previously so must have had some awareness of the benefit system even at a basic level.

The Tribunal carefully considered the issue of whether the Respondent would have understood the Notice to Leave and its consequences. Whilst it was not suggested that it was translated word for word to her it was clear from the Applicant Mrs Stewart at the Case Management Discussion that the Respondent had the ability to understand English as set out above and the meaning and possible consequences of the Notice were explained in Polish to her. This was against a background of the Respondent being aware that her rent for the property was not being paid at all after December 2018, she having discussed this with the Applicant Mrs Stewart. There had been ongoing dialogue with the Respondent on the issue and the

Applicants had asked agencies to assist to resolve matters, to no avail. The Tribunal formed the view from the information available that for whatever reason the Respondent was simply not dealing with or seeking assistance with the payment of her rent and accrued arrears.

The Tribunal formed the view that the Applicants had done everything they could to try to resolve the issues around non payment of the rent at the property and had applied to the Tribunal reluctantly.

Having taken all of the circumstances into account it seemed reasonable to grant the eviction order as requested.

## **Decision**

The Tribunal makes an eviction order against the Respondent in terms of Section 51 of the Private Housing ( Tenancies ) ( Scotland ) Act 2016 as the Respondent is in arrears of rent for the property over more than three consecutive months.

## Right of Appeal

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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.

Valerie Bremner

17 December 2019

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**Legal Member/Chair**

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**Date**