



**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/22/4065**

**Re: Property at 120 Thistle Court, Aberdeen, AB10 1SE (“the Property”)**

**Parties:**

**Parkin Properties Ltd, 7 Osborne Place, Aberdeen, AB25 2BX (“the Applicant”)**

**Mr Greg Pender, 120 Thistle Court, Aberdeen, AB10 1SE (“the Respondent”)**

**Tribunal Members:**

**Shirley Evans (Legal Member) and Elaine Munroe (Ordinary Member)**

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

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at 120 Thistle Court, Aberdeen, AB10 1SE under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth and from the Property and to make the same void and redd that the Applicant or others in their name may enter thereon and peaceably possess and enjoy the same.

**Background**

1. By application dated 8 November 2022, the Applicant’s agent applied to the First- tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for repossession under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).

2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the parties dated 11 and 12 October 2021, a Notice to Leave and email dated 6 July 2022, a rent statement, a letter dated 14 June 2022, an email dated 8 November 2022 addressed to Aberdeen City Council with a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Aberdeenshire Council also dated 8 November 2022.
3. By email of 21 March 2023 after enquiries from the Tribunal in relation to the Cost of Living (Tenant Protection) (Scotland) Act 2022 the Applicant's agent advised that she wished to amend the application to proceed on Ground 12A (substantial rent arrears) of schedule 3 of 2016 Act.
4. On 3 April 2023, the Tribunal accepted the application under Rule 9 of the Regulations 2017.
5. On 11 May 2023 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 1 June 2023. The Tribunal advised parties that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 16 June 2023. This paperwork was served on the Respondent by James Booth, Sheriff Officer, Aberdeen on 12 May 2023 and the Execution of Service was received by the Tribunal administration.
6. The Respondent did not lodge any written representations by 1 June 2023.

### **Case Management Discussion**

7. The Tribunal proceeded with a CMD on 16 June 2023 by way of teleconference. Ms Lisa Campbell from Stonehouse Lettings appeared on behalf of the Applicant. Mr Kelman from Parkin Properties Ltd was also in attendance. There was no appearance by or on behalf of the Respondent despite the teleconference starting 5 minutes late to allow the Respondent plenty of time to join. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in his absence.
8. The Tribunal had before it the Private Residential Tenancy Agreement between the parties dated 11 and 12 October 2021, the Notice to Leave and email dated 6 July 2022, a rent statement, a letter dated 14 June 2022, an email dated 8 November 2022 addressed to Aberdeen City Council with a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Aberdeenshire Council also dated 8 November 2022. The Tribunal considered these documents.
9. The Tribunal noted the Notice to Leave proceeded on Ground 12 (three months' rent arrears) of Schedule 3 of the 2016 Act and that by email of 21 March 2023 the Applicant sought leave to include Ground 12A (substantial rent arrears).

10. Ms Campbell moved the Tribunal to grant an order of eviction. She advised the Respondent had last paid rent on time was on 11 January 2022 with sporadic payments thereafter. She explained that their normal process for managing rent arrears was to contact a tenant approximately three times per week by email, text and calls. After the arrears started to accrue, she advised that they followed this procedure. The Respondent complained there were issues with the storage heaters and that the windows needed replacement and that he was withholding rent. The Applicant's agent arranged access and lined up contractors to inspect, but the Respondent never gave access. She explained her colleague Mr Fraser had attempted to get the Respondent to engage with him regarding the maintenance and access issues and explained the correct process for withholding rent, but there was no engagement from the Respondent. The Applicant's agent sent a letter to the Respondent on 14 June 2022 regarding the arrears and signposting the Respondent to support agencies. At this stage she explained that they realised they were probably going to have to go down the eviction route. The last payment to account was on 24 May 2022 of £450. By the time the Notice to Leave was served by email on 6 July 2022 the Respondent was a three full months in arrears amounting to £1350. The Notice was served on the Respondent by way of email. The Tribunal noted that in terms of Clause 8 of the tenancy agreement the rent was £450 per month and that in terms of Clause 4 service on the notice could be made by email. Ms Campbell explained the arrears had increased to £6750.
11. Ms Campbell went on to explain that as far as she was aware the Respondent lived alone. She was not aware that the Respondent had any disabilities or vulnerabilities or that there were any issues with benefits. She understood the Respondent was in employment.

### **Findings In Fact**

12. The Applicant and the Respondent agreed by way of Clause 8 of a Private Residential Tenancy Agreement dated 11 and 12 October 2021 in relation to the Property that the Respondent would pay the Applicant a monthly rent for the Property of £450.
13. The Respondent has fallen into arrears of rent and is in breach of Clause 8 of the tenancy agreement.
14. The Applicant's agent contacted the Respondent on a weekly basis from January 2022 about his rent arrears. Other than claiming he was withholding rent due to maintenance issues the Respondent did not engage with the Applicant's agent. He refused access for the Applicant's agent to attend to maintenance.
15. The Respondent's last payment was on 24 May 2022 when he paid £450.
16. On 14 June 2022, the Applicant's agent wrote to the Respondent signposting him to support agencies to assist with the arrears.

17. On 6 July 2022 the Applicant served a Notice to Leave on the Respondent by email. The said Notice requested that the Respondent remove from the Property by 5 August 2022. In terms of Clause 4 of the tenancy agreement parties agreed that the Notice could be served by email.
18. The Notice to Leave proceeded on Ground 12 of Schedule 3 of the 2016 Act. The arrears were £1350 at the time of serving the Notice to Leave. The Respondent had been in arrears of rent for more than three consecutive months with the level of arrears greater than the one month's rent under the tenancy.
19. The Respondent is in substantial arrears of £6750, being over six months in arrears. The arrears equate to fifteen months of arrears.
20. There are no outstanding benefits issues that will have any impact on the arrears.
21. The Respondent lives alone and is in employment.
22. A Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 was served on Aberdeen City Council on 8 November 2022.

### **Reasons for Decision**

23. The Tribunal considered the issues set out in the application together with the documents lodged in support. The Tribunal also considered the following legislation in its determination -
  - Private Housing (Tenancies) (Scotland) Act 2016
  - The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.
  - The Cost of Living (Tenant Protection) (Scotland) Act 2022.
24. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application originally proceeded on Ground 12 (three months rent arrears).
25. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.
26. In terms of Section 54 of the 2016 Act a landlord may not make an application to the Tribunal for an eviction order against a tenant until the expiry of the relevant period in relation to that Notice. The relevant period

begins on the day the tenant receives the Notice which in the case of Grounds 12 of Schedule 3 is 28 days.

27. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states the Respondent is in three months' rent arrears at Part 2 of the Notice. The Notice to Leave specifies the date the Applicant as landlord expects to become entitled to make an application for an eviction order namely 5 August 2022. In terms of Section 62(4) of the 2016 Act, the Notice to Leave must specify the day falling after the day on which the notice period defined in section 54(2) will expire. In this case the Notice to Leave was received by the Respondent on 6 July 2022. In the circumstances the Tribunal is satisfied the Respondent has been given sufficient notice of 28 days. Accordingly, the Notice to Leave complies with Section 62.
28. The Tribunal considered Applicant's agent's leave to amend dated 21 March 2023 under Rule 14(1) of the Regulations to allow the application to proceed under Ground 12A of Schedule 3 of the 2016 Act even though the Notice to Leave dated 6 July 2022, did not include Ground 12A.
29. Paragraph 5 (a) of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 ("the 2022 Act") introduced additional grounds of repossession and amended Schedule 3 of the 2016 Act on 28 October 2022, including the introduction of Ground 12A. Ground 12A (Substantial rent arrears) provides –
- "(1) It is an eviction ground that the tenant has substantial rent arrears.*
- (2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—*
- (a) the tenant has accrued rent arrears under the tenancy in respect of one or more periods,*
- (b) the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy when notice to leave is given to the tenant*
- on this ground in accordance with section 52(3), and*
- (c) the Tribunal is satisfied that it is reasonable to issue an eviction order.*
- (3) In deciding under sub-paragraph (2) whether it is reasonable to issue an eviction order, the Tribunal is to consider—*
- (a) whether the tenant being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit,*
- (b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers under paragraph 12(4)(b) (and continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022).*
- (4) For the purpose of this paragraph—*
- (a) references to a relevant benefit are to—*
- (i) a rent allowance or rent rebate under the Housing Benefit Regulations 2006 (S.I.2006/213),*
- (ii) a payment on account awarded under regulation 93 of those Regulations,*

*(iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,*  
*(iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,*  
*(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.”*

30. Paragraph 1(1) and (2) of Schedule 2 of the 2022 Act introduced certain restrictions on residential evictions. Paragraph 1(5) provides that where an eviction order relates to a private residential tenancy under the 2016 Act the restrictions do not apply where an order for eviction is granted on various grounds including Ground 12A.
31. In terms of Section 52(5)(b) of the 2016 Act the Tribunal may give permission for a ground of eviction to be included in the application even though it is not stated in the Notice to Leave.
32. The Tribunal considered that the Respondent had received intimation of the application to amend the application to proceed under Ground 12A with the application papers on 12 May 2023. The Respondent had not disputed the application. The Tribunal considered the Respondent's poor payment history since January 2022 and that he had not paid anything since 24 May 2022. Arrears have increased to £6750, being the equivalent of fifteen months rent. Accordingly the Tribunal was prepared to allow the amendment to allow the insertion of Ground 12A in the application. Ground 12A is discretionary ground of eviction. As well as being satisfied the facts have been established to support the ground, the Tribunal has to be satisfied that it is reasonable to evict.
33. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the submissions made by Ms Campbell. The Tribunal considered that the Respondent had not disputed the basis for the application. The Respondent was in substantial arrears of over six months. The arrears were continuing to increase. The Respondent has not paid anything towards the rent or arrears since 24 May 2022. He had not engaged at all with the Applicant's agent. There are no outstanding benefits issues. The Tribunal was satisfied on the basis of the documents lodged, together with submissions made by Ms Campbell, that the factual basis of the application had been established. A case under Ground 12A of Schedule 3 of the 2016 Act as amended by the 2022 Act was accordingly met. The Tribunal noted that notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Aberdeen City Council had been served.
34. In determining whether it is reasonable to grant the order, the Tribunal is required to weigh the various factors which apply and to consider the relevant circumstances of the case. In this case the Tribunal was satisfied on the

basis of the submissions of Ms Campbell that the Respondent had failed to engage with them. The Applicant's agent had complied with the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. They had regularly contacted the Respondent since arrears started to arise in an attempt to get him to engage. He had not done so. It would not be reasonable to expect the Applicant to continue to bear that level of substantial arrears with no engagement at all from the Respondent. The Respondent had also not engaged with the Tribunal process. There were no outstanding benefits issues. The arrears were increasing by the month and had reached such a level that there was very little choice but for the Tribunal to grant the order. The Tribunal considered the Respondent lived alone, had no known disabilities or vulnerabilities and was in employment. The balance of reasonableness in this case weighted towards the Applicant.

35. In the circumstances the Tribunal considered that in terms of Ground 12A of Schedule 3 the Respondent is in substantial rent arrears of over six months and that it is reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

### **Decision**

36. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

### **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 Evans

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Legal Chair

17 June 2023

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Date