



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) (Act) 2016.**

**Chamber Ref: FTS/HPC/EV/19/4017**

**Re: Property at 5 Sanderson Place, Newbigging, DD5 3RQ (“the Property”)**

**Parties:**

**Mr Alastair Anton, Mrs Lorna Anton, c/o Struan Baptie Property Management Ltd, 1A Victoria Road, Dundee, DD1 1EL (“the Applicants”)**

**Mr Kenneth Gijsbertus Vanderdeyl, Ms Elizabeth Isabel Chisholm, Addresses Unknown (“the Respondents”)**

**Tribunal Member:**

**Martin McAllister (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted against the Respondents in respect of the Property.**

**Background**

**This is an application for recovery of the Property. The application is dated 19<sup>th</sup> December 2019. Intimation of the case management discussion was made by advertisement because the addresses of the Respondent are not known.**

**The Case Management Discussion**

**The case management discussion was held in Caledonian House, Dundee on 18<sup>th</sup> March 2020. The Respondents were not present but Mrs Chisholm (hereinafter called “the second Respondent”) was represented by Mr Kenneth Marshall, solicitor who said that he had no instructions from Mr Vanderdeyl (hereinafter called “the first Respondent”).**

The Applicants was represented by Mr Stephen Forsyth, solicitor. Mr Struan Baptye and Mrs Melissa Coleman of Struan Baptye Property Management Ltd, letting agents of the Applicants were present.

### **Preliminary Matters**

The Legal Member outlined the purpose of a case management discussion. Mr Forsyth said that the Respondents had left the Property. Mr Marshall agreed and said that the second Respondent was not opposed to the granting of the order.

### **Documents Before the Tribunal**

1. The application dated 19<sup>th</sup> December 2019.
2. Copy Notice to Leave with proof of service which states that an application to the First-Tier Tribunal will not be made prior to 16<sup>th</sup> December 2019.
3. Copy Notice to Local Authority in terms of Section 11 of The Homelessness etc. (Scotland) Act 2003.
4. Rent statement as at date of application showing rent arrears of £3,124.54.
5. Rent statement showing current rent arrears of £5,449.54.
6. Certificate of Service by Advertisement dated 18<sup>th</sup> March 2020.

### **Findings in Fact**

1. The Applicants and Respondents entered into a private residential tenancy agreement for the Property dated 21<sup>st</sup> December 2018.
2. The tenancy commenced on 21<sup>st</sup> December 2018.
3. The tenancy has come to an end.
4. The monthly rent for the Property in terms of the tenancy agreement was £750.
5. There are currently rent arrears of £5,449.54.
6. There were rent arrears of £3,124.54 on 19<sup>th</sup> December 2019.

### **Reasons**

#### **The Law**

*Private Housing (Tenancies) (Scotland) Act 2016*

*Section 51(1)*

- (1) *The First-tier 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 applies*

### Schedule 3 Part 3

#### 12 Rent arrears

- (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.*
- (3) *The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if-*
  - (a) *for three or more consecutive months the tenant has been in arrears of rent, and*
  - (b) *the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.*
- (4) *In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.*

1. **Mrs Coleman and Mr Baptie stated that the level of rent arrears stated in both statements was accurate. Mr Marshall said that he had no issue with this. The Tribunal accepted that, in terms of the tenancy agreement, the monthly rent was £750 and the current rent arrears are £5,449.54.**
2. **The rent statements lodged disclose that the Respondents have been in arrears of rent for a period in excess of three consecutive months.**
3. **Mrs Coleman and Mr Baptie stated that, as far as they are aware, non-payment of rent has not occurred as a result of any issue of non-payment or delay in benefits. Mr Marshall did not take issue with this and the Tribunal accepted this.**
4. **The Tribunal was satisfied with the terms of the Notice to Leave and the terms of the Notice to the local authority.**

5. Since the Respondent are in arrears of rent by an amount in excess of £750 and since they have been in arrears of rent for a continuous period in excess of three months, the Tribunal must grant the order of eviction.

### **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.

**Martin J. McAllister, Legal Member of the First-tier Tribunal for Scotland**

**19<sup>th</sup> March 2020**