



**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/22/2078**

**Re: Property at 10 India Drive, Inchinnan, PA4 9LE (“the Property”)**

**Parties:**

**Mrs Susan Moore, Mr Graham Moore, 6 Cami Du Vinat, D'Amunt, 66820, France (“the Applicant”)**

**Mr Joseph Sillars, 10 India Drive, Inchinnan, PA4 9LE (“the Respondent”)**

**Tribunal Members:**

**Jan Todd (Legal Member) and Gerard Darroch (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession in favour of the applicants should be granted.**

**Background**

1. This was a case management discussion in respect of an application by the Applicant dated 29<sup>th</sup> June 2022 for an order for eviction against the Respondent. This was the first calling of the case before a Tribunal. A previous CMD had been arranged but was postponed at the request of the applicant's representative.
2. The following documents were lodged with the application:-
  - A copy of the Tenancy Agreement dated 19<sup>th</sup> March 2020 with a commencement date of 19<sup>th</sup> March 2020
  - Copy Notice to Leave dated 2<sup>nd</sup> December 2021
  - E-mail sending Notice to Leave dated 2<sup>nd</sup> December 2021
  - Copy S 11 Notice and letter to Renfrewshire Council dated 2<sup>nd</sup> December 2021
  - Rent statement showing balance due of £1550 at 1<sup>st</sup> December 2021

- E-mails to tenant regarding non-payment of rent
3. The Applicant lodged a further rent statement in the conjoined case for payment or rent arrears showing that as of 21<sup>st</sup> November 2022 the rent due was £7,545 and then a further rent statement and was lodged on 13<sup>th</sup> February seeking a sum due of £9,180.
  4. The Tribunal issued a direction asking for clarification of how the apparent rent increase from £525 to £545 charged from 1<sup>st</sup> January 2022 had been applied and the Applicant's representative responded on 2<sup>nd</sup> May 2023 providing a copy of an e-mail dated 29<sup>th</sup> September 2021 to the Respondent confirming the landlord wished to increase the rent from £525 to £545 from 1<sup>st</sup> January 2022 and a copy of the Respondent's response dated 30<sup>th</sup> September 2021.

### **The CMD**

5. The CMD proceeded today by way of teleconference. The Convener made introductions, and explained how the CMD would be conducted over the teleconference. The Applicant was represented by Mrs Jacqueline McLelland and Ms Daryl Harper who attended on behalf of the Applicant's representative Castle Residential.
  6. The Applicant was seeking eviction on Ground 12 of Schedule 3 to the 2016 Act
  7. The Respondent did not attend nor was he represented on the teleconference. The Respondent had been served a copy of the application and papers by sheriff officers on 20<sup>th</sup> December 2022 and sent on 3<sup>rd</sup> April 2023 a note of the date and time of this teleconference and details of how to join on. The Respondent has been given fair notice and the Tribunal therefore felt it was appropriate and fair to continue in his absence.
- Mrs McLelland spoke on behalf of the Applicant and advised that they were seeking an order for eviction of Mr Sillars who was the tenant in the Property. She explained that the Respondent had lived in the Property since approximately March 2020 and they believe he is still living at the Property although the tenant has not allowed or cooperated with giving access to the Property. He has not however returned the keys or given notice since receiving the Notice to Leave and neighbours believe he is still resident there.
  - Mrs McLelland explained that the Respondent has been verbally hostile and challenging when they have tried to contact him and they have been refused access and so cannot carry out inspections. She advised that this is having a significant adverse effect on the landlord who are reliant on rental income from this property to supplement their pension. She also advised this is causing them significant distress so they are seeking an order for eviction today.
  - In response to questions Mrs McLelland confirmed that the Respondent is a single male and she is not aware of him having any vulnerabilities.
  - With regard to the rent statement Mrs McLelland confirmed that the rent arrears are now £10815 although she advised that the Applicants are only seeking the sum previously intimated to the Tribunal on 13<sup>th</sup> February namely £9,180. She advised that nothing has been paid towards the arrears or any rent since October 2021 and advised that the guarantor is Ms Elizabeth Irvine and she sometimes paid his rent which is why her name appears on the statement.

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## **Facts**

1. The Applicant and the Respondent entered into a lease of the Property which commenced on 19<sup>th</sup> March 2020.
2. The Respondent is still occupying and in control of the Property and the tenancy is continuing.
3. A notice to leave dated 2<sup>nd</sup> December 2021 was served on the Respondent by e-mail confirming that no proceedings would be raised before 10<sup>th</sup> June 2022
4. These proceedings were raised on 29<sup>th</sup> June 2022 and the application included a copy of the Notice to Leave.
5. A Section 11 notice has been served on Renfrewshire Council
6. There were at least 3 months' rent arrears outstanding at the date of service of the Notice to Leave.
7. The Rent due was initially £525 in terms of the lease and was increased by notice of increase from 1<sup>st</sup> January 2022 to £545.
8. The current rent outstanding is £10,815 including rent.
9. The last payment made was on 4<sup>th</sup> October 2021.
10. The Respondent has failed to communicate or respond to the Applicant regarding the rent arrears and has made no response to this application.
11. The Applicants are reliant on income from the rent to supplement their pension.

## **Reasons for Decision**

- The Tribunal was satisfied that the Respondents had been served with a valid Notice to Leave under S52 (3) of the 2016 Act specifying Ground 12 of Schedule 3 of the Act as the relevant grounds of eviction.
- Grounds 12 required 6 months' notice under the rules which applied at the time of the service of the Notice in terms of the Coronavirus (Scotland) Act 2020. The Notice sets out the notice period as expiring on 10<sup>th</sup> June 2022. This Application was lodged timeously.
- Ground 12 is established if the Respondent is in arrears of rent by an amount equal to or greater than the amount which would be payable as one months' rent under the tenancy on the day the Tribunal considers the application and has been in arrears of rent for any amount for a continuous period up to and including that day, of three or more consecutive months. The Tribunal notes the Respondent did not pay the rent due on 1st September 2021, and only paid one month thereafter on 4<sup>th</sup> October leaving arrears due of more than 3 months on the date the Notice to Leave was served and there have been continuous arrears since. The current arrears outstanding today are £10,815. The Tribunal accepted that Ground 12 has been met.
- The Tribunal went on to consider if it was reasonable to grant an order for eviction. The Respondent has made no effort to pay the arrears, which are now substantial and rent has not been paid for over 18 months. The Applicant has sent pre action letters to the Respondent. The Respondent has not allowed any access to the landlord to inspect the Property or carry out maintenance checks and this is having a significant financial impact on the

Applicants and causing them significant distress. The Respondent is a single man with no known vulnerabilities. In view of the significant level of arrears and in the absence of any information from the Respondent the Tribunal finds it reasonable to grant the order for eviction. There is no suggestion that the failure to pay is a consequence of any delay or failure in the payment of benefit.

- There being no response to counter this from the Respondent, the Tribunal is satisfied in terms of S 51 (1) of the Act that Ground 12 being an eviction ground specified in the application is met, and that it is reasonable for the Tribunal to grant the application.

- Decision

Order for possession granted.

### **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.**

# J Todd

10 May 2023

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**Legal Member/Chair**

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**Date**