



**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 (Act)**

**Chamber Ref: FTS/HPC/EV/20/1073**

**Re: Property at 71 Stormyland Way, Barrhead, G78 2RR (“the Property”)**

**Parties:**

**Mrs Tahira Saddiq, 18 Urrdale Road, Glasgow, G41 5DD (“the Applicant”)**

**Mr Kevin Hearton, 71 Stormyland Way, Barrhead, G78 2RR (“the Respondent”)**

**Tribunal Members:**

**Alan Strain (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for eviction and recovery of possession be granted.**

**Background**

This is an application under Rule 109 and section 51(1) of the Act for eviction and recovery of possession on Ground 12 of Schedule 3 to the Act.

The Tribunal had regard to the following documents:

1. Application received 15 April 2020;
2. Private Residential Tenancy Agreement (**PRTA**) commencing 10 November 2018;
3. Notice to Leave dated 25 February 2020;
4. Section 11 Notice to Local Authority;
5. Rent Arrears Statement as at 9 April 2020
6. Royal Mail Certificate of Posting and Delivery of Notice to Leave dated 27 February 2020;
7. Email serving section 11 Notice dated 8 April 2020;

8. Certificate of Service of Tribunal CMD Notification on the Respondent by Sheriff Officers dated 21 July 2020;
9. Written Representations from Respondent dated 6 August 2020.

### **Case Management Discussion (CMD)**

The case called for a CMD by conference call on 17 August 2020. The Applicant participated and was unrepresented. The Respondent participated and was not represented.

The Respondent sought adjournment of the CMD to obtain legal representation. This was opposed by the Applicant due to the delay in proceedings and the fact that no rent had been paid for some months.

The Respondent informed the Tribunal that he had been unaware of the ability to be represented at the CMD.

The Tribunal considered carefully what both Parties had to say, the overriding objective and the interests of justice. The Tribunal decided to refuse the application to adjourn. The Respondent had ample opportunity to have obtained legal advice and representation. The Applicant would be prejudiced by the further delay if such an application were granted due to the ongoing rental arrears.

The Tribunal considered the terms of the Respondent's Written Representations and went through the items that were relevant to the Eviction Application with him.

The Respondent contended that the rent was agreed to be £400 per month, that he didn't gain entry to the Property until January 2019 and according wasn't due rent until then and disputed the amount of the arrears.

The Tribunal ascertained from the Respondent that he had seen the Schedule of Rent Arrears as at 9 April 2020 and agreed the amounts that he had paid were accurately stated on it. He disputed the amount of rent.

The Tribunal took time to go through the elements of Ground 12 with the Respondent and to ascertain whether the Ground was established.

The Tribunal explained that at the time of serving the Notice to Leave the Respondent must have been in arrears for 3 or more consecutive months. The Notice to Leave was served on 25 February 2020. As at that date (assuming the rent was £400 per month) he had been in arrears of rent since 10 January 2019 continuously. This was also on the basis that the Tribunal assumed he was not due to pay rent (as he asserted) until 10 January 2019.

The Tribunal then went on to consider whether as at the date of the CMD in excess of one month's rent was outstanding.

The Respondent accepted that he had not paid any rent for the last 4 months' and he agreed with the details of the payments made by him in the Rent Arrears Statement.

The Tribunal ascertained from the Respondent that he had been in employment until recently and had now been made redundant. He was not eligible for any relevant benefits up until that point.

The arrears were not due to any delay or failure to make payment of a relevant benefit.

The Respondent did not wish an eviction order to be granted and would do what he could to clear the arrears.

The Applicant informed the Tribunal that she wished the eviction order to be granted.

The Tribunal had regard to Ground 12 of Schedule 3 to the Act which provides:

*Rent arrears*

*12(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.*

*(5) For the purposes of this paragraph—*

*(a) references to a relevant benefit are to—*

*(i) a rent allowance or rent rebate under the [Housing Benefit \(General\) Regulations 1987 \(S.I. 1987/1971\)](#),*

*(ii) a payment on account awarded under regulation 91 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.*

The Tribunal then considered the documentary evidence it had received from the Parties and the matters that had been agreed. In so far as material the Tribunal made the following findings in fact:

1. The Parties let the subjects under a PRTA commencing 10 November 2018;
2. Notice to Leave had been served on the Respondent on 27 February 2020;
3. As at the date of service of the Notice to Leave the Respondent was in arrears of rent for a period in excess of 3 consecutive months;
4. As at the date of the CMD the Respondent was in arrears of rent for an amount in excess of one months' rent;
5. The rental arrears were not due to any delay or failure in the payment of a relevant benefit;
6. Section 11 notification had been served on the local authority on 8 April 2020.

The Tribunal was satisfied that Ground 12 had been established and it had no discretion other than to grant the application for eviction and recovery of possession.

### **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.**

# A Strain

**17 August 2020**

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**Legal Member/Chair**

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**Date**