



**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/19/2647**

**Re: Property at 8/4 West Pilton Green, Edinburgh, EH4 4HT (“the Property”)**

**Parties:**

**Mr George Kwek, c/o Southside Property Management, 20 Nicholson Street, Edinburgh, EH8 9DH (“the Applicant”)**

**Klaudia Ziedalska, Mr Daniel Nadworny, 8/4 West Pilton Green, Edinburgh, EH4 4HT (“the Respondents”)**

**Tribunal Members:**

**Neil Kinnear (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

**Background**

This is an application for an eviction order dated 22<sup>nd</sup> August 2019 and brought in terms of Rule 109 (Application for an eviction order) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant seeks an eviction order in relation to the Property against the Respondents, and provided with his application copies of the private residential tenancy agreement, notice to leave with executions of service, section 11 notices with executions of service, and rent arrears statement.

All of these documents and forms had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016*, and the procedures set out in that Act appeared to have been correctly followed and applied.

The Respondents had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 17<sup>th</sup> September 2019, and the Tribunal was provided with the executions of service.

### **Case Management Discussion**

A Case Management Discussion was held on 17<sup>th</sup> October 2019 at George House, 126 George Street, Edinburgh. The Applicant did not appear, but was represented by Mr McCall, solicitor. The First Respondent did not appear, but was represented by Mr Wilson, Housing Rights Advice Worker. The Second Respondent did not appear, nor was he represented.

The Tribunal was invited by Mr McCall with reference to the application and papers to grant the order sought on ground 12 of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*.

The notice to leave dated 16<sup>th</sup> July 2019 narrated that rent arrears at that time amounted to £2,370.00, accumulated over the four preceding months under the private residential tenancy agreement between the parties.

In response to an enquiry by the Tribunal concerning the monthly rental figures outstanding, Mr McCall produced various e-mails containing rent statements and a rent increase notice effective from 1<sup>st</sup> July 2019, which confirmed the monthly rental arrears sought, which he asked the Tribunal to consider.

Mr Wilson explained that he appeared at very short notice, having only just been instructed to appear by the First Respondent. He confirmed with the Tribunal that today's application was solely for an eviction order, and that there was not an application before the Tribunal today seeking payment of arrears in terms of Rule 111 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

After considering the various e-mails containing rent statements and a rent increase notice effective from 1<sup>st</sup> July 2019 produced by Mr McCall today, Mr Wilson accepted that he was not in a position to oppose the granting of the order sought, and he did not seek to oppose the documents being lodged at today's Case Management Discussion.

### **Statement of Reasons**

In terms of Section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* ("the Act"), the 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.

Para 12 of Schedule 3 to the Act provides that it is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. The Tribunal must find that this ground applies if (1) at the beginning of the day on which the Tribunal

first considers the application for an eviction order on its merits, the tenant 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 (2) 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 (3) 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.

The Tribunal is satisfied that ground 12 has been established. The tenant is in substantial arrears of rent which currently exceed one month's rent, and have been in arrears for a continuous period in excess of three months. The Tribunal is further satisfied that the tenant being in arrears is not wholly or partly due to any delay or failure in the payment of a relevant benefit. There has been no evidence to establish any such reason for rent arrears.

### **Decision**

In these circumstances, the Tribunal will make an order for eviction against the First and Second Respondents as sought in this application.

### **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.**

Neil Kinnear

17/10/19

---

**Legal Member/Chair**

---

**Date**