



**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/22/2898**

**Re: Property at 6 Orchard Place, Eliburn, West Lothian, EH54 6RX (“the Property”)**

**Parties:**

**Ms Margaret Deans, 29 Cairn Gardens, Balerno, EH14 7HJ (“the Applicant”)**

**Mr Craig Murphy, 6 Orchard Place, Eliburn, West Lothian, EH54 6RX (“the Respondent”)**

**Tribunal Members:**

**Petra Hennig-McFtridge (Legal Member) and Jane Heppenstall (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted. The decision was unanimous.**

**A: Background**

1. The application for an order for eviction under S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act) was made by the Applicant's agent on 16 August 2022 under Ground 12 of schedule 3 of the Act.
2. The following documents were lodged to support the application:
  - a. Copy tenancy agreement between the parties over the property commencing on 7 July 2021.
  - b. Tenancy rent statement from 7 July 2020 to 7 August 2022
  - c. Notice to leave dated 8 February 2022 was served on that date.
  - d. S11 Notice with email of service on 16 August 2022
  - e. PARS letters dated 3 and 11 February 2022 emailed to Respondent on said dates

3. On 20 October 2022 the application and notification of the Case Management Discussion (CMD) was served by Sheriff Officers on the Respondent. The Tribunal was satisfied that the Respondent had the required notice of the CMD as set out in Rules 17 (2) and 24 (2) of the Procedural Rules.
4. No representations from the Respondent were received by the Tribunal.
5. On 22 November 2022 the Applicant sent an updated rent statement covering the period to 7 November 2022. This was copied to the Respondent.
6. No representations from the Respondent were received by the Tribunal.
7. The case documents are referred to for their terms and held to be incorporated herein.

#### **B: Case Management Discussion**

1. The Applicant was represented at the CMD by Ms Wooley, the legal representative of the Applicant. The Respondent did not participate in the teleconference.
2. The legal member explained the purpose of the CMD. Ms Wooley advised that there had been two successful wage arrestments recently based on two payment orders against the Respondent previously granted by the Tribunal and thus the current arrears were £6,372.25. The Respondent had not engaged with the Tribunal process for these applications either. The Respondent's employer had since informed her that the Respondent had left his employment. The Respondent is a single male who lives at the property on his own and has not provided any explanation as to why he has stopped paying rent. He was in employment until recently. There had been various attempts by the letting agent and the Applicant to contact the Respondent but no payment offer had been forthcoming. The Applicant has health issues and receives PIP and supplements her income with the rent from the property, which has not been forthcoming for almost a year, the last payment from the tenancy having been received on 22 December 2021. The property is the only rental property. The lack of rental income has had a significant financial strain on the Applicant and she will have to sell the property.

#### **C: Findings in Fact:**

Based on the evidence lodged and the representations of the participants at the CMD the Tribunal makes the following findings in fact:

1. The property was let on a Private Residential Tenancy Agreement commencing on 7 July 2021.
2. The parties were the landlord and tenant of said Tenancy Agreement.
3. The tenancy continues.
4. The Applicant has title and interest to pursue the application .
5. The monthly rent, payable on the 7th day of the month in advance, was £550 as per clause 8 of the tenancy agreement.
6. Rent arrears accrued as per the Rent Statement up to November 2022.
7. As at 25 November 2022 £6,372.25 are still outstanding. The last payment of rent from the tenant had been made on 22 December 2021 and since then there had been two wage arrestments carried out

8. The Respondent has been in arrears of rent since 7 November 2021 and thus for a period exceeding 3 months at the time the notice to leave was served and is now in arrears of rent representing more than 11 months rent.
9. The Applicant had provided the Respondent with the opportunity to resolve the matter.
10. The Respondent is a single male residing in the property with no dependent children or family members.
11. The notice to leave gave the correct notice period and was served on 8 February 2022.
12. The rent arrears are not a consequence of delay or failure of payment of relevant benefits.
13. The Applicant provided the required S 11 notice and proof of service of same on the local authority.

#### **D: Reasons for decision**

##### 1. Relevant legislation:

In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

- (a) in any place where a hearing may be held;
- (b) by videoconference; or
- (c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

- (a) identifying the issues to be resolved;
- (b) identifying what facts are agreed between the parties;
- (c) raising with parties any issues it requires to be addressed;
- (d) discussing what witnesses, documents and other evidence will be required;
- (e) discussing whether or not a hearing is required; and
- (f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

Power to determine the proceedings without a hearing

However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

- (i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and
- (ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

- (i) correcting; or
- (ii) reviewing on a point of law, a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties

## **51 First-tier Tribunal's power to issue an eviction order**

(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.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may or must find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

### *Grounds under Schedule 3 of the 2016 Act*

#### Ground 12 Rent arrears

12(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

...

(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.

(3A) Sub-paragraph (3B) applies where the First-tier Tribunal is satisfied—

(a) that the eviction ground named by sub-paragraph (1) applies, and  
(b) that all or part of the rent in respect of which the tenant is in arrears as mentioned in that eviction ground relates to the period during which paragraph 5 of schedule 1 of the Coronavirus (Scotland) (No.2) Act 2020 is in force.

(3B) Where this sub-paragraph applies, in considering for the purposes of sub-paragraph (3)(b) whether it is reasonable to issue an eviction order against the tenant, the First-tier Tribunal is to consider the extent to which the landlord has complied with pre-action requirements before applying for the 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.

(6) In sub-paragraph (3B), "pre-action requirements" means such requirements as the Scottish Ministers may specify in regulations.

(7) Regulations under sub-paragraph (6) may in particular make provision about—

(a) information to be provided by a landlord to a tenant including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy,

- (b) steps to be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,
- (c) such other matters as the Scottish Ministers consider appropriate.

2. The Respondent has not made any representations and did not attend the CMD. The Respondent had fair notice of the representations of the Applicant forming the reasons for the application and has not challenged these. As no representations were received from the Respondent by the Tribunal, the facts of the case are not in dispute. This includes the matter of the accruing rent arrears as these were explicitly referred to in the application, the notice to leave and updated rent statement. The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case. The Respondent was made aware that the Tribunal could consider the case on its merits and make a decision at the CMD. No defence was lodged to the application.

3. The documents lodged are referred to for their terms and held to be incorporated herein. The Tribunal makes the decision on the basis of the documents lodged by the Applicant and the representations made by Ms Wooley on behalf of the Applicant.

4. In terms of S 54 of the Act a 6 months notice period applied and was given. The Applicant had served the notice required in terms of S 56 of the Act on the local authority and had complied with all formal requirements under the 2016 Act.

5. The Tribunal found that Ground 12 (2) of Schedule 3 and 3A of the 2016 Act applies in this case. This is a discretionary ground of eviction. There is clear evidence of the rent arrears accruing and some arrears having been in place since November 2021. The Tribunal was satisfied that in terms of Ground 12 3(B) the Applicant has complied with the pre action requirements set out in the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 by sending the emails of 3 and 11 February 2022 addressing the arrears and signposting the tenant to advice sources, fund sources and seeking proposals for a resolution. No payments apart from the wage arrearments have been received and the Respondent has not engaged with the Applicant to resolve the matter.

6 The Respondent has not provided any updates regarding his situation and had ignored all correspondence sent to him regarding rent arrears. The Respondent has not engaged in the process before the First-tier Tribunal and has not raised any issues as to why it would not be reasonable to grant an eviction order. No specific issues regarding reasonableness arise from the information available. The Respondent is a single male occupant with no dependent children living with him. No specific needs of the Respondent to live at the specific address have been raised. He has not provided any information advising of problems accessing suitable alternative accommodation.

7. The Respondent has not provided any information indicating that the rent arrears may have arisen from a late or incorrect benefit payment. There has been a

prolonged and persistent failure by the Respondent to address the arrears despite the Applicant's steps to try and engage the Respondent.

8. The significant arrears have had a negative impact on the Applicant's financial position as she relied on the income to supplement her PIP payments.

9. In the case of *City of Glasgow District Council v Erhaiganoma* 1993 SCLR 592, The Inner House of the Court of Session stated at page 594 that "Where prima facie reasonableness has been made out, we think that it is then for the tenant to put circumstances before the court to show otherwise.". In the present case the Applicant had provided evidence of significant and persistent rent arrears and attempts of the landlord to engage the tenant in efforts to find assistance and address the arrears. The Respondent had put forward no circumstances to show that it would not be reasonable for the Tribunal to issue an eviction order. In all the circumstances the Tribunal thus finds that it is reasonable to grant the eviction order on ground 12 of schedule 3 of the Act.

10. In terms of S 51(1) of the 2016 Act the Tribunal thus grants the application for an eviction order as it is satisfied that one of the eviction grounds in schedule 3 of the Act applies.

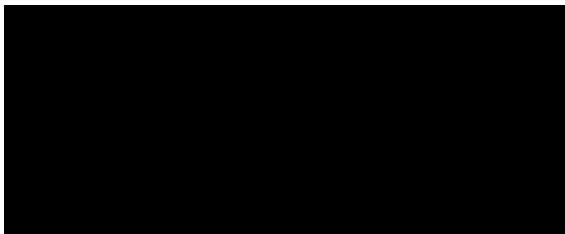
11. The Tribunal, having regard to the appeal period, determines that in terms of S 51(4) of the Act the tenancy ends on 27 December 2022.

#### **E : Decision**

**The Tribunal grants an order for eviction in terms of S 51 of the Act on Ground 12 of Schedule 3 of the Act**

#### **F: 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.**



**Legal Member/Chair**

**25 November 2022**  
**Date**