



**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/23/1327**

**Re: Property at 13 Pipers Court, Shotts, ML7 4DS (“the Property”)**

**Parties:**

**Mr Richard Duckett, Mrs Kerry Duckett, 1 Glengowan, Millheagh, Larkhall, ML9 1AS (“the Applicant”)**

**Mr Derek Adam, 13 Pipers Court, Shotts, ML7 4DS (“the Respondent”)**

**Tribunal Members:**

**Yvonne McKenna (Legal Member) and Helen Barclay (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 12A of schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.**

**Background**

1. The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E dated 20 April 2023. The documents produced were a Tenancy Agreement dated 1 September 2022; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies)(Scotland) Act 2016 (“ the 2016 Act”) dated 16 March 2023 (“Notice to Leave”) with attached rent statement showing arrears of £3300; email to the Respondent dated 16 March 2023 attaching the Notice to Leave; copy emails from the Applicant’s Representative to the Respondent regarding rent arrears dated 20 February 2023, 27 February 2023 and 8 March 2023 complying with the pre-action requirements; notification to the Local Authority in terms of section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 19 April

2023 and sheriff officer's execution of service certifying service of the Application on 3 July 2023.

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

2. The CMD took place by teleconference on 13 July 2023. The Applicant was represented by Mrs Colette Lloyd. The Respondent was absent. No written representations had been received from the Respondent by the Tribunal.
3. The CMD was conjoined with an application for a Payment Order under Reference FTS/HPC/CV/23/1328.
4. An updated rent statement had been produced to the Tribunal. This showed that no payments of rent had been made by the Respondent since the application was made to the Tribunal and the rent arrears as at the date of the CMD amounted to £5500.
5. The Tribunal went over the paperwork and the prior procedure. The purpose of the CMD was explained, and that in terms of Rule 17 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ('the Rules') the Tribunal may do anything at a CMD which it may do at a Hearing, including making a decision.
6. The Applicant had in terms of the Form E requested that eviction be granted under Ground 8A as opposed to Ground 12A. The Tribunal noted that the Notice to Leave stated that the Respondent was in arrears of rent of £3300, that the Respondent was in arrears over three consecutive months and that the Respondent had substantial rent arrears (equivalent to 6 months' worth of rent), This was also the specified reason stated on the Form E. At the time the Notice to Leave was served the Respondent was in arrears of an amount equivalent to 6 months' rent. The specifics of the Ground were satisfied it was just the wrong number had been inserted in the Form E and the Tribunal allowed an amendment in terms of Rule 13.
7. Mrs Lloyd moved the Tribunal to grant the Order for Eviction. She stated that the Respondent tenant had paid the first months' rent and the Applicant had received no payment since. The Respondent had made several excuses for not paying his rent. He had stated that he had changed jobs and that there was an issue relating to a fraud on his bank account. The Respondent had stopped communicating with the Applicant's Representative altogether since April 2023. The Applicant wished the Property to be returned to him in order that he could obtain a decent tenant. Mrs Lloyd said that in addition, the Applicant had been unable to access the Property and was concerned regarding the Property's current state.
8. Currently, the Respondent's circumstances are unknown to the Applicant. It is not known whether the Applicant is working or not. When he initially took over the lease the Respondent had been perfectly plausible. He had initially applied for a mortgage with the financial advisor in the Representative's office.

At that time he was working full-time and earned a good salary as a tyre engineer. He had passed the mortgage application and was looking for something to move into quickly. He had moved in as a single man. There is no suggestion that he has access to children. There are no issues regarding payment of benefits. There had been issues from day one of the Respondent moving in.

9. The Applicant landlord owns only one property. He has rented the Property out for over 10 years. He has never had any issues previously. Mrs Lloyd described the Applicant as a decent landlord who always dealt with matters appropriately and attended to matters such as any repairs straight away.

### **Findings in Fact**

10. The Tribunal made the following findings in fact:
  - (i) The parties entered into a Private Residential Tenancy Agreement (“the Agreement”) which commenced on 1 September 2022;
  - (ii) In terms of Clause 8 of the Agreement the Respondent was due to pay rent to the Applicant in the sum of £550 per calendar month payable in advance;
  - (iii) The Applicant has served a Notice to Leave on the Respondent on the basis of Ground 12A of Schedule 3 to the 2016 Act, and which was served on 16 March 2023;
  - (iv) On 16 March 2023 the Respondent was in rent arrears over three consecutive months and was in arrears or rent of an amount equivalent to 6 months’ rent;
  - (v) The Respondent has been in continuous arrears of rent since October 2022;
  - (vi) The Respondent is in arrears of rent amounting to £5500 at the date of the CMD.

### **Reasons for Decision**

11. *Section 51 of the 2016 Act states as follows:*

*51 (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 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.*

12. Ground 12A of Schedule 3 to the 2016 Act states as follows:

*“Substantial rent arrears*

*12A(1) It is an eviction ground that the tenant has substantial rent arrears.*

*(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—*

*(a) the tenant has accrued rent arrears under the tenancy in respect of one or more periods,*

*(b) the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months’ rent under the tenancy when notice to leave is given to the tenant on this ground in accordance with section 52(3), and*

*(c) the Tribunal is satisfied that it is reasonable to issue an eviction order.*

*(3) In deciding under sub-paragraph (2) whether it is reasonable to issue an eviction order, the Tribunal is to consider—*

*(a) whether the tenant being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit,*

*(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers under paragraph 12(4)(b) (and continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022).*

*(4) For the purpose of this paragraph—*

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

*(i) a rent allowance or rent rebate under the Housing Benefit Regulations 2006 (S.I. 2006/213),*

*(ii) a payment on account awarded under regulation 93 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,*

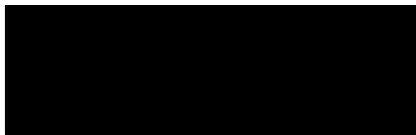
*(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.”*

13. The Tribunal was satisfied that a Notice to Leave had been served on the Respondent and which specified that ground, in accordance with the requirements of section 52 of the 2016 Act. The Tribunal was satisfied that the terms of Ground 12A of Schedule 3 to the 2016 Act had been met, namely that the Respondent has substantial rent arrears and was in arrears of an amount equating to 6 months' rent at the date the Notice to Leave was served. The Tribunal was satisfied that there was no information before it to suggest that the tenant's being in arrears of rent over that period was either wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

14. The Tribunal was satisfied that it was reasonable to grant the Order sought. The Respondent had been in arrears of rent since October 2022. . No explanation had been given by him as to the reason for falling into arrears. The Tribunal was satisfied that the Applicant had taken appropriate steps to try and engage with the Respondent, offer him assistance and signpost him to appropriate advice agencies. It appeared that the Respondent had simply chosen not to engage with any such contact. In the absence of any representations by the Respondent to the contrary, the Tribunal was satisfied that it was reasonable to grant the Order.

### **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.**



**Yvonne McKenna**

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**Legal Member/Chair**

**13 July 2023**

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**Date**