



**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/20/0180**

**Re: Property at 23 Moravia Avenue, Bothwell, G71 8QA (“the Property”)**

**Parties:**

**Mr James Smith, 40 Mough Lane, Chadderton, Oldham, OL9 9PJ (“the Applicant”)**

**Miss Lynne MacDonald, Mr Steven Munro, 23 Moravia Avenue, Bothwell, G71 8QA (“the Respondents”)**

**Tribunal Members:**

**Nairn Young (Legal Member) and Ann Moore (Ordinary Member)**

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

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

- Background
1. This application is for an eviction order to remove the Respondents from the Property, which they occupy in terms of a private residential tenancy agreement with the Applicant. It called for a case management discussion (‘CMD’) by teleconference at 10am on 22 June 2021. The Applicant was represented on the call by Ms Stephen of Anderson Strathern LLP, solicitors. The Respondents did not call in to the hearing and were not represented.

2. This matter has had a fairly lengthy procedural history. It called previously for a CMD on 14 August 2020. The first-named Respondent appeared at that CMD and intimated an intention to defend the application on various grounds. A direction was made requiring these grounds to be specified in writing and some particular questions to be answered by 31 August 2020. The Respondents did not answer that direction. The same direction required the Applicant to address various questions regarding the characterisation of the notice relied on by him in terms of s.52(3) of the Private Housing (Tenancies) (Scotland) Act 2016 ('the Act') as a 'notice to leave', and its validity as such, by 28 September 2020. The Applicant submitted written representations to the Tribunal on these questions on that date.
3. A hearing took place in the Respondents' absence on 12 October 2020, at which the application was refused, on the basis that the notice to leave was not properly constituted. A conjoined application for an order for payment of rent arrears was granted on the same day in the sum of £3,710.
4. Permission to appeal the decision of the hearing to the Upper Tribunal was granted on 4 December 2020. In a decision dated 6 April 2021, the Upper Tribunal granted the appeal and remitted the application to the First-tier Tribunal for consideration, on the basis that the ground relied on (para.12 of Schedule 3 to the Act ('Ground 12')) was no longer mandatory in terms of the Coronavirus (Scotland) Act 2020. The Respondents did not appear or make any representations at any stage during this part of the process.
5. In advance of this CMD, the Tribunal directed that the Applicant lodge written submissions on (among other things) whether the mandatory strand of Ground 12 had ceased to apply. Those submissions were received on 18 June 2021.
6. The Respondents were notified of this CMD by letters sent by recorded delivery on 19 May 2021. The commencement of the CMD was delayed by 10 minutes to allow for any technical difficulty they may have had in accessing the teleconference, but no contact was made by them. Given the history of

their non-engagement with the process at each stage since the hearing in October 2020, the Tribunal considered that it was in the interests of justice to proceed in their absence.

- Findings in Fact

The following findings in fact were made at the previous hearing of this application:

7. The Applicant rents the Property to the Respondents in terms of a private residential tenancy with a start date of 24 June 2019.
8. In terms of that tenancy, rent of £420 is due on the 28<sup>th</sup> day of each month.
9. The Respondents occupied the Property in terms of various other tenancy agreements, which were not private residential tenancies, immediately prior to the start date of the private residential tenancy.
10. On 28 November 2019 sheriff officers instructed by the Applicant deposited written notices purporting to be notices to leave at the Property, addressed to the Respondents, as well as sending the notices by ordinary post.
11. Each notice used the template set out in Schedule 5 of the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
12. Insofar as is relevant to this decision, that template was completed as follows:
  - (a) In Part 1, the notices stated that the tenants had lived in the property since 24 June 2019.
  - (b) In Part 2, they stated that the Applicant intended to apply to the Tribunal for an eviction order on the ground that the Respondents were in rent arrears over three consecutive months.

(c) In Part 3, they gave as further particulars of how that ground had arisen only, "Monthly rent- £420, Current arrears- £890," and stated that a rent statement had been attached as supporting evidence.

(d) In Part 4, they stated that an application for an eviction order would not be submitted to the Tribunal before 27 December 2019, being the earliest date such an application could be made.

13. Each notice was accompanied by a rent statement, giving the following information:

Rent Due

28 <sup>th</sup> June 2019	£420.00	
28 <sup>th</sup> July 2019	£420.00	
28 <sup>th</sup> August 2019	£420.00	
28 <sup>th</sup> September 2019	£420.00	
28 <sup>th</sup> October 2019	£420.00	
		£2,100.00

Rent Paid

23 <sup>rd</sup> August 2019	£710.00	
25 <sup>th</sup> October 2019	£420.00	
		£1,310.00

Arrears due as of 21<sup>st</sup> November 2019: £890.00

14. The total rent paid entered on the rent statements was erroneously recorded as £1,310 rather than the intended figure of £1,130. The arrears alleged to be due were also miscalculated and erroneously given on the rent statement as £890, rather than £930.

15. The Respondents have continued to occupy the property following service of the notices.

16. This application was made on 20 January 2020.

In addition, the Tribunal now makes the following findings in fact:

17. As at the date of previous hearing (12 October 2020), the Respondents owed at least £3,710 in rent arrears.

18. The Respondents have been in arrears continuously since 28 June 2019.

19. The arrears are not wholly or partly due to any delay or failure in payment of a relevant benefit.

- Relevant Law

20. The Coronavirus (Scotland) Act 2020 ('the 2020 Act') introduced temporary changes to the way in which the Act applies. These came into force on 7 April 2020 (s.17 of the 2020 Act). Section 2 of the 2020 Act introduces a Schedule 1 which reads (so far as relevant to this case:

**"1 Private residential tenancies: eviction grounds to be discretionary**

(1) The Private Housing (Tenancies) (Scotland) Act 2016 applies, in relation to a notice to leave within the meaning of section 62 of that Act served on a tenant while this paragraph is in force, in accordance with the modifications in this paragraph.

(2) Section 51(2) (First-tier Tribunal's power to issue an eviction order) has effect as if the words "or must" were repealed.

(3) Schedule 3 (eviction grounds) has effect as if—

...

(i) in paragraph 12 (rent arrears), sub-paragraph (2) were repealed,....”

21. Read without modification, Section 51 of the Act reads:

**“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.”

22. Also read without modification, Ground 12 reads:

**“12 Rent arrears**

(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.”

- Reasons for Decision

23. On the basis of the previous findings in fact and its application of the law, the Upper Tribunal found that a validly constituted notice to leave was served on the Respondents on 28 November 2019. As schedule 1 to the 2020 Act was not in force on that date, the modifications contained in it do not have effect for the purposes of the Tribunal’s consideration of this application (in terms of para.1(1) of that schedule).

24. The Tribunal first considered this application on its merits on 12 October 2020. As at the beginning of that day, the Respondents were in arrears of rent by an amount greater than one month’s rent under the tenancy and had been in arrears for a continuous period of more than three months. These arrears were not wholly or partly due to any delay or failure in payment of a relevant



benefit. The Tribunal must therefore find that Ground 12 applies and issue an eviction order.

- Decision

**Eviction order 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.**

Nairn Young

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**Legal Member/Chair**

22/06/2021

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**Date**