



**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/20/0764**

**Re: Property at 11 Drumbuie Drive, Patna, KA6 7PD (“the Property”)**

**Parties:**

**Mr Colin Keenan, Mrs Lauren Kate Keenan, 16 Castleview Road, Strathaven, ML10 6HD (“the Applicants”)**

**Miss Louise Lyle, 11 Drumbuie Drive, Patna, KA6 7PD (“the Respondent”)**

**Tribunal Members:**

**Neil Kinnear (Legal Member)**

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

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

**Background**

This is an application for an eviction order received by the Tribunal on 3<sup>rd</sup> March 2020 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 application was originally brought by the First Applicant, albeit that the landlord in the tenancy agreement to which it relates is the First and Second Respondents, who are also co-proprietors of the Property.

The Applicants seek an eviction order in relation to the Property against the Respondent, and provided with their application copies of the private residential tenancy agreement, notice to leave and proof of service, section 11 notice and proof 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 Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 15<sup>th</sup> July 2020, and the Tribunal was provided with the execution of service.

## **Case Management Discussion**

A Case Management Discussion was held at 10.00 on 13<sup>th</sup> August 2020 by Tele-Conference. The Applicants did not participate, but were represented by Ms McCulloch, letting agent. The Respondent did not participate, nor was she represented. The Respondent has not responded to this application at any stage either in writing or by any other form of communication.

The Tribunal was satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Tribunal noted that the application was brought in the sole name of the First Respondent, but that the landlord in the lease agreement was the Applicants, who were also co-proprietors of the Property.

Ms McCulloch advised the Tribunal that this was an error on the part of her office, and asked the Tribunal to make an order adding Mrs Lauren Kate Keenan as an additional Applicant in terms of Rule 32 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended. After confirming that she was instructed by both Applicants, the Tribunal made an order adding Mrs Lauren Kate Keenan as an additional Applicant to the application.

The Tribunal also noted that the notice to leave had been served by e-mail on the Respondent in terms of the lease agreement. However, the e-mail address used did not correspond with that specified in the lease agreement.

Ms McCulloch explained that the Respondent had contacted her office on 8<sup>th</sup> January 2020 advising that she had changed her e-mail address to the one subsequently used for service of the notice to leave on 29<sup>th</sup> January 2020. She was able to e-mail the Tribunal a copy of her business file note of the Respondent's contact advising of the change, and a copy of a subsequent e-mail from the Respondent to her using that e-mail address.

Finally, the Tribunal noted that the application form is dated 03/02/2020. The notice to leave is dated 29<sup>th</sup> January 2020 and was served by e-mail that day. However, the Tribunal noted that it had received the application on 3<sup>rd</sup> March 2020.

Ms McCulloch confirmed that the date on the form was an inadvertent error, and should have read 03/03/2020. In any event, the application had not been sent to, nor received by, the Tribunal prematurely.

Ms McCulloch also e-mailed the Tribunal an updated rent arrears statement showing that as of today's date, rent arrears amount to £631.77. Rental of £475.00 per month is payable in advance in terms of clause 8 of the private residential tenancy agreement, and the Respondent has been in arrears of rent for considerably in excess of three months.

The Tribunal was invited by Ms McCulloch 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*.

### **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 has 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. Indeed, the Applicants have been receiving payments of housing benefit directly in respect of the Property, as shown in the rent arrears statements they provided.

## **Decision**

In these circumstances, the Tribunal will make an order for possession of the house let on the tenancy 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**

13 August 2020

---

**Legal Member/Chair**

---

**Date**