



**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/20/1910**

**Re: Property at 61 Bruce Gardens, Dalkeith, EH22 2LB (“the Property”)**

**Parties:**

**Miss Lynne Fraser, Mr Simon Bates, 27 Thornyhall, Dalkeith, EH22 2ND (“the Applicants”)**

**Mr William Lindsay, Ms Francesca Karch, 61 Bruce Gardens, Dalkeith, EH22 2LB (“the Respondents”)**

**Tribunal Members:**

**Rory Cowan (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Eviction Order should be granted.**

- Background

By application dated 10 September 2020 (the Application), the Applicants sought an Eviction Order in terms of Ground 12 of schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (the 2016 Act) relative to the Property. In support of the Application, various documents were lodged, including:

- 1) Copy Notice to Leave dated 6 March 2020 along with confirmation of email service;
- 2) Copy Lease
- 3) Bank statements; and
- 4) A rent statement detailing the arrears.

- The Case Management Discussion

A Case Management Discussion (CMD) was assigned for 25 November 2020 to be dealt with by way of conference call. Both Applicants and both Respondents attended and took part in the call. It was agreed between the Applicants that Mr Bates would primarily represent them and for the Respondents that Mr Lindsay would do likewise although it was agreed that if the other parties wished to, they would be given the opportunity to make any representations.

On behalf of the Applicants Mr Bates confirmed that they were still seeking an Eviction Order as a result of rent arrears. The arrears as at the date of lodging the Application were £5,176.78 and as at the date of the CMD were £6,076.78. There had been some arrears consistently since on or around 1 October 2019. The monthly rent was £650. Mr Lindsay on behalf of the Respondents confirmed these sums were correct and that the Respondents had been in some arrears consistently since 1 October 2020.

The Notice To Leave was dated 6 March 2020 and had been sent by email on that date to the email addresses provided for in the lease for the Property (consent to email service was also contained in the lease). Mr Lindsay accepted that the NTL had been received by them. The date specified in Part 4 of the NTL was 6 April 2020. As the NTL was served prior to the Coronavirus (Scotland) Act coming into force, the notice period provided for in the NTL was correct. As the level of the arrears was more than the equivalent of one month's rent, and the requirements of ground 12 of schedule 3 had been made out, the Tribunal had no discretion but to award an Eviction Order.

- Findings in Fact and Law

- 1) The Applicants and Respondents entered into a Private Residential Tenancy that commenced on 24 January 2019.
- 2) The rent due per the tenancy is £650 per calendar month.
- 3) As at 25 November 2020 the arrears of rent were £6,076.78.
- 4) Clause 4 of the said tenancy agreement contains a consent to electronic transmission of documents including Notices to Leave.
- 5) On 6 March 2020 the Applicants sent a Notice to Leave to the Respondents by email citing Ground 12 of Schedule 3 to the Private Housing (Tenancies)(Scotland) Act 2016 and confirmed that proceedings would not be raised before 6 April 2020.
- 6) The Notice to Leave was in the prescribed format.
- 7) The provisions of paragraph 12(2) of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 have been met and the Applicant is entitled to an Eviction Order as sought.

- Reasons for Decision

It was accepted by the Respondents that they were in substantial arrears and had been for a period in excess of 3 consecutive months. The NTL had been served in accordance with the requirements of the Private Housing (Tenancies)(Scotland) Act

2016. As at the date of the CMD, the arrears were in excess of 1 months rent and as such the Tribunal had no discretion and had to grant the eviction order.

- Decision

The Tribunal decided to grant an Eviction Order against the Respondents relative to the Property.

### **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.**



**Rory Cowan**  
**Legal Member/Chair**

**25 November 2020**  
**Date**