



**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/21/0265**

**Re: Property at 90 Montrose Street, Brechin, Angus DD9 7DF, DD9 7DF (“the Property”)**

**Parties:**

**Mr Alexander Collie, 5 Broomfield Way, Montrose, DD10 8UD (“the Applicant”)**

**Mr Paul Patterson Morrison, 90 Montrose Street, Brechin, Angus DD9 7DF, DD9 7DF (“the Respondent”)**

**Tribunal Members:**

**Joel Conn (Legal Member) and Linda Reid (Ordinary Member)**

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

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

**Background**

1. This is an application by the Applicant for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”). The PRT in question was by the Applicant to the Respondent commencing on 1 August 2019.
2. The application was dated 3 February 2021 and lodged with the Tribunal on or around that date.
3. The application relied upon a Notice to Leave dated 21 July 2020 in terms of section 50 of the Private Housing (Tenancies) (Scotland) Act 2016, intimated upon the Respondent by email on 21 July 2020 in accordance with the provisions of the PRT. The Notice relied upon Ground 12 of Schedule 3 Part 1 of the 2016 Act, being that “the tenant has been in rent arrears for three or more consecutive

months". The body of the notice referred to arrears of £1,180 and referred to an appended rent statement. That rent statement set out irregular rental payments from February 2020 which left arrears amounting to £1,180 by 1 July 2020. The rent due under the PRT is £280 per month due in advance on the 1<sup>st</sup> of each month. The Notice intimated that an application to the Tribunal would not be made before 24 January 2021.

4. Evidence of a section 11 notice in terms of the Homelessness Etc. (Scotland) Act 2003 served upon Angus Council on 3 February 2021 was provided with the application. Evidence of the Applicant's agent providing pre-action protocol information to the Respondent by email on 29 January and 3 February 2021 was further provided in the application papers.

### **The Hearing**

5. On 10 June 2021 at 10:00, at a case management discussion ("CMD") of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, we were addressed by the Applicant's agent, Lori Beattie of Wardhaugh Property.
6. There was no appearance for the Respondent. Having adjourned briefly for the Applicant's agent to obtain confirmation from colleagues, we were informed that no contact had been received from the Respondent since 3 February 2021. We considered the evidence of intimation of the CMD and, having not commenced the CMD until 10:10, we were satisfied to consider the application in the Respondent's absence.
7. The Applicant's agent confirmed that the application for eviction was still insisted upon. She stated that arrears had continued to accumulate and by 1 June 2021 stood at £4,260. (We note that this is over 15 months' rent in total.)
8. The Applicant's agent was unaware of any application by the Respondent for benefits and did not believe there to have been any. Her office had prompted the Respondent, in emails before the Notice to Leave was issued, to consider a benefits application but we were told that no response was made by the Respondent saying he was advancing same. Further, the Applicant had applied, speculatively, to the local authority for Housing Benefit to be paid direct to him. No reply was received which was, in the Applicant's agent's view, indicative that the Respondent was not in receipt of Housing Benefit. No motion was made for expenses.

### **Findings in Fact**

9. On 31 July 2019, the Applicant let the Property to the Respondent under a Private Residential Tenancy with commencement on 1 August 2019 ("the Tenancy").
10. In terms of clause 4 of the Tenancy Agreement, the parties agreed that hard copy personal service or email could be used for communication of notices in terms of the Tenancy.

11. On 21 July 2020, the Applicant's agent drafted a Notice to Leave in correct form addressed to the Respondent, providing the Respondent with notice that he was in rent arrears for a period in excess of three consecutive months and detailing arrears at that date of £1,180.
12. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior to 24 January 2021.
13. The Applicant's agent served a copy of the Notice to Leave on the Respondent to the email address authorised by the Respondent in the Tenancy Agreement on 21 July 2020.
14. The Applicant raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 12 of Schedule 3 Part 1 of the 2016 Act.
15. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon Angus Council on the Applicant's behalf.
16. The Applicant's agent provided the Respondent with suitable pre-action protocol information by email on 29 January and 3 February 2021.
17. As of 10 June 2021, the Respondent remained in arrears of rent in the amount of £4,260 which is the equivalent of an excess of 15 months' of rent.
18. The Respondent does not claim to have paid any amount of the arrears remaining as at 10 June 2021.
19. The sum of arrears remaining as of 10 June 2021 is neither wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
20. On 13 May 2021, a Sheriff Officer acting for the Tribunal intimated the application and associated documents upon the Respondent, providing the Respondent with sufficient notice of the CMD of 10 June 2021 and the details for dialling into the conference call.

### **Reasons for Decision**

21. The application was in terms of rule 109, being an order for eviction of a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been correctly served upon the Respondent.
22. Ground 12 of Schedule 3 to the 2016 Act (as temporarily amended) applies if:
  - (1) *...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.*

*(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.*

23. The arrears information provided at the CMD clearly showed that Ground 12 was satisfied in regard to the length of arrears and amount outstanding. We require, in terms of the Act as temporarily amended, to consider the reasonableness of the application even in regard to such substantial arrears. We were satisfied that the Applicant's reasons for seeking eviction were reasonable given the increased amount and duration of the arrears. We had no information before us to suggest that it was unreasonable to evict the Respondent. The Respondent has provided no response or denial to the Applicant or Tribunal on these arrears. Further, given the lack of material communication by the Respondent with the Applicant, his agent, or the Tribunal, there was no information available to us to suggest that the sum of arrears remaining as of 10 June 2021 was in any way a consequence of a delay or failure in the payment of a relevant benefit. We were satisfied to hold that there was no such relevant issue with benefits. In all the circumstances before us, we were satisfied that Ground 12 was well founded by the Applicant and reasonable to grant.
24. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time.

### **Decision**

25. In all the circumstances, we grant an order against the Respondent for eviction from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 in normal terms further to ground 12 of Schedule 3 of that Act.

### **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.**

**J. C**

**10 June 2021**

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**Legal Member/Chair**

**Date**