



**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/21/0856**

**Re: Property at 14 Balloan Court, Inverness, IV2 4US (“the Property”)**

**Parties:**

**Highland Housing Alliance, Highland Housing Alliance, Fairways, Castle Heather, Inverness, IV2 6AA (“the Applicant”)**

**Ms Victoria Charlotte Anne Walton, 14 Balloan Court, Inverness, IV2 4US (“the Respondent”)**

**Tribunal Members:**

**Shirley Evans (Legal Member) and Eileen Shand (Ordinary Member)**

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

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at 14 Balloan Court, Inverness, IV2 4US under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same.

**Background**

1. By application dated 1 April 2021, the Applicant’s solicitor applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for repossession under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).

2. The application was accompanied by a Private Residential Tenancy Agreement dated 19 July 2019 between the parties, a Notice to Leave dated 7 August 2020 with proof of service, various items of correspondence to the Respondent from the Applicant, a copy of the Applicant's COVID -19 Policy for Rent Payments, a rent statement and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Highland Council dated 1 April 2021.
3. On 20 April 2021, the Tribunal accepted the application under Rule 9 of the Regulations 2017.
4. On 28 April 2021 the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 1 June 2021. The Respondent required to lodge written submissions by 19 May 2021. This paperwork was served personally on the Respondent by Robert White, Sheriff Officer, Inverness on 29 April 2021 and the Execution of Service was received by the Tribunal administration.

### **Case Management Discussion**

5. The Tribunal proceeded with the Case Management Discussion on 1 June 2021 by way of teleconference. The Applicant was represented by Mr Brown from Messrs Harper Macleod, Solicitors. Mr Brown was accompanied by Ms Stoddart from Highland Housing Alliance. There was no appearance by or on behalf of the Respondent despite the teleconference starting 10 minutes late to allow the Respondent plenty of time to join. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in her absence.
6. The Tribunal had before it the Private Rented Tenancy Agreement between the parties, the various items of correspondence, the Applicant's COVID – 19 Policy on Rent Payments, an updated rent statement to 1 May 2021, a copy of the Notice to Leave dated 7 August 2020 with proof of service and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Highland Council dated 1 April 2021.
7. The Application was heard together with the Applicant's action for payment of arrears under case reference FTS/HPC/CV/21/0857.
8. Mr Brown submitted the parties had entered into a Private Residential Tenancy Agreement dated 19 July 2019 with a start date of 31 July 2019. He moved the Tribunal to grant the order for repossession and submitted that the Respondent had had sufficient time to make representations in response to the Applicant's application and that she was aware the order could be made against her in her absence, the application having been served on her. In his submission there was no prejudice to the Respondent in the Tribunal granting the order in the circumstances.

9. The Tribunal noted that in terms of Clause 7 of the tenancy agreement the Respondent had agreed to pay a monthly rent of £549.99 per month. With reference to the rent statement Mr Brown advised the last payment was made on 1 April 2020 for £549.99. The arrears were increasing and equated to 13 months arrears and stood at £7224.71. Ms Stoddart clarified the monthly rent had increased from 1 August 2020 to £557.14 and then from 1 May 2021 to £560.21. Mr Brown submitted that the Respondent had not denied the level of arrears and despite the best efforts of his client, had not engaged at all with them to come to any arrangement in relation to the payment of the arrears.
  
10. The Tribunal questioned Mr Brown as to whether the correspondence sent by the Applicants to the Respondent complied with the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. Mr Brown submitted that the correspondence sent by his client did comply with the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. In his submission the letters to the Respondent demonstrated that his clients had made every effort to get the Respondent to engage with them and come to an agreement with regards to repayment. There had been no engagement from the Respondent despite these letters and despite the Notice to Leave served on 7 August 2020. His client had written to the Respondent in relation to the payment of arrears and had included in their letter of 14 April 2020 a specific COVID -19 Policy on Rent Payments which signposted the Respondent to advice agencies including Shelter Scotland for benefits and debt advice. The policy also in his submission set out clearly how his client would assist regardless of the Respondent's employment position. However the Respondent had not provided any explanation as to why she was not paying rent and why the arrears had accrued. In his submission the Applicant's focus was very much on sustaining their tenancies and the correspondence evidenced that the Applicant made the Respondent aware of all the options open to her and signposted her to the relevant advice agencies. He submitted that the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 were one factor to be considered as far as reasonableness was concerned.
  
11. Ms Stoddart was asked to comment on the steps the Applicants has taken to engage with the Respondent. She specifically referred to letters dated 15 May and 27 August 2020 in which the Applicants had tried to get the Respondent to agree a repayment programme. The letter dated 27 August 2020 in particular followed a conversation that the Respondent had had with a member of the Applicant's staff in which she advised she would make an arrangement to pay. The Respondent had stated that she had not received the letters from the Applicant as she had been in London. She did not set up a repayment plan. The Applicant continued to write to the Respondent after that contact. They had driven past the Property and had formed the opinion that the Respondent was still resident as there were children's toys in the garden and the curtains were noted to be closed on occasions. She also explained that when the Respondent had applied to be housed by the Applicant she had

stated she was in employment earning at least £20 000 per annum. Up to the date she stopped paying rent, the Respondent had paid rent by direct debit. As far as the Applicant was aware there were no benefits' issues. She believed the Respondent lived in the Property with a primary aged child as per her original application.

12. In his closing submission Mr Brown stated it was reasonable in all the circumstances for the Tribunal to make an Order to evict in terms of Ground 12 of Schedule 3 of the 2016 Act as amended by the Coronavirus (Scotland) Act 2020. The Notice to Leave was in the correct form and proper notice of 6 months had been given. Contractually the Respondent had failed in her obligation to pay rent and had incurred arrears. There were no benefits issues and a notice in terms of Section 11 of the Homelessness (Scotland) Act had been served on Highland Council on 1 April 2021.

### **Findings in Fact**

13. The Applicant and the Respondent agreed by way of Clause 7 of a Private Residential Tenancy Agreement dated 19 July 2019 in relation to the Property that the Respondent would pay the Applicant a monthly rent of £549.99. Rent was increased to £557.14 as of 1 August 2020 and to £560.21 as of 1 May 2021.

14. The Respondent has fallen into arrears of rent. She has not made any payments towards rent since 1 April 2020 when she paid £549.99. The arrears as at 1 March 2021 were £6657.08. Arrears have increased to £7224.71 as at 1 May 2021.

15. On 7 August 2020, the Applicant served a Notice to Leave on the Respondent by Recorded Delivery requesting that she remove from the Property by 13 February 2021.

16. At the time of serving the Notice to Leave the Respondent had been in arrears of rent for more than three consecutive months.

17. The Applicant had sent numerous letters both pre and post the Notice to Leave, to the Respondent together with a copy of their COVID 19 Policy on Rent Payments in compliance with the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. There had been no active response to these letters from the Respondent other than one telephone conversation in August 2020 with a promise to pay the rent which did not transpire.

18. There are no outstanding benefits issues that the Applicant is aware of. The Respondent was in employment at the time of her application for housing.
19. The Respondent resides in the Property with a primary aged child.
20. A Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 was served on Highland Council on 1 April 2021.

### **Relevant Legislation**

21. The Tribunal considered the following legislation in its determination -
- Private Housing Tenancies (Scotland) Act 2016, as amended by the Coronavirus (Scotland) Act 2020
  - The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.

#### **Private Housing Tenancies (Scotland) Act 2016, as amended by the Coronavirus (Scotland) Act 2020**

Section 51 (1) of the 2016 Act provides 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.

Section 51 (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.

Section 51 (3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

Section 51 (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.

#### **Section 52 Applications for eviction orders and consideration of them**

(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of— (a) subsection (3), or (b) any of sections 54 to 56 (but see subsection (4)).

(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.

(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—

(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or

(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

#### 54 Restriction on applying during the notice period

(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.

(2) The relevant period in relation to a notice to leave— (a) begins on the day the tenant receives the notice to leave from the landlord, and

(b) in the case of a notice served before 3 October 2020 expires on the day falling—

(i) 28 days after it begins if subsection (3) applies,

(ii) three months after it begins if subsection (3A) applies,

(iii) six months after it begins if neither subsection (3) nor (3A) applies.

(c) in the case of a notice served on or after 3 October 2020, expires on the day falling—

(i) 28 days after it begins if subsection (3B) applies,

(ii) three months after it begins if subsection (3C) applies,

(iii) six months after it begins if neither subsection (3B) nor (3C) applies

(3) This subsection applies if the only eviction ground stated in the notice to leave is that the tenant is not occupying the let property as the tenant's home. [ground 10]

(3A) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the tenant has a relevant conviction, [ground 13]

(iv) that the tenant has engaged in relevant anti-social behaviour, [ground 14]

(v) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour, [ground 15]

(vi) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(vii) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, [ground 17] or

(b) the only eviction grounds stated in the notice to leave are—

(i) the eviction ground mentioned in subsection (3), and

(ii) an eviction ground, or grounds, mentioned in paragraph (a)

(3B) This subsection applies if the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(a) that the tenant is not occupying the let property as the tenant's home, [ground 10]

(b) that the tenant has a relevant conviction, [ground 13]

(c) that the tenant has engaged in relevant anti-social behaviour, or [ground 14]

(d) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour. [ground 15]

(3C) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(iv) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or [ground 17]

(b) the only eviction grounds stated in the notice to leave are—

(i) an eviction ground, or grounds, mentioned in subsection (3B), and

(ii) an eviction ground, or grounds, mentioned in paragraph (a).

#### 62 Meaning of notice to leave and stated eviction ground

(1) References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,

(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.

(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.

#### Ground 12 in Schedule 3 of the Act

##### Rent arrears



(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2) [Temporarily repealed by the 2020 Act]

(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.

(3A) Sub-paragraph (3B) applies where the First-tier Tribunal is satisfied—

(a) that the eviction ground named by sub-paragraph (1) applies, and

(b) that all or part of the rent in respect of which the tenant is in arrears as mentioned in that eviction ground relates to the period during which paragraph 5 of schedule 1 of the Coronavirus (Scotland) (No.2) Act 2020 is in force.

(3B) Where this sub-paragraph applies, in considering for the purposes of sub-paragraph (3)(b) whether it is reasonable to issue an eviction order against the tenant, the First-tier Tribunal is to consider the extent to which the landlord has complied with pre-action requirements before applying for the 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.

(6) In sub-paragraph (3B), “pre-action requirements” means such requirements as the Scottish Ministers may specify in regulations.

(7) Regulations under sub-paragraph (6) may in particular make provision about— (a) information to be provided by a landlord to a tenant including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy,

(b) steps to be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,

(c) such other matters as the Scottish Ministers consider appropriate.

### **The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.**

Paragraph 4 relates to the pre-action requirements for private residential tenancies -

4.—(1) For the purposes of paragraph 12(3B) of schedule 3 of the 2016 Act the Scottish Ministers specify the pre-action requirements set out in paragraphs 2 to 4.

(2) The provision by the landlord to the tenant of clear information relating to—

(a) the terms of the tenancy agreement,

(b) the amount of rent for which the tenant is in arrears,

(c) the tenant’s rights in relation to proceedings for eviction (including the pre-action requirements set out in this regulation), and

(d) how the tenant may access information and advice on financial support and debt management.

(3) The making by the landlord of reasonable efforts to agree with the tenant a reasonable plan to make payments to the landlord of—

(a) future payments of rent, and

(b) the rent for which the tenant is in arrears.

(4) The reasonable consideration by the landlord of—

- (a) any steps being taken by the tenant which may affect the ability of the tenant to make payment to the landlord of the rent for which the tenant is in arrears within a reasonable time,
- (b) the extent to which the tenant has complied with the terms of any plan agreed to in accordance with paragraph (3), and
- (c) any changes to the tenant's circumstances which are likely to impact on the extent to which the tenant complies with the terms of a plan agreed to in accordance with paragraph (3).

### **Reasons for Decision**

22. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the submissions made by Mr Brown. The Tribunal noted the content of the rent statement lodged which showed the Respondent had last paid rent to her account on 1 April 2020. The Applicant produced evidence of persistent non-payment of rent with reference to the tenancy agreement, correspondence with the Respondent and the rent statements lodged. The Tribunal appreciated that Ms Stoddart was able to clarify certain matters of fact and accepted the veracity of her statements as being factually correct.
23. The Respondent had not disputed the application. The Tribunal was satisfied on the basis of the documents lodged, together with submissions made by Mr Brown and the additional information given by Ms Stoddart that the facts were not in dispute and that there was no need to proceed to a full hearing for evidence to be led. In particular it is not disputed that the Respondent had been in rent arrears from April 2020 and was in arrears of more than 3 months when the Notice to Leave was given on 7 August 2020 and at the time the Tribunal considered the application. The amount of arrears of £7224.71 was also not disputed.
24. The application was based on a Notice to Leave given after 7 April 2020, the date the Coronavirus (Scotland) Act 2020 came into force amending the terms of the 2016 Act under Schedule 1 paragraphs 3 and 4. The Notice to Leave was given on 7 August 2020 and thus the notice period stated in Section 54 (2) (b) (iii) of 6 months applies as further defined in Section 64 of the 2016 Act. The Tribunal was satisfied that the Notice to Leave met these requirements.

25. The application to the Tribunal was made after 6 October 2020 and accordingly the provision of Ground 12 (3B) of schedule 3 of the 2016 Act applies with regard to the compliance with the pre-action requirements introduced by The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 and specifically Regulation 4 in relation to private residential tenancies. Whilst the correspondence post 6 October 2020 does not follow the suggested wording of the templates provided by the Scottish Government for use by Landlords, the Tribunal was satisfied that the letters and the COVID – 19 Policy on Rent Payments gave the Respondent an opportunity to enter into a repayment plan with clear information as to the amount of arrears and signposting her to advice agencies. The Tribunal considered that must have been understood by the Respondent who after receiving the Notice to Leave had contacted the Applicant to make such a payment plan, but unfortunately did not do so. As a whole therefore the Tribunal were satisfied the Applicant had complied with the pre action requirements.

26. In any event, had the Tribunal not considered the correspondence was sufficient to comply with the pre action requirements that would not have been fatal to the application. Compliance with the pre action requirements is just one factor the Tribunal requires to consider when determining whether it is reasonable to evict. Mr Brown's submission on the fact the Respondent was 13 months in arrears was compelling, particularly when the Applicant understood the Respondent to be in employment. It was unfortunate and regrettable that the Respondent had not taken up the offers for a repayment plan particularly when there is a child of primary school age in the Property. However, that latter fact did not outweigh the other facts that the Applicant had made a concerted and continued effort to get the Respondent to engage with them and despite the Notice to Leave had kept the door open for her to approach them with a repayment proposal, but to no avail. The Tribunal accepted Mr Brown's submission that contractually the Respondent had failed to comply with her obligation to pay rent, with no indication why that should be. There were no benefit issues. A Section 11 Notice had been served.

27. In the circumstances the Tribunal considered that in terms of Ground 12 of Schedule 3 it was reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

### **Decision**

28. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

## **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.**

**1 June 2021**

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**Legal Chair**

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**Date**