



**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/21/0925**

**Re: Property at 60 Macdonald Terrace, Lochgilphead, Argyll, PA31 8TE (“the Property”)**

**Parties:**

**Ms Melanie Lowndes, 333D Kingston Road, Wimbledon Chase, London, SW20 8JX (“the Applicant”)**

**Mr Tyler Taylor-Smith, Ms Laura Downie, 24 Dunselma Court Strone, Argyll, Dunoon, PA23 8RT; 60 Macdonald Terrace, Lochgilphead, Argyll, PA31 8TE (“the Respondents”)**

**Tribunal Members:**

**Neil Kinnear (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**

This is an application for an eviction order dated 16<sup>th</sup> April 2021 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 Applicant seeks an eviction order in relation to the Property against the Respondents, and provided with her 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*, the

*Coronavirus (Scotland) Act 2020*, and the *Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses)(Notice Periods) Modification Regulations 2020*, and the procedures set out in those Acts and that Regulation appeared to have been correctly followed and applied.

The Respondents had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 10<sup>th</sup> May 2021, and the Tribunal was provided with the executions of service.

## **Case Management Discussion**

A Case Management Discussion was held at 14.00 on 4<sup>th</sup> June 2021 by Tele-Conference. The Applicant participated, and was not represented. The Respondents did not participate, nor were they represented. The Respondents have 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 Applicant confirmed that since this application was lodged, she has received £577.06 arrested from the First Respondent's earnings following enforcement of an earlier payment order granted by the Tribunal in respect of rent arrears in relation to the tenancy of the Property.

Rent arrears at the time the application was lodged were £5,400.00. As of today's date, that figure has increased to £6,300.00. Under deduction of the sums arrested from the First Respondent's earnings, rent arrears currently total £5,723.94. The Respondents had paid the tenancy deposit and the first month's rent in advance when the tenancy commenced on 22<sup>nd</sup> March 2020, and have made no payments since.

The Tribunal was invited by the Applicant 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*.

The Applicant explained that she had written various letters to the Respondents asking them to make contact with her in order to discuss options to assist them with their rent arrears, and advising them about where they might obtain advice. She had not provided those to the Tribunal, but confirmed that they were written after taking advice to comply with the pre-action requirements under the *Rent Arrears Pre-action Requirements (Coronavirus) (Scotland) Regulations 2020*. Most recently, she had written letters on 5<sup>th</sup> March and 27<sup>th</sup> April 2021.

The notice to leave dated 21<sup>st</sup> August 2020 relied on ground 12 of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*. It narrated that rent arrears at that

time amounted to £1,800.00, accumulated over the previous four months under the private residential tenancy agreement between the parties.

Rental of £450.00 per month was payable in advance in terms of clause 5 of the private residential tenancy agreement. The Respondents had been in arrears of rent for four months as at the date of the notice to leave, and they have been in arrears of rent for a continuous period of more than three consecutive months.

### **Statement of Reasons**

In terms of Section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* (“the Act”) as amended by the *Coronavirus (Scotland) Act 2020*, 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, and that the Tribunal may find that the ground applies if it is satisfied that it is reasonable on account of that fact to issue an eviction order. In deciding 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.

The Tribunal is satisfied that ground 12 has been established. The tenant is in substantial arrears of 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.

The Tribunal is satisfied that the Applicant has complied with the pre-action requirements under the *Rent Arrears Pre-action Requirements (Coronavirus) (Scotland) Regulations 2020*. In any event, even if she has not, the Tribunal would still consider it reasonable in all the circumstances to grant an eviction order.

The Tribunal is satisfied that it is reasonable to issue an eviction order. The arrears of rent are substantial, representing 14 months payments. No payments have been received since the commencement of the lease, and the Respondents have failed to respond or engage with the Applicant to agree a reasonable plan to make payments to her.

### **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

04/06/2021

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**Legal Member/Chair**

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**Date**