



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Sections 51 and 71 of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/EV/21/0948 and FTS/HPC/CV/21/0949**

**Re: Property at 26 Braehead Avenue, Edinburgh, EH4 6QN (“the Property”)**

**Parties:**

**David Ross, The Old Manse, 5 Manse Road, Colmonell, Girvan, KA26 0SA (“the Applicant”)**

**Robert Stoddart and Louise Stoddart, 26 Braehead Avenue, Edinburgh, EH4 6QN (“the Respondents”)**

**Tribunal Members:**

**Lynsey MacDonald (Legal Member)**  
**Ann Moore (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the orders for eviction and payment should be granted.**

**1. Background**

- 1.1. The Applicant sought an order for eviction in respect of the property on the grounds of rent arrears, by way of application in terms of Rule 109 (Eviction Order in a Private Residential Tenancy).
- 1.2. The Applicant separately lodged an application for an order for payment in respect of rent arrears in terms of Rule 111 (Civil Proceedings in a Private Residential Tenancy)
- 1.3. The Applicant lodged inter alia a copy of the tenancy agreement, the notice to leave, a section 11 notice, and a rent statement.
- 1.4. A Case Management Discussion was fixed for 10th June 2021.

1.5. In advance of the Case Management Discussion the Applicant lodged a motion to increase the sum sued, which was intimated to the Respondents.

## 2. The Case Management Discussion

2.1. The Applicant did not personally attend the Case Management Discussion, but was represented by Miss Donnelly, Solicitor.

2.2. The Respondents attended the Case Management Discussion.

2.3. The Applicant invited the Tribunal to grant the order for eviction on the grounds that there was a significant sum of rent arrears, that the pre-action requirements had been complied with, and that it was reasonable to grant the order. The Respondent did not oppose the order for eviction, and invited the Tribunal to grant the order.

2.4. The Applicant invited the Tribunal to grant the motion to amend the sum sued for. The Respondent did not oppose the motion to amend.

2.5. The Applicant invited the Tribunal to grant the order for payment in the amount of the amended sum, together with interest as provided for in the tenancy agreement. The Respondent accepted that the sum was owed, and did not oppose the granting of the order for payment.

## 3. Reasons for Decision

3.1. There was nothing in dispute between the parties.

3.2. The Tribunal accepted that the notice requirements had been met by the Applicant.

3.3. Section 51(1) of the Private Housing (Tenancies) Scotland Act 2016 (“the 2016 Act” provides that, *“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”*.

3.4. Schedule 3, paragraph 12 of the 2016 Act, as it applies in relation to the Coronavirus (Scotland) Acts, provides inter alia that:

(1) *It is an eviction ground that 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 subparagraph (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.*

*the*

*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*

*requirements before*

*to which the landlord has complied with pre-action 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*

*a relevant benefit.*

*consequence of a delay or failure in the payment of*

3.5. The Tribunal accepted that the Respondents were in rent arrears for a period of three or more consecutive months, namely the period from November 2019.

3.6. The Tribunal accepted that the sum owed by the Respondents to the Applicant was £18,225 as at the date of the Case Management Discussion.

3.7. There was no evidence that the rent arrears was wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

3.8. In considering reasonableness of granting the order for eviction, the Tribunal took into account: the significant sum outstanding, the pre-action requirements had been met, the Respondents remained unable to pay the monthly rent, and the Respondents wished the order to be granted.

#### 4. Decision

4.1. The order for eviction is granted.

4.2. The motion to amend the sum sued for to £18,225 is granted.

4.3. The order for payment in the sum of £18,225 together with interest at the rate 8% is granted.

#### 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.**

**Lynsey MacDonald**

10th June 2021

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**Legal Member/Chair**

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**Date**