

**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)**

**Chamber Ref: FTS/HPC/EV/21/1391**

**Re: Property at 59 Keir Hardy Hill, Cumnock, KA18 1PP (“the Property”)**

**Parties:**

**Mr David Litman, 20 Craighens Road, Cumnock, KA18 3AS (“the Applicant”)**

**Mr Craig McGuire, 59 Keir Hardy Hill, Cumnock, KA18 1PP (“the Respondent”)**

**Tribunal Members:**

**Alastair Houston (Legal Member) and Elizabeth Williams (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be made in terms of paragraph 12 of Schedule 3 of the 2016 Act.**

**1. Background**

1.1 This is an application under Rule 109 of the Chamber Rules whereby the Applicant seeks an eviction order on the basis of rent arrears which have accrued. The application was accompanied by copies of the written tenancy agreement between the parties, the notice to leave, a rent statement, letters sent to the Respondent and correspondence between the parties in Whatsapp.

1.2 The application had initially referred to paragraph 8 of Schedule 3 of the 2016 Act. The Applicant had submitted an amended application form alongside a copy of the notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003.

**2. The Case Management Discussion**

2.1 The Case Management Discussion took place on 19 August 2021 by teleconference. The Applicant attended personally. The Respondent was neither present nor represented.

2.2 The Tribunal noted that the Respondent had been given notice of the Case Management Discussion by Sheriff Officer. Accordingly, the requirements of Rule 29 of the Chamber Rules having been satisfied, the Tribunal proceeded with the Case Management Discussion in the absence of the Respondent.

2.3 The Tribunal heard from the Applicant. He confirmed that the tenancy commenced on 28 February 2020. The rent due was £495.00 per calendar month. This had been reduced, by agreement between the parties, from May 2020 until June 2021 to £425.00 due to the pandemic. Despite the reduction in the rent, arrears had accrued since May 2020. An order for payment of £2250.00 had been made in favour of the Applicant by the Tribunal on 26 May 2021. The arrears were now £2580.00 with a further rent payment due at the end of August 2021. He had made an arrangement with the Respondent whereby the ongoing rent and arrears were to be paid at the rate of £150.00 per week. Payments had been intermittent and no payment had been made for the last two weeks. He last spoke with the Respondent on 2 August 2021 when the Respondent advised he was going on holiday. He understood that the Respondent lived alone and was in full time employment as a labourer.

### **3. Reasons For Decision**

3.1 In terms of section 51 of the 2016 Act, the Tribunal is to issue an eviction order if it finds that one of the grounds in schedule 3 of the 2016 Act applies. The Applicant seeks an eviction order on the basis of ground 3, which is in the following terms:-

*12(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 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.*

3.2 The Respondent was in arrears since May 2020. The above ground was previously a mandatory ground until, due to amendment by the Coronavirus (Scotland) Act 2020, the introduction of the requirement upon the Tribunal to consider it reasonable to grant the eviction order. Furthermore, given the arrears have accrued since May 2020, subsection (3B) applies and the Tribunal is therefore required to have regard to the Applicant's compliance with the pre-action requirements when considering whether it is reasonable to grant the eviction order.

3.3 Further provision as to the pre-action requirements is contained in the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 (“the 2020 Regulations”). Regulation 4 applies to private residential tenancies and is in the following terms:-

*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).*

The Tribunal considered all that was said by the Applicant along with the documentation accompanying the application. The Tribunal noted that the Applicant had sent three letters to the Respondent, using styles created by the Scottish Association of Landlords, providing all information required by regulation 4(2) of the 2020 Regulations. The same letters made offers to agree a payment plan and requested the Respondent provide information as to his circumstances in an effort to progress this. Whilst a payment arrangement was later agreed, the Respondent had failed to adhere to its terms.

- 3.4 The Tribunal had no information from the Respondent as to his circumstances relevant to assessing the consideration of the landlord required by Regulation 4(4) of the 2020 Regulations. The Tribunal considered that the Applicant had complied as far as he could with the pre-action requirements. Whilst the Tribunal was to have regard to the pre-action requirements, compliance was not wholly determinative of the question of reasonableness. The Tribunal considered it had a duty to consider all relevant circumstances. In the absence of any representations made by the Respondent, the Tribunal could only consider those made by the Applicant. Accordingly, the Tribunal placed weight on the level of the arrears, the resources available to the Respondent given he was in employment and the absence of any dependents who would be detrimentally affected by the granting of an eviction order.

## **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.**

Alastair Houston

23 August 2021

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**Legal Member/Chair**

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**Date**