

Housing and Property Chamber
First-tier Tribunal for Scotland



**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/21/2210

**Re: Property at Flat 3/3 30 Gardner Street, Glasgow, Lanarkshire, G11 5NJ
("the Property")**

Parties:

**Mr Iain Malcolm-Brown and Mrs Elizabeth Malcolm-Brown, 67 Keith Street,
Stornoway, Isle of Lewis, HS1 2JH ("the Applicant")**

**Mr Elvis Nweke, Flat 3/3 30 Gardner Street, Glasgow, Lanarkshire, G11 5NJ
("the Respondent")**

Tribunal Members:

George Clark (Legal Member) and Leslie Forrest (Ordinary Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that the application should be decided without a
Hearing and issued an Eviction Order against the Respondent.**

Background

By application, received by the Tribunal on 13 September 2021, the Applicant sought an Eviction Order against the First-named Respondent under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). The Ground relied on was Ground 12 of Schedule 3 to the Act, namely that the First-named Respondent has been in arrears of rent for three or more consecutive months.

The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties commencing on 24 June 2019 at a rent of £750 per month and a Rent Statement showing arrears as at 24 August 2021 of £11,538.30, and a Notice to Leave, dated 3 March 2021, with evidence of its having been served on the Respondent by sheriff officer on 5 March 2021. The Notice to Leave stated that an application to the Tribunal for an Eviction Order would not be made before 8 September 2021. The Applicant's solicitors, TC Young, Glasgow, also lodged a copy

of a letter sent by them to the Respondent on 3 February 2021, which referred to the arrears, enclosed a Rent Statement and asked him to contact them to let them know of any difficulties he was experiencing, to allow parties to work together towards agreeing a payment plan. The letter also signposted the Respondent to organisations that might be able to offer advice regarding entitlement to benefits and directed him to a Government website regarding possible entitlement to Universal Credit.

On 4 October 2021, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 24 October 2021. The Respondent made no representations to the Tribunal.

Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the morning of 9 November 2021. The Applicant was represented by Miss Kirsty Morrison of TC Young, solicitors, Glasgow. The Respondent was not present or represented.

Miss Young told the Tribunal that no rent had been received since the date of the application. The arrears now stood at £13,038.30. She said that, in view of the level of arrears, the fact that there had been arrears since April 2020 and the lack of engagement by the Respondent, it was reasonable for the Tribunal to issue an Eviction Order. She explained to the Tribunal that correspondence had regularly been sent to the Respondent regarding arrears. The letter of 3 February 2021 had been lodged with the Tribunal and the latest letters containing the same information had been sent to the Respondent on 30 September and 28 October 2021. The Respondent had not replied to any of these letters and had not engaged with the Applicant, the Applicant's letting agents or solicitors, other than making sporadic rent payments.

The Tribunal noted that a credit of £230.85 had been made to the rent account on 16 April 2021, with the debit entry for rent due on 24 May 2021 being reduced to £519.15. Miss Morrison did not know the reason behind those entries.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to decide the application without a Hearing.

Section 51 of the 2016 Act states that the Tribunal is to issue an Eviction Order against the tenant under a Private Residential Tenancy Agreement if, on an application by the landlord, it finds that one of the Eviction Grounds named in Schedule 3 to the Act applies.

Ground 12 of Schedule 3 to the 2016 Act, as amended by the Coronavirus (Scotland) Act 2020, provides that it is an Eviction Ground that the tenant has been in arrears for three or more consecutive months, and that the Tribunal may find that

Ground 12 applies if, at the beginning of the day on which the Tribunal first considers the application for an Eviction Order, the tenant is in arrears by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy the tenant has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit and the Tribunal is satisfied that it is reasonable on account of that fact to issue an Eviction Order.

The Tribunal noted that the rent had been paid on 24 March 2020, that no payments had then been made until 17 November 2020 (£750), that there were no further payments until 8 April 2021 (£750) and 16 April 2021 (£230.85). The next payment had been on 30 July 2021 (£750) and no payments had been received since that date. The Tribunal was satisfied that the Respondent had been in arrears for three or more consecutive months, that the rent was more than one month in arrears at the date of the Case Management Discussion and that there was no evidence before the Tribunal to indicate that the Respondent's being in arrears was attributable in whole or in part to the delay or failure in the payment of a relevant benefit.

The Tribunal was satisfied from the evidence before it that letters from the Applicant's solicitors regarding the arrears, encouraging the Respondent to contact them with a view to arranging a repayment plan and signposting him to organisations that might be able to offer help and advice regarding benefits, had been sent on a regular basis, but that the Respondent had failed to engage in any way with them. He had also not made any written representations to the Tribunal and had not been present or represented at the Case Management Discussion.

The view of the Tribunal was that, in all the circumstances of the case and taking into account all the evidence before it, the requirements of Ground 12 had been met and, given the level of arrears and the failure of the Respondent to engage with the Applicant, the Applicant's letting agents or the Applicant's solicitors, it was reasonable to issue an Eviction Order.

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.

George Clark

Legal Member/Chair

9 November 2021
Date