



**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/21/0907**

**Re: Property at 13 2/1 Dudhope Street, Dundee, DD1 1JT (“the Property”)**

**Parties:**

**Ms Maggie Kelly, Room 113, Building 1070 Police HQ, Braintree, CM7 4AZ (“the Applicant”)**

**Miss Alexandra Mosakowski, 13 2/1 Dudhope Street, Dundee, DD1 1JT (“the Respondent”)**

**Tribunal Members:**

**Richard Mill (Legal Member) and Elizabeth Dickson (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction be made against the Respondent**

**Background**

1. This is an application under rule 109 and section 51. The rule is contained within the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Rules of Procedure 2017 and the section is contained within the Private Housing (Tenancies) (Scotland) Act 2016, which governs the application.
2. Intimation of the Case Management Discussion (CMD) and service of the documents were served upon the respondent by Sheriff Officer delivery on 19 May 2021. Written submissions were required to be lodged with the Tribunal by 7 June 2020, but none were received.

3. The CMD took place at 2.00 pm on 17 June 2020. The applicant was represented by Mr Billy Baxter of Pavilion Properties. The respondent joined the teleconference hearing and represented her own interests. She did not offer formal opposition to the application. She acknowledged that there were substantial rent arrears, being the basis upon which the eviction application is made.

### Findings and Reasons

4. The property is 13 (2/1) Dudhope Street, Dundee DD1 1JT.
5. The applicant is Ms Maggie Kelly. She is the registered landlord of the Property. The respondent is Miss Alexandra Mosakowski. She the tenant of the property.
6. The parties entered into a private residential tenancy which commenced on 10 March 2020. Rent was stipulated at £460 per calendar month. There was another tenant, Miss Simran Ahmed, named on the lease. She had provided notice to leave the property at the end of March 2020 and did so at the end of April 2020. This was shortly after the respondent took up occupation. The respondent chose to continue with the lease in her sole name having been given options by the applicant's representative, including the option to leave herself.
7. This eviction application is based upon ground 12 of Part 1 of Schedule 3 to the 2016 Act on the basis that the respondent has been in rent arrears for three or more consecutive months.
8. Ground 12 was formerly a mandatory ground for eviction, but due to the changes brought about by the Coronavirus (Scotland) Act 2020, all grounds for eviction, including ground 12, are now discretionary.
9. Most notice periods which require to be given to tenants in Notices to Leave for the purposes of eviction have also been extended by virtue of the 2020 Act. The relevant notice period under ground 12 was previously one of 28 days but is now one of 6 months.
10. Other Coronavirus changes are also relevant. Where a Notice to Leave the property on rent arrears grounds has been served on or after 7 April 2020 and the arrears of rent occurred wholly or partially on or after 27 May 2020, landlords require to comply with the pre-action requirements contained within the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 which came into force on 30 September 2020. The Tribunal is satisfied on the basis of the documentary evidence produced that the requirements have been adhered to.

11. This eviction application is accompanied by a detailed rent statement which discloses that arrears of rent has accrued. The tribunal attached weight to this unchallenged documentary evidence. More than 3 months' rent arrears were outstanding at the time when the Notice to Leave was served, and this remains the position with the current arrears standing at £4,154.22. The respondent accepts this sum is outstanding. The ground relied upon is established.
12. The Notice to Leave served upon the respondent which highlights the applicants' intention to seek an eviction order under ground 12 was dated 30 September 2020. On the application of section 62(5) of the 2016 Act, and Rule 6, it is to be assumed that the respondent would have received the Notice to Leave 48 hours after it was sent. Proof of posting has however been produced from the Royal Mail trace and track system which discloses that the Notice to Leave was signed for as being received the day after it was sent, namely on 1 October 2020. The assumption under the Act is that delivery did not take effect until 2 October 2020. The Tribunal however relied upon the Upper Tribunal decision of Sheriff Fleming in UTS/AP/20/0029 [2021] UT 20. The assumption under the 2016 Act regarding deemed service 48 hours after posting can be rebutted. It is rebutted in this case as the date of service is reliably vouched as having taken place on 1 October 2020.
13. The required 6 month notice period ran from the day of service on 1 October 2020 until 1 April 2021. In terms of section 64 of the 2016 Act, a period of 6 months is a period which ends in the month which falls 6 months after the month in which it began on the same day of the month as it began.
14. On the Application of Section 62(4), the date to be specified as the day on which the applicant would become entitled to make an application for an eviction order to the First-tier Tribunal is the day after the six month period expired, namely the day after 1 April 2021 ie 2 April 2021. The Notice to Leave relied upon in this application specifies this date and is therefore valid and can be relied upon.
15. In exercising its discretion and considering the reasonableness of making the order proposed the Tribunal took into account the high level of rent arrears and the personal circumstances of the respondent. She is 22 years of age. She is employed. She has no diagnosed disabilities. She has no dependants. In all these circumstances the Tribunal found it was reasonable to make the eviction order sought.

## **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.

**R. M**

17 June 2021

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Legal Member/Chair

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Date