



**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/22/0037**

**Re: Property at 69 Barbeth Road, Condorrat, G67 4SH (“the Property”)**

**Parties:**

**Mrs Heather Derrick, Mr Steve Derrick, 20 Belmont Road, Ipstones, Stoke on Trent, ST10 2SN (“the Applicant”)**

**Mr Gavin McKay, 69 Barbeth Road, Condorrat, G67 4SH (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Gerard Darroch (Ordinary Member)**

**Decision**

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

**Background**

- 1 By application to the Tribunal the Applicant sought an eviction order against the Respondent in respect of the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). In support of the application the Applicant provided the following documentation:-
  - (i) Private Residential Tenancy Agreement between the parties dated 24<sup>th</sup> September 2018;
  - (ii) Notice to Leave dated 20 January 2021 stating that proceedings for possession will commence no earlier than 22 July 2021 and citing ground 12, together with proof of service on the tenant by Sheriff Officers on 21 January 2021;

- (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to North Lanarkshire Council together with proof of service by email to the Council together with proof of service by recorded delivery mail;
  - (iv) Rent Statement;
  - (v) Order granted by the First-tier Tribunal for Scotland (Housing and Property Chamber against the Respondent in favour of the Applicant for payment of the sum of £5670; and
  - (vi) Copy correspondence from K Property as agent for the Applicant to the Respondent in compliance with the pre-action requirements.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for the 13 May 2022 to take place by teleconference. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondent by Sheriff Officers.

### **Case Management Discussions**

- 3 The first Case Management Discussion took place by teleconference on 13 May 2022. The Applicant was represented by Donna Cramb of K Property. The Respondent was in attendance.
- 4 As a preliminary point the Tribunal raised the question of jurisdiction, noting that the landlord was named as Communications Ltd. Ms Cramb advised that the Applicants were the owners of the company. The Tribunal determined to issue a Direction for the Applicants to produce the necessary documentation in order to demonstrate that they had title and interest to bring the proceedings. The direction also instructed the Respondent to provide a summary of his defence of the application, along with any information to show that it would not be reasonable to grant the order for eviction.
- 5 The second Case Management Discussion took place on 6 June 2022. The Applicant was again represented by Ms Cramb. The Respondent was present. It was noted that no documentation had been received from either party in response to the Direction. Ms Cramb advised that there had been a misunderstanding regarding the date of the Case Management Discussion and she'd had it diarised for the 16<sup>th</sup> June.
- 6 The Tribunal noted that the information sought from the Applicant included relevant excerpts from Companies House regarding Communications Ltd. On the basis that the information was publicly available on the Companies House

website, the Tribunal determined that in order to progress proceedings without undue delay, it would carry out its own investigations by checking the information on the site. It was confirmed that the Applicants were the sole Directors of the company.

- 7 The Tribunal then heard from the parties regarding the order sought by the Applicants. Ms Cramb confirmed the Applicant sought an order for repossession. The failure to pay rent had been an ongoing issue and the Applicants had been patient with the Respondent. A previous order had been granted by the Tribunal for outstanding rent arrears in April 2021 in the sum of £5670. Since then further arrears of £4873 had accrued. The Respondent had looked into accommodation with the local authority, but was unable to secure this and had moved back into the property. Ms Cramb confirmed that some payments had been made by the Respondent in recent weeks. These included a payment of £220 on the 27<sup>th</sup> May. This was the most that had been received from the Respondent in some time. She understood there may have been a change in his employment status. The arrears now stood at £10,543. Ms Cramb explained that the Applicants had a mortgage over the property so the arrears had impacted upon them. It was no longer feasible for the Respondent to remain in the property with the excessive level of arrears. The Applicants did not want to go down this route but felt it was a last resort.
- 8 The Respondent explained that he had been in and out of work, as a labourer working in construction. He had moved out of the property and in with his sister, as he'd understood he was being evicted, but following advice from Shelter he had moved back into the property. His sister's property was not big enough to accommodate him. He had proposed a payment plan of £600 towards the rent and arrears. £200 was now being paid on a weekly basis. He didn't see any problem in making these payments now that he was in steady employment that was expected to last for at least a year.
- 9 The Tribunal sought clarification on the recent payments made to the rent account. Ms Cramb confirmed that £300 had been paid in March, £200 in April and £500 in May. The Tribunal further clarified that at the rate proposed it would take approximately 46 months to repay the debt owed. The Respondent confirmed that he had been in receipt of universal credit whilst out of work, however had not made any payments towards the rent account. He received £500 per month. He accepted that he should have made some payments during that time. The Tribunal confirmed that the Respondent resided in the property alone.

### **Relevant Legislation**

- 10 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Private Housing Tenancies (Scotland) Act 2016, as amended by the Coronavirus (Scotland) Act 2020, the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020 and the Coronavirus (Extension and Expiry) (Scotland) Act 2021:-

## **1 - Meaning of private residential tenancy**

1) A tenancy is a private residential tenancy where—

(a) the tenancy is one under which a property is let to an individual (“the tenant”) as a separate dwelling,

(b) the tenant occupies the property (or any part of it) as the tenant’s only or principal home, and

(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

(2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

## **51 First-tier Tribunal’s power to issue an eviction order**

(1) 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.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

## **52 Applications for eviction orders and consideration of them**

(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—

(a) subsection (3), or

(b) any of sections 54 to 56 (but see subsection (4)).

(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.

(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—

(a) is stated in the notice to leave accompanying the landlord’s application in accordance with subsection (3), or

(b) has been included with the Tribunal’s permission in the landlord’s application as a stated basis on which an eviction order is sought.

#### **54 Restriction on applying during the notice period**

(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.

(2) The relevant period in relation to a notice to leave—

(a) begins on the day the tenant receives the notice to leave from the landlord, and

(b) in the case of a notice served before 3 October 2020 expires on the day falling—

(i) 28 days after it begins if subsection (3) applies,

(ii) three months after it begins if subsection (3A) applies,

(iii) six months after it begins if neither subsection (3) nor (3A) applies.

(c) in the case of a notice served on or after 3 October 2020, expires on the day falling—

(i) 28 days after it begins if subsection (3B) applies,

(ii) three months after it begins if subsection (3C) applies,

(iii) six months after it begins if neither subsection (3B) nor (3C) applies

(3) This subsection applies if the only eviction ground stated in the notice to leave is that the tenant is not occupying the let property as the tenant's home. [ground 10]

(3A) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the tenant has a relevant conviction, [ground 13]

(iv) that the tenant has engaged in relevant anti-social behaviour, [ground 14]

(v) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour, [ground 15]

(vi) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(vii) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, [ground 17] or

(b) the only eviction grounds stated in the notice to leave are—

(i) the eviction ground mentioned in subsection (3), and

(ii) an eviction ground, or grounds, mentioned in paragraph (a)

*(3B) This subsection applies if the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—*

*(a) that the tenant is not occupying the let property as the tenant's home, [ground 10]*

*(b) that the tenant has a relevant conviction, [ground 13]*

*(c) that the tenant has engaged in relevant anti-social behaviour, or [ground 14]*

*(d) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour. [ground 15]*

*(3C) This subsection applies if—*

*(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—*

*(i) that the landlord intends to live in the let property, [ground 4]*

*(ii) that a member of the landlord's family intends to live in the let property, [ground 5]*

*(iii) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]*

*(iv) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or [ground 17]*

*(b) the only eviction grounds stated in the notice to leave are—*

*(i) an eviction ground, or grounds, mentioned in subsection (3B), and*

*(ii) an eviction ground, or grounds, mentioned in paragraph (a).*

## **62 Meaning of notice to leave and stated eviction ground**

*(1) References in this Part to a notice to leave are to a notice which—*

*(a) is in writing,*

*(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,*

*(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and*

*(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.*

*(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.*

*(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).*

*(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.*

*(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.*

### **Schedule 3, Part 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 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. (4) In deciding under subparagraph (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.*

- 11 The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 are also relevant to this application.

### **Findings in Fact and Law**

- 12 The parties entered into a Private Residential Tenancy Agreement dated 24 September 2018.
- 13 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
- 14 On 15 June 2021 the Applicant delivered a Notice to Leave to the Respondent by email. The Notice to Leave cited ground 12 of Schedule 3 of the 2016 Act and confirmed that proceedings would not be raised any earlier than 18 December 2021.
- 15 The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 16 In terms of Clause 8 of the said Tenancy Agreement the Respondent undertook to make payment of rent at the rate of £375 per calendar month.
- 17 As at the date of service of the Notice to Leave arrears in the sum of £4875 were outstanding.

- 18 As at the date of the Case Management Discussion arrears in the sum of £10,543 were outstanding.
- 19 Despite repeated requests the Respondent has refused or delayed to make payment of the rent due.
- 20 The Respondent resides in the property alone with no dependents.
- 21 On 28 April 2021 the Applicant obtained an order for payment against the Respondent from the First-tier Tribunal for Scotland (Housing and Property Chamber) under reference FTS/HPC/CV/21/0148 in the sum of £5670.
- 22 The Applicant has complied with the pre-action requirements by offering to enter into payment arrangements with the Respondent, highlighting the ongoing rent arrears and directing him to advice agencies for support.
- 23 It is reasonable to make the order sought by the Applicant.
- 24 The provisions of ground 12 of Schedule 3 of the 2016 Act have been met.

### **Reasons for Decision**

- 25 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. There were no substantive matters in dispute or issues to be resolved that would require a hearing to be fixed in the matter. The Respondent had been given the opportunity to take part in the Case Management Discussion and to make submissions to the Tribunal.
- 26 On the preliminary issue of jurisdiction the Tribunal was satisfied that the Applicants were the sole Directors of Communication Ltd having regard to the information from Companies House and therefore had title and interest to bring the proceedings on the company's behalf. The Tribunal therefore considered the provisions of section 51 of the Private Housing (Tenancies) (Scotland) Act 2016.
- 27 The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicant's intention to rely upon ground 12 of Schedule 3 of the 2016 Act. The Tribunal was satisfied that the required notice had been given to the Respondent and therefore that application could be entertained.
- 28 The Tribunal accepted that there were rent arrears outstanding in the sum of £10,543 at the date of the Case Management Discussion and arrears of £4875 at the time of service of the Notice to Leave. This was not disputed by



the Respondent. On that basis the Tribunal was satisfied that ground 12 had been met, in that rent had gone unpaid for three or more months and there was at least one months rent arrears outstanding as at the date of the Case Management Discussion.

- 29 The Tribunal then considered the question of reasonableness. The Tribunal noted that the Respondent was now in employment and had recently recommenced payments to the rent account, albeit these had so far been largely sporadic. It was further noted that at the rate of payment proposed by the Respondent it would take approximately four years for the debt to be repaid. There was no suggestion that the failure to make payment of rent was a result of any delay or failure in the payment of a relevant benefit. The Respondent had confirmed that he had been in receipt of universal credit when unemployed but had not made any attempts to pay even a portion of the rent during those periods. The Tribunal also accepted that the Respondent resided in the property alone, with no dependents. Taking into account the level of rent arrears which now stood at over £10,000, the efforts by the Applicant to assist the Respondent and steps taken to address the issue by submitting a previous application for the Tribunal for payment and the Respondent's personal circumstances, the Tribunal ultimately concluded that it would be reasonable in the particular facts and circumstances of the case to make an eviction order.
- 30 The Tribunal therefore determined to make an order for eviction against the Respondent. 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.**

  
**Ruth O'Hare**

**08/06/2022**

---

**Legal Member/Chair**

---

**Date**