



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

Chamber Ref: FTS/HPC/EV/22/0675

**Re: Property at 91 Brisbane Street, Livingston, West Lothian, EH54 5EU (“the
Property”)**

Parties:

**Mrs Margaret Smith, Mr Stephen Smith, 55 Gary Walk, Livingston, West Lothian,
EH54 5AS (“the Applicant”)**

**Mr John Telford, Mrs Andrea Telford, 91 Brisbane Street, Livingston, West
Lothian, EH54 5EU (“the Respondent”)**

Tribunal Members:

Josephine Bonnar (Legal Member) and Mary Lyden (Ordinary Member)

Decision in absence of the Respondents

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an eviction order should be granted against the
Respondents in favour of the Applicants.**

Background

1. The Applicants seek an eviction order in terms of section 51 Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). A copy tenancy agreement, Notice to Leave, rent statement and Notice in terms of Section 11 Homelessness etc (Scotland) Act 2003 were lodged in support of the application. The application is based on ground 12 of schedule 3, rent arrears over three consecutive months.
2. A copy of the application and supporting documents were served on the Respondents by Sheriff Officer on 17 May 2022. All parties were advised that a Case Management Discussion (“CMD”) would take place on 23 June 2022 at

2pm by telephone case conference and that they were required to participate. Prior to the CMD the Applicant's representative submitted an updated rent statement.

3. The CMD took place at 2pm on 23 June 2022. The Applicant was represented by Ms Wooley, trainee solicitor. The Respondents did not participate and were not represented.

The CMD

4. Ms Wooley told the Tribunal that there has been no recent contact with the Respondents. She confirmed that they continue to reside at the property. The Tribunal noted that the Applicant had submitted copies of three letters from the lettings agents to the Respondents dated 13 July 2021, 16 November 2021, and 3 February 2022. Ms Wooley confirmed that these had been issued in compliance with the Pre Action Requirements Regulations. She further advised that following the November 2021 letter, the Respondents intimated that they would clear the arrears by the end of January 2022 but did not do so. In October 2020 they had entered a payment arrangement to pay £875 per month to cover the monthly rent of £675 with the remainder going to the arrears. They maintained this arrangement until May 2021. In response to questions from the Tribunal about the cause of the rent arrears, Ms Wooley referred the Tribunal to a communications log submitted with the application. This indicates that the letting agent called Mr Telford on 16 November 2021. He said that he had got behind with his rent payments because of work, that he was a self employed courier and was trying to work out his finances. This is the only explanation for non payment which has been provided. Ms Wooley said that the Respondents are not in receipt of benefits. They have made 2 applications for universal credit which were refused. Following a brief adjournment, Ms Wooley advised the Tribunal that it is understood that the Respondents have one dependent child of primary school age. There is no information available about any disabilities or health issues affecting the household or their current work status or income. In response to further questions from the Tribunal, Ms Wooley said that she had no information about any steps taken by the Local Authority, following receipt of the section 11 notice. The Respondents have not engaged with the letting agents, so no information is available about their attempts to find alternative housing. It is assumed that the rent arrears are connected to the pandemic because the arrears started in March 2020.
5. Ms Wooley advised the Tribunal that the property is the Applicant's only rental property. They depend upon the rental income to supplement their income and have experienced financial difficulties because of the arrears, which have now reached £4655. She could not confirm whether there is a mortgage over the property. She concluded by saying that the Respondents will be eligible for emergency homeless accommodation, as they have a dependant child. She added that the Applicants have been very patient and have given the Respondents every opportunity to address the arrears. However, they clearly cannot afford the rent for the property and the tenancy is not sustainable. Ms Wooley stated that the Applicants seek an eviction order, and that enforcement of the order should not be delayed given the length of time which has elapsed

and the additional debt which the Respondents would accrue.

Findings in Fact

6. The Applicants are the owners and landlords of the property.
7. The Respondents are the tenants of the property in terms of a tenancy agreement dated 16 September 2019.
8. The Respondents are due to pay rent at the rate of £675 per month.
9. The Respondents have been in arrears of rent since 16 March 2020.
10. The Respondents owe the sum of £4655 in unpaid rent to the Applicants.
11. The Applicant served a Notice to leave on the Respondent on 26 July 2021.
12. The Respondents have made two payment arrangements with the Applicants but have not adhered to these.
13. The Respondents reside at the property with one child of school age.
14. The Applicants have suffered financial hardship because of the rent arrears.

Reasons for Decision

15. The application was submitted with a Notice to Leave, together with copies of emails sent to both Respondents which establish that the Notice was sent to the Respondents on 26 July 2021. The Notice states that an application to the Tribunal is to be made on ground 12, rent arrears over three consecutive months. Part 4 of the notice indicates that the earliest date that an application to the Tribunal can be made is 29 January 2022. The application to the Tribunal was made after expiry of the notice period. The Tribunal is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a copy of the Section 11 Notice which was sent to the Local Authority. The Tribunal is satisfied that the Applicant has complied with Section 56 of the 2016 Act.
16. Section 51(1) of the 2016 Act states, "The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies." Ground 12 of Schedule 3 (as amended by Schedule 1 of the Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) (No 2) Act 2020) states "(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 in 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.”

17. Paragraph 3B states that, when considering whether it is reasonable to issue an eviction order, the Tribunal “is to consider the extent to which the landlord has complied with pre-action requirements before applying for the eviction order.” This provision applies where “all or part of the rent on 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”. This Act came into force on 7 May 2020. Regulation 4 of the Rent Arrears Pre-Action Requirements (Coronavirus) Scotland Regulations 2020 specifies the pre-action requirements which apply to the 2016 Act. These include the provision of clear information relating to the terms of the tenancy agreement, the level of the arrears, the tenant’s rights in relation to eviction proceedings and how the tenant can access information and advice.
18. Sub-Paragraph (4) states, “In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenants 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.” These are defined in sub-paragraph (5) and include housing benefit and universal credit.
19. The Tribunal is satisfied that the Respondents currently owe the sum of £4655 in unpaid rent and that no payments have been made to the rent account since 17 January 2022. The account has been in arrears since the 16 March 2020. They have therefore been in arrears for three or more consecutive months, both at the date of service of the Notice to leave (when the arrears were £2880) and the date of the CMD.
20. The Tribunal proceeded to consider whether it would be reasonable to grant the order. The Tribunal noted that the Applicant issued three letters to the Respondents dated 13 July 2021, 16 November 2021, and 3 February 2022, in terms of the pre action requirements which currently apply to rent arrears cases. The Tribunal is satisfied that these letters meet these requirements of the Regulations. The Tribunal also notes that the Applicants agreed to repayment arrangements with the Respondents, when asked to do so. The Applicants have therefore complied with the Rent Arrears Pre Action Requirements (Coronavirus) (Scotland) Regulations 2020.
21. The Respondents did not participate in the hearing and did not provide the Tribunal with any information regarding their personal circumstances. The Applicants’ solicitor was able to provide the Tribunal with fairly limited information. The Tribunal was therefore unable to establish whether the Respondents are currently working or in receipt of benefits and whether any delay or failure in the payment of relevant benefits have contributed to the non-

payment of rent. From the information previously provided by the Respondents to the letting agent, it appears that one of the Respondents was working as a self-employed courier and that applications were made for universal credit in August 2020 and November 2021, but were refused.

22. The Tribunal had regard to the fact that the Respondents have a young child and that the rent arrears started when the country went into lockdown in March 2020, when many people have experienced financial hardship. However, the account has been in arrears for over two years and no payments have been made for five months. The Tribunal also noted that the Respondents have defaulted on two payment arrangements made with the letting agent. The first arrangement involved an additional sum being paid each month. The Respondents defaulted after 6 months. The second arrangement was made in November 2021, when the Respondents undertook to clear the arrears by the end of January 2022. They failed to do so. The Tribunal also noted that the Applicants have experienced financial problems due to the arrears, as they depend upon the rental income to supplement their income.

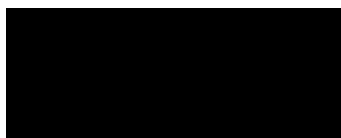
23. The Tribunal concludes that the Applicants have complied with the requirements of the 2016 Act and that the eviction ground has been established. The Tribunal is also satisfied that it is reasonable that an eviction order is granted. The Tribunal considered whether it would be reasonable to delay enforcement of the order for eviction in terms of Rule 16A of the Tribunal Procedure Rules. However, having noted that the Respondents have been aware that the Applicants were seeking an eviction order since July 2021, when the notice to leave was served, and as the Respondents have not provided the Tribunal with any information or evidence to justify a delay, the Tribunal determines that it would not be appropriate to order a delay in enforcement.

Decision

24. The Tribunal determines that an eviction order should be granted against the Respondents.

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.



23 June 2022

Josephine Bonnar, Legal Member