



**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/22/1040**

**Re: Property at 25A West High Street, Inverurie, Aberdeenshire, AB51 3SA (“the Property”)**

**Parties:**

**Mr Graham King, Fiona King, Roadside, Kinmundy, Newmacher, Aberdeen, AB21 7PQ (“the Applicants”)**

**Miss Lisa Henson, 25A West High Street, Inverurie, Aberdeenshire, AB51 3SA (“the Respondent”)**

**Tribunal Members:**

**Richard Mill (Legal Member) and David Fotheringham (Ordinary Member)**

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

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

**Introduction**

This is an eviction application under Rule 109 and Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016.

Intimation of the application and of the Case Management Discussion (CMD) was effected upon the respondent by Sheriff Officers on 17 May 2022.

The CMD took place by teleconference on 29 June 2022 at 2.00 pm. The applicants were represented by Mr David Gray of Messrs Gilson Gray Solicitors. The respondent failed to participate in the hearing. There was no known barrier to her doing so.

## Findings and Reasons

The property is 25A West High Street, Inverurie, Aberdeenshire AB51 3SA.

The applicants are Mr Graham and Mrs Fiona King. They are the heritable proprietors and the landlords. The respondent is Miss Lisa Henson who is the tenant.

The parties entered into a private residential tenancy which commenced on 1 May 2021. The rent was stipulated at £700 per month.

The respondent has fallen into rent arrears. She has not made any payments of rent. At the time that the Notice to Leave was prepared, the rent arrears stood at £2,800 being more than 3 months rental arrears. No payments of rent have been made by the respondent since the initial month was paid. As at the date of the hearing, the rent arrears have risen to £9,100. A detailed rent statement which evidences this has been produced which the Tribunal found to be a credible and reliable source of documentary evidence.

The current eviction proceedings are based upon arrears of rent and the relevant ground relied upon is ground 12, contained within Part 1, Schedule 3 to the 2016 Act, namely that the respondent is in rent arrears over three consecutive months.

Ground 12 as originally drafted was a mandatory ground for eviction. Since the coming into force of the Coronavirus (Scotland) Act 2020, all eviction grounds are discretionary. Additionally the notice periods have been extended by virtue of the 2020 Act. The relevant notice period under ground 12 was previously one of 28 days and was one of 6 months at the time that the Notice to Leave was served.

The Notice to Leave which is relied upon is dated 27 September 2021. With reference to Section 62 of the Act, the day specified as being the earliest day upon which proceedings before the Tribunal can be raised requires to be a total of the notice period of 6 months plus an additional three days. That date referred to within the Notice to Leave was specified as 29 March 2022. This is one day short of the requirements under the Act.

The applicants rely however upon a Sheriff Officer's execution dated 28 September 2021 which evidences that the Notice to Leave was served on that date personally to the respondent.

On the basis that personal service took place on 28 September 2021, the relevant notice given to the respondent in the Notice to Leave was not in fact short. The assumption regarding the deemed 2 days for service under Section 62 of the Act is rebuttable in accordance with the decision of Sheriff Fleming in the Upper Tribunal – [2021] UT20 UTS/AP/20/0029. The Tribunal accepted that the Notice was received by the respondent on 28 September 2021. The 6 month notice period commenced

then and therefore expired on 28 March 2022. The additional one day required under Section 62 of the Act means that the Notice required to specify 29 March 2022 as the earliest day upon which relevant proceedings before the Tribunal could be commenced. This is the day which was specified. The Notice to Leave is valid and can be founded upon.

The Tribunal relied upon the detailed rent statement produced on behalf of the applicant. This updated statement vouches that the arrears are now at £9,100. The Tribunal was satisfied that more than three consecutive months of rent was unpaid at the time that the Notice to Leave was served and at the date of the hearing. This establishes ground 12.

The Tribunal proceeded to consider the issue of reasonableness.

Little is known about the personal circumstances and profile of the Respondent. She has not engaged in the process and has offered no opposition to the application.

The Tribunal took into account the significant arrears of rent which is a relevant factor to weigh up in the reasonableness balancing exercise. It is unreasonable to expect the applicants to maintain the property for the respondent in the absence of her making any rental payments.

Under Part 2 of Schedule 1 to the Coronavirus (Scotland) No 2 Act 2020, Scottish Ministers were given the power to make Regulations setting out pre-action requirements for landlords in relation to certain cases. The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 were subsequently brought into force and apply in respect of any application made to the Tribunal on or after 6 October 2020. The Tribunal was satisfied that such Requirements have been complied with.

The respondent has not taken advantage of the tenant loan scheme (which closed to new applications from 31 December 2021) nor the tenant grant fund (which can cover rent arrears for the period 23 March 2021 to 9 August 2021).

A Notice under section 11 of the Homelessness Etc (Scotland) Act 2003 has been served by the applicant. It is reasonably expected and likely that alternative housing will be made available to the Respondent upon presenting to the local authority following an eviction order being made.

In all of the foregoing circumstances the Tribunal found that it was reasonable to grant the eviction order applied for.

### **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.

Richard Mill

29 June 2022

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Legal Member/Chair

\_\_\_\_\_  
Date