



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/EV/22/1190**

**Re: Property at 65/18 Larkfield Road, Greenock, PA16 0XJ (“the Property”)**

**Parties:**

**Mr Steven Singh, Mrs Gurwinder Kaur, 23 Madeira Street, Greenock, PA16 7XF (“the Applicants”)**

**Mr Keith Stewart, 65/18 Larkfield Road, Greenock, PA16 0XJ (“the Respondent”)**

**Tribunal Members:**

**Graham Harding (Legal Member) and Gordon Laurie (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicants were entitled to an order for the eviction of the Respondent from the property.**

**Background**

1. By application dated 22 April 2022 the Applicants applied to the Tribunal for an order for the eviction of the Respondent from the property under Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicants submitted a rent statement, Notice to Leave, S 11 Notice and tenancy agreement in support of the application.
2. By notice of Acceptance dated 7 July 2022 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.
3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 3 August 2022.

## **The Case Management Discussion**

4. A CMD was held by teleconference on 16 September 2022. The Applicants attended in person. The Respondent did not attend nor was he represented.
5. Mr Singh confirmed that the tenancy commenced on 2 July 2019 and although the tenancy purported to be a Short Assured tenancy was in fact a Private Residential Tenancy. He confirmed that the rent was £500.00 per calendar month. Mr Singh went on to say that the Respondent stopped paying rent in January 2021 and that by the date of the application the rent due amounted to £7200.00 and at the date of the CMD it had risen to £12700.00.
6. Mr Singh confirmed that a Notice to Leave under Ground 12 of Schedule 3 of the 2016 Act had been sent to the Respondent by recorded delivery post on 14 October 2021. He said that according to the track and trace report from Royal Mail it had first been delivered on 16 October 2021 but had then been amended to say it had been delivered on 21 October 2021. Mr Singh also confirmed he had sent a Section 11 Notice to Inverclyde Council by email on 14 October 2021.
7. In response to a query from the Tribunal as to whether the Applicants had followed the Scottish Governments Pre-Action requirements, Mr Singh advised the Tribunal that he had when sending the Respondent the Notice to Leave advised him of the terms of his tenancy agreement and the level of arrears and directed the Respondent to the advice available to him from Shelter. He went on to say that following service of the Notice to Leave the Respondent had not been in communication and had not made any attempt to negotiate an agreement or to make payment.
8. Mr Singh said that he was sure the Respondent continued to live in the property as he had received complaints from neighbours about the Respondent's dogs and the smell from rubbish at the property.
9. When asked about the Respondent's circumstances Mr Singh said the Respondent was aged 35 -40 and in employment. He said he had a girlfriend who had her own property and there were no children staying at the property. He was not aware of the Respondent having any health issues.
10. With regards to the Applicants' own circumstances Mr Singh explained that they had a portfolio of about 14 properties consisting of a mix of residential and commercial properties. He confirmed that the property was subject to a standard security. He said that being owed £12700.00 was making things tight financially and the Applicants had to sell some property to stay afloat partially due to the debt owed by the Respondent and partially due to the wider economic climate.

## **Findings in Fact**

11. The parties entered into a Private Residential Tenancy that commenced on 2 July 2019 at a rent of £500.00 per calendar month.
12. The Respondent has not paid any rent since January 2021.
13. The Respondent was in arrears of rent for at least three months at the date of service of the Notice to Leave on 14 October 2021.
14. Intimation of the proceedings was given to Inverclyde Council by a Section 11 Notice sent by email on 14 October 2021.
15. The Applicants have received complaints about the Respondent's dogs and rubbish left at the property from neighbours.
16. The Applicant has accrued rent arrears as at the date of the CMD amounting to £12700.00.
17. The Applicants have experienced some financial issues as a result of the Respondent failing to pay his rent.

### **Reasons for Decision**

18. The Tribunal was satisfied from the documents produced, the written representations and the oral submissions at the CMD that the parties entered into a Private Residential Tenancy that commenced on 2 July 2019. The Tribunal was also satisfied that the Respondent fell into arrears of rent and has not paid any rent at all since January 2021 resulting in him currently owing the Applicants rent of £12700.00.
19. The Tribunal was satisfied from the documents produced, the written representations and the oral submissions that a valid Notice to Leave had been served on the Respondent and that proper intimation of the proceedings had been given to the local authority by way of a Section 11 Notice.
20. Were it not for the provisions of the Coronavirus (Scotland) Act 2020 and the Coronavirus (Recovery and Reform) Act 2022 the Tribunal would have been obliged to grant the order sought without further enquiry. However, by virtue of the provisions of the foregoing legislation the Tribunal is required to consider whether in all the circumstances it would be reasonable to grant the order.
21. The Tribunal has taken account of the fact that despite being given an opportunity to do so the Respondent has chosen not to participate in the proceedings. The Tribunal has also taken account of the fact that the Respondent has accrued very substantial rent arrears of £12700.00 and has apparently made no effort to communicate with the Applicants to offer any explanation for non-payment or try to reach an agreement with them. The Tribunal has been advised that the Respondent is in employment and does not

have any health issues and that there are no children living in the property. The Respondent may have a girlfriend but she has her own property. The Tribunal has been told that the Respondent's neighbours have complained about the Respondent's dogs and about rubbish left at the property and the smell coming from it.

22. The Tribunal has been advised by the Applicants that although they own a substantial number of properties the Respondent's property is subject to a standard security and the debt accrued by the Respondent has placed a strain on their finances to the extent that they were required to sell property to stay financially afloat.

23. The Tribunal noted that the Applicants had made some effort to comply with the pre-action requirements by advising the Respondent of his obligations in terms of the tenancy agreement, advising of the level of arrears at the date of the Notice to Leave and directing the Respondent to the help and advice available from Shelter.

24. After taking everything into account the Tribunal is satisfied that it would be reasonable to grant the order sought by the Applicants as on balance the harm to the Applicants by not granting the order would be greater than the harm to the Respondent by granting the order.

### **Decision**

25. Having carefully considered the documents produced together with written representations and the oral submissions and being satisfied that it has sufficient information before it to allow it to make a decision without the need for a hearing finds the Applicants entitled to an order for the eviction of the Respondent from the property.

### **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.**



**Graham Harding**  
**Legal Member/Chair**

**16 September 2022**  
**Date**