



**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/22/2671**

**Re: Property at 77 Grange Path, Arbroath, DD11 4EL (“the Property”)**

**Parties:**

**Mr Fraser Evans, 33 Elmbank Crescent, Arbroath, DD11 4EZ (“the Applicant”)**

**Miss Kerrie Hastie, 77 Grange Path, Arbroath, DD11 4EL (“the Respondent”)**

**Tribunal Members:**

**Petra Hennig-McFatrige (Legal Member) and Ann Moore (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted. The decision was unanimous.**

**A: Background**

1. The application for an order for eviction under S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act) was made by the Applicant on 2 August 2022 under Ground 12 of schedule 3 of the Act.
2. The following documents were lodged to support the application:
  - a. Copy tenancy agreement between the parties over the property commencing on 19 July 2021.
  - b. Tenancy rent statement from August 2021 to August 2022
  - c. Notice to leave dated 24 June 2022, served recorded delivery on 25 June 2022
  - d. S11 Notice with email of service on 2 August 2022
  - e. PARS letter dated 10 June 2022 with recorded delivery confirmation of service on 14 June 2022
  - f. Joint owner consent from Clark Evans
  - g. mandate from Applicant to agent.

3. On 19 October 2022 the application and notification of the Case Management Discussion (CMD) was served by Sheriff Officers on the Respondent. The Tribunal was satisfied that the Respondent had the required notice of the CMD as set out in Rules 17 (2) and 24 (2) of the Procedural Rules.
4. No representations from the Respondent were received by the Tribunal.
5. On 21 November 2022 the Applicant sent an updated rent statement covering the period to November 2022
6. No representations from the Respondent were received by the Tribunal.
7. The case documents are referred to for their terms and held to be incorporated herein.

### **B: Case Management Discussion**

1. The Applicant was represented at the CMD by Mr Beattie, the legal representative of the Applicant. The Respondent did not participate in the teleconference.
2. The legal member explained the purpose of the CMD. Mr Beattie confirmed that the arrears continued at the level of £4,800 as set out in the latest rent statement. No further payments had been received. The Applicant has no information whether the Respondent is currently in receipt of benefits. The Respondent to the best of the Applicant's knowledge is a single individual with no dependants. She moved into the property on 2 August 2021, having reached an agreement with the Applicant that she could move in her belongings gradually from 19 July 2021 onwards. Rental payments of £600 monthly in advance were agreed at that time. The arrears commenced in January 2022 with no explanation given by the Respondent. There was no reaction to the letter of 10 June 2022 or the Notice to Leave, both of which were signed for by the Respondent. No payments have been received since May 2022 and the arrears continue to increase. There had been absolutely no dialogue from the Respondent. A resolution of the situation now seemed extremely unlikely. He argued that it would be reasonable to grant an eviction order given the level of rent arrears and the complete non engagement of the Respondent in finding a resolution.
3. Mr Beattie asked that the calculation of the date in part 4 of the notice to leave be dealt with under rule 73 as it was a minor calculation error in favour of the Respondent and presented no detriment to her.

### **C: Findings in Fact:**

Based on the evidence lodged and the representations of the participants at the CMD the Tribunal makes the following findings in fact:

1. The property was let on a Private Residential Tenancy Agreement commencing on 19 July 2021.
2. The parties were the landlord and tenant of said Tenancy Agreement.
3. The tenancy continues.
4. The Applicant has title and interest to pursue the application joint owner of the property with authorisation to act alone given by the joint owner.
5. The monthly rent, payable in advance, was £600 as per clause 8 of the tenancy agreement and the arrangements entered into between the parties regarding the first payment date of 2 August 2021.

6. Rent arrears accrued as per the Rent Statement up to November 2022.
7. As at 22 November 2022 £4,800 have accrued and payment of that amount is due from the Respondent to the Applicant.
8. The Respondent has been in arrears of rent since January 2022 and thus for a period vastly exceeding 3 months both at the time the notice to leave was served and at the date of the CMD.
9. The Applicant had provided the Respondent with the opportunity to resolve the matter.
10. The Respondent is a single female residing in the property with no dependent children or family members.
11. The notice to leave was sent recorded delivery to the Respondent on 24 June 2022 and gave 30 days notice.
12. The rent arrears are not a consequence of delay or failure of payment of relevant benefits.
13. The Applicant provided the required S 11 notice and proof of service of same on the local authority.

#### **D: Reasons for decision**

##### **1. Relevant legislation:**

In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

- (a) in any place where a hearing may be held;
- (b) by videoconference; or
- (c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

- (a) identifying the issues to be resolved;
- (b) identifying what facts are agreed between the parties;
- (c) raising with parties any issues it requires to be addressed;
- (d) discussing what witnesses, documents and other evidence will be required;
- (e) discussing whether or not a hearing is required; and
- (f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

Power to determine the proceedings without a hearing

However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

- (a) may make a decision without a hearing if the First-tier Tribunal considers that—
  - (i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and
  - (ii) to do so will not be contrary to the interests of the parties; and
- (b) must make a decision without a hearing where the decision relates to—
  - (i) correcting; or
  - (ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties

2016 Act

### **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 or must 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.

### *73 Minor errors in documents*

(1) An error in the completion of a document to which this section applies does not make the document invalid unless the error materially affects the effect of the document.

(2) This section applies to—

(a) a notice under section 14(3), 16(3)(c), 22(1) or 61(1),

(b) the document by which a referral is made to a rent officer under section 24(1),

(c) the document by which an application is made to a rent officer under section 42(1), and

(d) a notice to leave (as defined by section 62(1)).

### *Grounds under Schedule 3 of the 2016 Act*

#### Ground 12 Rent arrears

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 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.

(3A) Sub-paragraph (3B) applies where the First-tier Tribunal is satisfied—

(a) that the eviction ground named by sub-paragraph (1) applies, and

(b) that all or part of the rent in 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.

(3B) Where this sub-paragraph applies, in considering for the purposes of sub-paragraph (3)(b) whether it is reasonable to issue an eviction order against the tenant, the First-tier Tribunal is to consider the extent to which the landlord has complied with pre-action requirements before applying for the eviction order.

(4) In deciding under sub-paragraph (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.

(5) For the purposes of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971),

(ii) a payment on account awarded under regulation 91 of those Regulations,

(iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,  
(iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,  
(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.

(6) In sub-paragraph (3B), “pre-action requirements” means such requirements as the Scottish Ministers may specify in regulations.

(7) Regulations under sub-paragraph (6) may in particular make provision about—

(a) information to be provided by a landlord to a tenant including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy,

(b) steps to be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,

(c) such other matters as the Scottish Ministers consider appropriate.

2. The Respondent has not made any representations and did not attend the CMD. The Respondent had fair notice of the representations of the Applicant forming the reasons for the application and has not challenged these. As no representations were received from the Respondent by the Tribunal, the facts of the case are not in dispute. This includes the matter of the accruing rent arrears as these were explicitly referred to in the notice to leave. The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case. The Respondent was made aware that the Tribunal could consider the case on its merits and make a decision at the CMD. No defence was lodged to the application.

3. The documents lodged and the Direction are referred to for their terms and held to be incorporated herein. The Tribunal makes the decision on the basis of the documents lodged by the Applicant and the representations made by Mr Beattie on behalf of the Applicant.

4. In terms of S 54 of the Act a 28 day notice period applied and was given. The date stated in part 4 of the notice to leave, 27 July 2022, was a date 2 days after the date if correctly calculated taking into account the provisions of S 64 (1) (b), (4) and (5) and S 54 (2) and (3) (iii) of the Act. The Tribunal considered what the consequence of the date stating 27 July 2022 rather than 25 July 2022 should be. The Tribunal considered that the matter could be considered under S 73 of the Act as it was a minor error, which does in this case not affect the effect of the form. There had been no detriment to the Respondent, who had received 2 extra days notice. The Tribunal also considered that the entry of a date a few days later than the correct date in part 4 of the notice to leave would effectively bar an Applicant to raise proceedings earlier than the date stated on the notice and thus the notice could be considered valid as it still gave the Respondent the correct information as to when proceedings could first be raised. The Applicant had served the notice required in terms of S 56 of the Act on the local authority and had complied with all formal requirements under the 2016 Act.

5. The Tribunal found that Ground 12 (2) of Schedule 3 and 3A of the 2016 Act applies in this case. This is a discretionary ground of eviction. There is clear evidence of the rent arrears accruing and some arrears having been in place since January 2022. The Tribunal was satisfied that in terms of Ground 12 3(B) the Applicant has complied with

the pre action requirements set out in the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 by sending the letter of 10 June 2022 addressing the arrears and signposting the tenant to advice sources and seeking proposals for a resolution. No payments apart from the payments listed in the rent statement submitted have been received and the Respondent has not engaged with the Applicant to resolve the matter.

6 The Respondent has not provided any updates regarding her situation and had ignored all correspondence sent to her regarding rent arrears. The Respondent has not engaged in the process before the First-tier Tribunal and has not raised any issues as to why it would not be reasonable to grant an eviction order. No specific issues regarding reasonableness arise from the information available. The Respondent is a single female occupant with no underage dependent children. No specific needs of the Respondent to live at the specific address have been raised. She has not provided any information advising of problems accessing suitable alternative accommodation. The length of time of occupancy of the property has been considered by the Tribunal but is in and of itself not a reason to make an eviction order unreasonable.

7. The Respondent has not provided any information indicating that the rent arrears may have arisen from a late or incorrect benefit payment. There has been a prolonged and persistent failure by the Respondent to address the arrears despite the Applicant's steps to try and engage the Respondent.

8. In the case of *City of Glasgow District Council v Erhaiganoma* 1993 SCLR 592, The Inner House of the Court of Session stated at page 594 that “Where prima facie reasonableness has been made out, we think that it is then for the tenant to put circumstances before the court to show otherwise.”. In the present case the Applicant had provided evidence of significant and persistent rent arrears and attempts of the landlord to engage the tenant in efforts to find assistance and address the arrears. The Respondent had put forward no circumstances to show that it would not be reasonable for the Tribunal to issue an eviction order. In all the circumstances the Tribunal thus finds that it is reasonable to grant the eviction order on ground 12 of schedule 3 of the Act.

9. In terms of S 51(1) of the 2016 Act the Tribunal thus grants the application for an eviction order as it is satisfied that one of the eviction grounds in schedule 3 of the Act applies.

10. The Tribunal, having regard to the appeal period, determines that in terms of S 51(4) of the Act the tenancy ends on 23 December 2022.

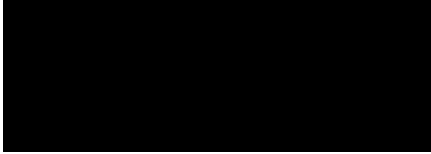
#### **E : Decision**

**The Tribunal grants an order for eviction in terms of S 51 of the Act on Ground 12 of Schedule 3 of the Act**

#### **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.**



**Petra Hennig McFatridge  
Legal Member/Chair**

**22 November 2022  
Date**