



**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/22/4343**

**Re: Property at 50 Walker Road, First Floor Left, Aberdeen, AB11 8BN (“the Property”)**

**Parties:**

**Marnox Properties Ltd, 144 Crown Street, Aberdeen, AB11 6HS (“the Applicant”)**

**Mr Israel Oghene, 50 Walker Road, First Floor Left, Aberdeen, AB11 8BN (“the Respondent”)**

**Tribunal Member:**

**Gillian Buchanan (Legal Member) and Helen Barclay (Ordinary Member)**

**Summary of Discussion**

At the Case Management Discussion (“CMD”), which took place by telephone conference on 6 September 2023, the Applicant was represented by Mr Logan. The Respondent was in attendance.

The CMD was in respect of this matter and the related case bearing reference FTS/HPC/CV/22/4344.

Prior to the CMD the Tribunal received from the Applicant the following:-

- An email dated 25 August 2023 with rent Statement attached.

The Tribunal received no further documents from the Respondent.

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:-**

**Background**

A CMD in respect of this application and the related application FTS/HPC/CV/22/4344 previously took place on 13 June 2023. At that CMD the Tribunal adjourned the CMD to allow the following:-

1. The Applicant to produce an up to date rent statement with a further rent statement to be lodged just prior to the adjourned CMD.
2. The Applicant and/or the Respondent to lodge with the Tribunal such information as they hold relative to the rent arrears payments for the Property being made by

Universal Credit in order that the Tribunal has sight of the amounts of those payments, the basis of the calculation of those payments and the period(s) to which those payments relate.

3. The Respondent's outstanding appeal to Universal Credit to be progressed and, hopefully, determined with any correspondence received from Universal Credit relative to that appeal being lodged with the Tribunal along with the determination thereof.

The Tribunal issued a Direction relative to the above.

### **The CMD on 6 September 2023**

*For the Applicant*

At the CMD Mr Logan made the following representations for the Applicant in respect of this application and the related application FTS/HPC/CV/22/4344: –

- i. Mr Logan had not checked the rent arrears figures as at the CMD. The Rent Statement recently lodged reflected the position as at August 2023. The arrears balance was then £3,901.02.
- ii. For 5 months, payments have been received from Housing Benefit (or more correctly Universal Credit).
- iii. He had no reason to expect that similar payments would not be received for September 2023.
- iv. As at August 2023 the total rent arrears accrued amounted to in excess of 13 months rent.
- v. Assuming no other rental payments are missed and no additional payments made, at the rate of £63.18 per month being the amount being paid by Universal Credit towards the arrears, the debt would take in excess of 5 years to clear.
- vi. Mr Logan has concerns that benefit payments will cease and he reminded the Tribunal that in the past the Respondent accepted that he received several such payments and did not pass them on to the Applicant.
- vii. He remarked that the Respondent feels little responsibility to the Applicant for the arrears accrued.
- viii. Mr Logan indicated that the Applicant does not receive any paperwork from Universal Credit, monies are simply lodged in the Applicant's account. He speculated that he might receive paperwork on an annual basis.
- ix. The Applicant seeks an eviction order against the Respondent. The Respondent has made no attempt personally to improve the arrears from his own finances and it is reasonable to grant an eviction order in the circumstances.
- x. The Respondent has been a tenant for some time and during that period the rent has not increased. If the Applicant increased the rent as it would be entitled to do at least to a limited extent meanwhile, the arrears position would worsen.
- xi. Had the Respondent made an effort to improve the position himself it is unlikely that the Applicant would have sought an eviction order at the CMD.
- xii. With regard to the payment application, the Applicant seeks a payment order in a sum of £3,300 being the amount claimed in the application with interest thereon. Mr Logan referred to Clause 35(a) of the PRT. He maintained the wording there included an entitlement to recover interest and suggested a rate of 4% per annum as being a reasonable rate to award.

- xiii. In response to questions from the Tribunal, Mr Logan stated that the Applicant owns seven of the eight flats within the tenement block of which the Property forms part. The second floor right flat is owned by another individual.

#### *For the Respondent*

At the CMD the Respondent made the following representations in respect of this application and the related application bearing reference FTS/HPC/CV/22/4344.

- i. With regard to the accuracy of the Rent Statement produced by the Applicant, the Respondent stated that he did not think Mr Logan would do anything untoward. He did not know what sums he had paid but ultimately agreed that he was happy to proceed on the basis that the Rent Statement was correct.
- ii. The Respondent stated that all payments that have been made are payments from his money. He is entitled to Universal Credit. By paying the Applicant, his wife and daughters receive less.
- iii. The Respondent said that he had allowed the payments to be made to the Applicant even although they were "against the law" and made reference to the Respondent owing various creditors a total of £85,509. He said he could stop the Universal Credit being paid to the Applicant but wanted the debt paid.
- iv. With regard to the outstanding appeal to Universal Credit, the Respondent stated that he had received a "note" that the claim would not be paid. He took advice and was advised that a mandatory notice ought to have been given to him with details of a right of appeal. He has therefore written again and awaits a response. The outstanding appeal is therefore ongoing.
- v. The Respondent stated that no eviction order should be granted. Rent was now being paid and the arrears reduced. 20% of the arrears balance would be paid each year. He still expected to get further money from Universal Credit. He said he was entitled to that money.
- vi. The Respondent stated that Mr Logan had misled the Tribunal at the previous CMD and had attempted to hide the fact that monies were being paid towards the arrears. He said Mr Logan only disclosed that fact in response to questions from the Tribunal.
- vii. Mr Logan told the Respondent previously that he would categorically not help the Respondent with Universal Credit.
- viii. The Respondent said both applications should be struck out.
- ix. Previously, Mr Logan asked him to pay £10 but he paid £100. Therefore if he has additional income he will pay that money to reduce the arrears.
- x. The Respondent confirmed that his wife and 2 daughters are still not living with him.
- xi. The Respondent said that his health has not been good and he receives ongoing psychiatric input.

#### *Further representations for the Applicant*

In response to the Respondent's submissions Mr Logan made the following further representations:-

- i. The last payment received from the Respondent personally was in September 2022 in a sum of £150. No benefits were being paid at that time.
- ii. The Respondent objects to the Applicant receiving benefits and Mr Logan remains concerned he will stop them.

- iii. Mr Logan has sympathy with the Applicant's health.

## Findings in Fact

- i. On 28 November 2019 the parties entered into a Private Residential Tenancy Agreement ("the PRT") in respect of the Property.
- ii. The PRT started on 27 November 2019.
- iii. The rent agreed to be payable in terms of the PRT is £300 per calendar month payable on the first day of each month.
- iv. On 3 November 2022 the Applicant served on the Respondent by Sheriff Officer a Notice to Leave requiring that the Respondent remove from the Property by 2 December 2022.
- v. In terms of the Notice to Leave the Applicant sought to recover possession of the Property under Grounds 12 and 12A of the Private Housing (Tenancies)(Scotland) Act 2016.
- vi. On 6 December 2022 the Applicant submitted to Aberdeen City Council a notice under section 11 of the Homelessness etc (Scotland) Act 2003.
- vii. On 8 November 2022 the Applicant sent to the Respondent a letter in compliance with the Scottish Government pre-action protocol.
- viii. By application dated 6 December 2022 the Applicant seeks an eviction order under Ground 12A of Schedule 3 of the 2016 Act.
- ix. The Respondent lives in the Property alone.
- x. As at August 2023 the rent arrears balance was £3,901.02 which equates to a total of in excess of 13 months rent.
- xi. Ongoing rent is being paid by Universal Credit directly to the Applicant.
- xii. In addition Universal Credit makes additional deductions from the Respondent's benefits and pays £63.18 towards the rent arrears due. At that rate it will take in excess of 5 years for the arrears to be paid.
- xiii. The arrears did not accrue as a consequence of any delay or failure in the payment of a relevant benefit.
- xiv. It is reasonable that an eviction order be granted.

## Reasons for Decision

The Tribunal carefully considered whether or not an eviction order should be granted.

The application proceeds on the basis of Ground 12A of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016. Ground 12A states:-

### ***"12A Substantial rent arrears***

*(1) It is an eviction ground that the tenant has substantial rent arrears.*

*(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—*

*(a) the tenant has accrued rent arrears under the tenancy in respect of one or more periods,*

*(b) the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy when notice to leave is given to the tenant on this ground in accordance with section 52(3), and*

*(c) the Tribunal is satisfied that it is reasonable to issue an eviction order.*

*(3) In deciding under sub-paragraph (2) whether it is reasonable to issue an eviction order, the Tribunal is to consider—*

*(a) whether the tenant being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, (b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers under paragraph 12(4)(b) (and continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022).*

*(4) For the purpose of this paragraph—*

*(a) references to a relevant benefit are to—*

*(i) a rent allowance or rent rebate under the Housing Benefit Regulations 2006 (S.I. 2006/213),*

*(ii) a payment on account awarded under regulation 93 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.”*

The Respondent has accrued rent arrears under the PRT in respect of one or more periods. The cumulative amount of those rent arrears exceeds the equivalent of 6 months rent payable under the PRT when the Notice to Leave was served.

The Tribunal considered whether it would be reasonable to grant an eviction order.

The arrears did not accrue as a consequence of any delay or failure in the payment of a relevant benefit. The arrears total in excess of 13 months rent and, in respect that the arrears balance is reducing by only £63.18 per month, at that rate the arrears would take in excess of 5 years to clear in full.

The Applicant has complied with the action protocol prescribed by the Scottish Ministers and reference is made to the letter of 8 November 2022 sent to the Respondent on behalf of the Applicant by Raeburn Christie Clark and Wallace, Solicitors, Aberdeen.

In all of the circumstances it is reasonable that an eviction order be granted. The Tribunal therefore granted an eviction order.

## **Decision**

The Tribunal granted an eviction order in terms of Ground 12A of Schedule 3 of the 2016 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.**

**Gillian Buchanan**

**Legal Member/Chair**

**6 September 2023**

**Date**