



**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/23/0837**

**Property : 5 Templand Drive, Cumnock KA18 1ER (“Property”)**

**Parties:**

**Pauline Ethel Cavanagh, 23 Gladeside Court, Succombs Hill, Warmingham, Surrey CR9 9JG (“Applicant”)**

**TC Young, Solicitors, 7 West George Street, Glasgow G2 1BA (“Applicant's Representative”)**

**Mark Torbet, 5 Templand Drive, Cumnock KA18 1ER (“Respondent”)**

**Tribunal Members:**

**Joan Devine (Legal Member)  
Gordon Laurie (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined that an order for possession of the Property should be made.**

**Background**

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: a Private Residential Tenancy Agreement dated 27 September 2019; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 (“Act”) dated 30 August 2022 (“Notice to Leave”); sheriff officer certificate of service of the Notice to Leave on 5 September 2022; rent statements as at 1 September 2022 and 27 February 2023; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 8 March 2023 and communications to the Respondent regarding arrears dated 6, 13 and 28 July 2022 and 30 August 2022. The Tribunal had sight of a sheriff officer's execution of service certifying service of the Application on the Respondent on 12 April 2023.

### **Case Management Discussion (“CMD”)**

A CMD took place before the Tribunal on 16 May 2023 by teleconference. Kirstie Donnelly of the Applicant's Representative was in attendance as was the Respondent.

Ms Donnelly told the Tribunal that the arrears had increased to £6700 and that there had been no communications from the Respondent regarding repayment.

The Respondent told the Tribunal that he did not oppose the application. He said he thought that his partner was paying the rent. The Tribunal noted that the tenancy commenced in September 2019 and the arrears had started to accumulate from January 2022. The tribunal asked the Respondent if he had paid the rent before January 2022. He said he was not sure whether he or his partner paid the rent. The Respondent said he did not recall seeing letters about the arrears. The Respondent told the Tribunal that both he and his partner were employed. They were not in receipt of benefits. The Respondent said that he lived in the Property with his partner and 3 children aged 10, 12 and 15. The Respondent said that he had his name down for a council house since before he moved into the Property but had heard nothing back from the local authority.

### **Findings in Fact**

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a Tenancy Agreement dated 27 September 2019 ("Tenancy Agreement").
2. The Notice to Leave was served by sheriff officer on 5 September 2022.
3. The Notice to Leave stated that an application for an eviction order would not be submitted to the Tribunal before 4 October 2022.
4. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 8 March 2023.
5. At the date of making the Application, the Respondent had been in rent arrears for three or more consecutive months.
6. The application had been served on the Respondent on 12 April 2023.

### **Reasons for the Decision**

The Tribunal determined to make an Order for possession of the Property in terms of Section 51 of the Act.

In terms of section 51 of the Act, the First-tier Tribunal may 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.

In the Application the Applicant stated that they sought recovery of possession of the Property on the basis set out in Ground 12 which states :

"(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months."

The Tribunal considered the statement of rent arrears provided and determined that the ground for eviction had been established. Having considered the submissions from the Applicant's Representative and the Respondent, the Tribunal determined that it would be reasonable to grant an order for eviction.

### **Decision**

The Tribunal grants an order for possession of 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.**

# J Devine

**Legal Member**

**Date : 16 May 2023**