



**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/23/1661**

**Re: Property at Flat C, 171 Riverside Road, Kirkfieldbank, Lanark, ML11 9JR (“the Property”)**

**Parties:**

**Homeselect Finance (No 3) Limited, Whittington Hall, Whittington Road, Worcester, WR5 2ZX (“the Applicant”)**

**Mr John Anderson, Flat C, 171 Riverside Road, Kirkfieldbank, Lanark, ML11 9JR (“the Respondent”)**

**Tribunal Members:**

**Jan Todd (Legal Member) and Helen Barclay (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 possession be granted.**

1. This was a case management discussion in respect of an application by the Applicant dated 22<sup>nd</sup> May 2023 for an order for eviction against the Respondent. This was the first calling of the case before a Tribunal.
2. The following documents were lodged with the application:-
  - A copy of the Tenancy Agreement dated with a commencement date of 21<sup>st</sup> January 2019
  - Copy Notice to Leave dated 1<sup>st</sup> March 2023
  - Execution of service of notice to leave by sheriff officers dated 1<sup>st</sup> March 2023
  - Copy S 11 Notice and letter to South Lanarkshire Council dated 22<sup>nd</sup> May 2023
  - Letters to tenant regarding non-payment of rent dated 9<sup>th</sup> and 16<sup>th</sup> May 2023
  - Rent statement showing sum due to 4<sup>th</sup> April 2023 of £2,750

## **The CMD**

3. The CMD proceeded today by way of teleconference. The Convener made introductions, and explained how the CMD would be conducted over the teleconference. The Applicant was represented by Ms Claire Mullen of T C Young solicitors and another member of TC Young Solicitors, namely Ms Stephanie Callaghan was in attendance as an observer only.
4. The Applicant was seeking eviction on Ground 12 A of Schedule 3 to the 2016 Act
5. The Respondent did not attend nor was he represented on the teleconference. The Respondent had been served a copy of the application and papers by sheriff officers on 25<sup>th</sup> July 2023 together with a note of the date and time of the teleconference and details of how to join. The Respondent has been given fair notice and the Tribunal therefore felt it was appropriate and fair to continue in his absence.
6. Ms Mullen spoke on behalf of the Applicant and advised that they were seeking an order for eviction of Mr Anderson who was the tenant in the Property. She explained that the Respondent was due to pay rent in the sum of £1950 for 6 months in advance on 21<sup>st</sup> January 2019 and six monthly thereafter. She confirmed that as per the most recent rent statement which she had lodged he was now in arrears of £4,758.50 the last payment to account having been made on 4<sup>th</sup> April of £500 and that no further payments had been made.
7. Ms Mullen submitted that the Respondent should always be in credit as the rent is due 6 monthly in advance and he has not been since January 2021. She advised that the landlord is a corporate landlord with over 1000 properties and that she understood the Respondent to be a single adult male aged 57 but that she had not details of his income or occupation and was not aware if he was on benefits. She advised that he was difficult to contact and there had been no response to the Applicants letters in May nor their most recent letter in August 2023. Ms Mullen advised that the Applicant had made an offer earlier in the year to repay some of the arrears but had not maintained this and there had been no communication at all since April. She further advised there are some complaints of anti-social behaviour and submitted that in light of the extent of the arrears which were over 6 months at the date of service of the Notice to Leave and are now over a years rent due, and given his lack of contact it would be reasonable for the order for eviction to be granted.
8. The Tribunal questioned Ms Mullen about how the rent arrears were made up given the rent statement was not entirely clear and after a short break Ms Mullen was able to clarify the rent was initially charged monthly which was shown on the rent statement and then corrected to show rent due on 21<sup>st</sup> January and 21<sup>st</sup> July in 6 monthly payments.

## **Facts**

1. The Applicant and the Respondent entered into a lease of the Property which commenced on 21<sup>st</sup> January 2019.
2. The Respondent is still occupying and in control of the Property and the tenancy is continuing.

3. A notice to leave dated 1<sup>st</sup> March 2023 was served on the Respondent by Sheriff Officer confirming that no proceedings would be raised before 1<sup>st</sup> April 2023.
4. These proceedings were raised on 22<sup>nd</sup> May 2023 and the application included a copy of the Notice to Leave.
5. A Section 11 notice has been served on South Lanarkshire Council
6. There were at least 6 months' rent arrears outstanding at the date of service of the Notice to Leave.
7. The Rent due was initially £1,950 for 6 months payable in advance in terms of the lease.
8. The rent was recently increased to £2,008.50 per 6 months.
9. The current rent contractually due and not paid from 21<sup>st</sup> July 2023 is £4,758.50.
10. The last payment made was on 4<sup>th</sup> April 2023 for £500.
11. The Respondent has failed to communicate or respond to the Applicant regarding the rent arrears and has made no response to this application.
12. The Tribunal finds it reasonable that an order for eviction is granted for the reasons stated below.

### **Reasons for Decision**

- The Tribunal was satisfied that the Respondents had been served with a valid Notice to Leave under S52 (3) of the 2016 Act specifying Ground 12 A of Schedule 3 of the Act as the relevant grounds of eviction.
- The Notice to Leave was also accompanied by evidence of how the ground was met namely a rent statement.
- Grounds 12 A require 28 day's notice under the current rules. The Notice sets out the notice period as expiring on 1<sup>st</sup> April 2023 and was served by sheriff officers on 1<sup>st</sup> March 2023. This Application is therefore timeous.
- The Tribunal considered whether the terms of Ground 12 A were met namely that the tenant has substantial rent arrears. This ground may be met if the Respondent is in arrears of rent by an amount equal to or greater than the amount which would be payable as six months' rent under the tenancy on the day the Notice to Leave was served and the Tribunal finds it reasonable that an order for eviction be granted. The rent statement shows that as of 21<sup>st</sup> January 2023 the sum due and outstanding prior to the next rent becoming due was £1,625 and the next 6 monthly rent became due on 21<sup>st</sup> January 2023. The Tribunal notes the Respondent was in arrears of rent to the extent of at least 6 months rent when the Notice to Leave was served on 1<sup>st</sup> March and only £500 has been paid since then and so there have been continuous arrears since the Notice to Leave was served and the sum due and not paid today is £4,758.50 which is more than 6 months' rent. The Tribunal accepted that Ground 12 A has been met.
- The Tribunal went on to consider if it was reasonable to grant an order for eviction. They found Ms Mullen to be credible in her response to questions and accepted that the Respondent has been difficult to contact, has not maintained any payment plan and has not made any payment since April more than 4 months ago. The Respondent has made no substantial effort to pay the arrears, he has stopped paying any rent for the last few months and

has not been in communication with the Applicant. There is no suggestion that the failure to pay is a consequence of any delay or failure in the payment of benefit.

- There being no response to counter this from the Respondent, the Tribunal is satisfied in terms of S 51 (1) of the Act that Ground 12 A being an eviction ground specified in the application and in the Notice to Leave is met, and that it is reasonable for the Tribunal to grant the application.
  
- Decision

An order for possession is granted.

### **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.**

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**Legal Member/Chair**

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**Date 21/08/2023**