



**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/23/1768**

**Re: Property at 132 Berryhill Crescent, Wishaw, ML2 0NF (“the Property”)**

**Parties:**

**Mr Alan Smith, Mrs Keri Smith, 287 Anchorage Drive North, Mindarie, Western Australia, 6030, Australia (“the Applicants”)**

**Mr Shan Khan, Mrs Sameera Saleem, 132 Berryhill Crescent, Wishaw, ML2 0NF; 132 Berryhill Crescent, Wishaw, ML2 0NF (“the Respondents”)**

**Tribunal Members:**

**Richard Mill (Legal Member) and Elizabeth Currie (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction be granted against the respondents**

**Introduction**

These linked applications seek an eviction order and an order for payment in respect of rent arrears. The applications are under Rules 109 and 111 and Sections 51 and 71 of the Private Housing (Tenancies) (Scotland) Act 2016.

Intimation of the applications and the initial Case Management Discussions (CMDs) in both applications were effected upon the respondents by Sheriff Officers on 14 August 2023.

The CMDs took place by teleconference on 13 September 2023 at 10.00 am. The applicants were represented by Ms Gillian Matthew of Bannatyne Kirkwood France & Co Solicitors. The respondents failed to participate in the hearing.

## Findings and Reasons

The property is 132 Berryhill Crescent, Wishaw ML2 0NF. The applicants are Mrs Keri Smith and Mr Alan Smith who are the heritable proprietors and registered landlords of the property. The respondents are Mrs Sameera Saleem and Mr Shan Khan who are the tenants.

The parties entered into a private residential tenancy which commenced on 17 February 2021. The agreed rent in terms of the written lease was £950 per month.

The eviction application is based upon arrears of rent and the ground relied upon is ground 12A, contained within Part 1, Schedule 3 to the 2016 Act, as amended by the Cost of Living (Tenant Protection) (Scotland) Act 2022. This constitutes an eviction ground where there are 'substantial rent arrears'. This ground is an exception to the current additional protections afforded to tenants under the 2022 Act.

The applicants served a notice to leave upon the respondents by Sheriff Officers on 13 March 2023. In terms of the said notice to leave the respondents were advised that proceedings before the tribunal would not be raised before 11 April 2023.

The tribunal was satisfied that the respondents had received the minimum statutory notice of the applicants' intention to raise proceedings and that the notice to leave was valid.

As at the date that the notice to leave was served, the respondents owed £7,350 representing more than 6 months' rent. When the applications were lodged with the tribunal, the amount of rent outstanding had increased to £10,200. As at the date of the hearing the outstanding rent had increased to a total £13,050, which is evidenced by an updated rent statement. A corresponding Rule 14A amendment application had been made timeously to seek to increase the sum sought. The detailed rent statement was found to be credible and reliable, and the tribunal attached weight to it.

The applicants are entitled to recover arrears of rent lawfully due under the lease. The tribunal accordingly made a Payment Order in the sum of £13,050.

In the application the applicants also seek interest. 4% per annum is an appropriate rate of interest to be imposed by the tribunal.

Substantial rent arrears for the purposes of ground 12A as defined is being where the cumulative amount of rent arrears equates to, or exceeds, an amount equivalent to 6 months' rent under the lease agreement where notice is given to the tenant on this new ground. This is evidenced and ground 12A is therefore established.

The tribunal proceeded to consider the issue of reasonableness of making an eviction order.

The first respondent has not lived in the property since around November 2022 when she separated from the second respondent.

The second respondent's circumstances are largely unknown. He lives alone in the property and has no known disabilities or other vulnerabilities. The application has not been opposed by him.

There is evidence that the local authority has been advised of the eviction proceedings with a relevant section 11 notice having been issued by the applicants. It is likely that in the event of an eviction order being granted that the local authority will make alternative accommodation available to the respondents.

The rent arrears pre-action requirements are evidenced to have been complied with. The applicants' letting agent engaged with the respondents regarding the arrears and signpost them to relevant advice agencies.

It is not reasonable for the applicants to continue to make the tenancy available for the respondents in the absence of any rent being paid. No rent has been paid since August 2022, over one year ago. This is seriously prejudicial to the applicants.

In all of the circumstances, the tribunal determined that making an eviction order was reasonable.

### **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.**



**13 September 2023**

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**Legal Member/Chair**

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**Date**