



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/EV/21/2387**

**Re: Property at 164 Tweed Street, Methil, Fife, KY8 3PS (“the Property”)**

**Parties:**

**Red Box Property Ltd., 24 Stewartfield, Edinburgh, EH6 5RQ (“the Applicant”)**

**Mr Craig Calder, 164 Tweed Street, Methil, Fife, KY8 3PS (“the Respondent”)**

**Tribunal Members:**

**Valerie Bremner (Legal Member) and Linda Reid (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 eviction from the property be made against the Respondent in terms of Ground 12 of Schedule 3 of the Private Housing Tenancies (Scotland) Act 2016, in that for three or more consecutive months the Respondent has been in arrears of rent and the Tribunal having found it was reasonable to make such an order

The Decision of the Tribunal was unanimous.

**Background**

1. This application for an eviction order in terms of Rule 109 of the Tribunal rules of procedure was first lodged with the Tribunal on 30 September 2021. The application was accepted by the Tribunal on 16 November 2021 and a case management discussion was fixed for 13 January 2022 at 2pm.

**Case Management Discussion**

2. The case management discussion was attended by Mr Morris, a director of the Applicant company. There was no appearance by or on behalf of the Respondent. Mr Morris requested that the tribunal proceed in the absence of the Respondent. The

tribunal noted that the application and supporting papers had been deposited at the property by Sheriff Officers on 2nd December 2021. Accordingly, the tribunal was satisfied that fair notice of the proceedings had been given to the Respondent who had neither attended nor made any representations to the Tribunal and it was appropriate to proceed in the absence of the Respondent.

3. At the case management discussion the tribunal members had sight of the application, a tenancy agreement, a Notice to Leave, a notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003, emails in respect of the Notice to Leave and the Section 11 Notice, a letter to the Respondent dated 6 July 2021 and email exchanges between Mr Morris on behalf of the Applicant and the Respondent.

4. Mr Morris explained that the Applicant company had entered into a tenancy agreement with the Respondent at the property in September 2020. Difficulties with the payment of the monthly rent of £475 started very quickly after the start of tenancy. As at the date of the case management discussion rent arrears amounted to £3383.36, more than 7 months' rent and the rent had been in arrears since the autumn of 2020. Some monies had been received since the application had been lodged with the tribunal but the Respondent had not paid the full monthly rent since the application had been lodged at the end of September 2021. Three payments of £355 had been received in respect of universal credit payments. Mr Morris indicated that no universal credit payment had been received for the rent outstanding for January 2022.

5. Mr Morris indicated that the Respondent simply did not communicate with the Applicant company at all. He had lodged correspondence showing that the Respondent had been written to July 2021 explaining the sources of assistance he could access in paying the rent arrears. As well as sending this letter there had been an email exchange between Mr Morris and the Respondent around this time when further sources of help had been signposted. Mr Morris explained that the Respondent had been contacted on numerous occasions but did not communicate with him. When he did he said he would sort out the rent arrears "next Friday" but that date never came around. Mr Morris explained that he had sent recorded delivery letters, e mailed and posted information. He felt that false promises had been made or that communications had been met with silence.

6. On behalf of the landlord an application had been made to obtain universal credit and the Applicant had been able to obtain three payments towards the rent arrears. None of these payments covered the full amount of the monthly rent. No further payment had been received from universal credit in January 2022.

7. Mr Morris indicated that the applicant company was a large property business but like any other business it had bills to be paid and there was a mortgage to pay for the property, even when the rent was not being received. It was costing the landlords to allow the Respondent to remain at the property when all attempts to engage with him regarding the rent arrears had failed.

8. Mr Morris confirmed that he was relying on Ground 12 of the 2016 Act as an eviction ground, that the Respondent had been in arrears of rent for at least three consecutive months.

9. Mr Morris confirmed that the email sending the Notice to Leave to the Respondent was sent on the same day as the Section 11 notice was emailed to Fife Council, 25<sup>th</sup> March 2021.

10. The tribunal was satisfied that notice to leave was in proper form and had been served giving sufficient notice to the Respondent of the application for eviction and the Section 11 notice had also been properly served.

11. The Applicant had complied at least in part with the pre-action protocol requirements in relation to engaging with the Respondent signposting him to various agencies which might assist him with the rent arrears. This letter also gave Mr Morris's email address for contact purposes.

### **Findings in Fact**

12. The Applicant company entered into a Private residential tenancy agreement with the Respondent at the property with effect from 4 September 2020.

13. The monthly rent payable in terms of the agreement is £475.

14. Arrears of rent started to accrue at the property in the autumn of 2020 and as of 14<sup>th</sup> January 2022 stand at £3383.36.

15. The rent has been in arrears to some extent every month since October 2020.

16. The Respondent has on a number of occasions indicated that he would deal with the arrears but this has never happened.

17. The Applicant wrote to the Respondent by letter and email in July 2021 signposting agencies where assistance could be obtained by him.

18. The Applicant applied for and received 3 payments from universal credit towards the rent arrears.

19. The rent arrears are not due to any delay or failure in the payment of any benefit.

20. The Applicant served a Notice to Leave on the Respondent in proper form and giving the correct notice period.

21. The Applicant served a notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 on Fife Council before the application for eviction was submitted.

22. The Respondent having been in rent arrears for some considerable time during the tenancy and having failed to engage with the Applicant regarding these arrears it is reasonable to grant an eviction order.

## **Reasons for Decision**

23. The Tribunal was satisfied in terms of the material it had seen and the representations made by the Applicant's representative that the eviction ground had been made out and it was reasonable to grant the order. The Respondent had not engaged and attended the Tribunal to put forward any information to suggest that the order should not be made. In addition the Applicant had attempted to comply with the pre action protocol requirements before making the Application for an eviction order.

## **Decision**

24. The Tribunal made an order for eviction from the property against the Respondent and in favour of the Applicant in terms of Ground 12 of Schedule 3 of the Private Housing Tenancies ( Scotland ) Act 2016 in that for three or more consecutive months the Respondent has been in arrears of rent and the Tribunal having found it was reasonable to make such an order

## **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**

**13.1.22**  
**Date**

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