



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

**Chamber Ref: FTS/HPC/EV/21/0300**

**Re: Property at Flat 6, 10 Scott Street, Perth, PH1 5EJ (“the Property”)**

**Parties:**

**Mrs Amanda Fooks, 154B HIGH STREET, NEWBURGH, FIFE, KY14 6DZ (“the Applicant”)**

**Mr John Cowie, Flat 6, 10 Scott Street, Perth, PH1 5EJ (“the Respondent”)**

**Tribunal Members:**

**Petra Hennig-McFatrige (Legal Member) and Angus Lamont (Ordinary Member)**

**Decision in absence of the Respondent**

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

**The Tribunal grants an order for eviction in terms of S 51 of the Act on Ground 12 of Schedule 3 of the Act and specifies the date of 14 June 2021 as the date in terms of section 51 (4) of the Act.**

**A Background:**

1. The application was made on 9 February 2021. The application asked for eviction of the Respondent on the basis of Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act) as amended by the Coronavirus (Scotland) Act 2020.
2. Attached to the application were:
  - a) the Private Rented Tenancy Agreement for the property commencing 20 January 2020

- b) Copy Notice to Leave dated 7 May 2020 with the date on which proceedings could first be raised stated as 9 November 2020 and confirmation of service by email sent 7 May 2020
  - c) Copy S 11 Notice,
  - d) Computer printout of rent history from 20 January 2020 to 1 February 2021
  - e) Easyread Notes accompanying the Private Residential Tenancy (PRT) agreement
  - f) Authorisation of applicant to PKC Lets for conduct of the case dated 3 February 2021
3. Directions dated 19 February 2021 to produce the service confirmation of the S 11 notice and evidence of the landlord registration were issued to the applicant.
  4. A Case Management Discussion (CMD) was scheduled for 7 April 2021 and the papers and intimation served on the respondent by Sheriff Officers on 4 March 2021.
  5. The respondent did not participate in the first CMD. The CMD note of 7 April 2021 and the further Direction issued with this are referred to for their terms and held to be incorporated herein.
  6. A further CMD was scheduled for 14 May 2021 at 10:00 and the notice of same together with the CMD note and Directions intimated to the respondent on 16 April 2021, verified by his signature on the track and trace record for the recorded delivery service.
  7. Prior to the second CMD the applicant provided the following further documents:
    - a. rent statement for the period of 20 January 2020 to 20 April 2021 showing rent arrears outstanding of £4,070.
    - b. second S 11 notice with proof of service on the local authority
    - c. paper apart with additional information regarding the application and the steps taken to comply with the pre-action requirements by PKC Lets and the Housing Officer Norman Smith
    - d. landlord registration information
  8. In terms of Rule 17 (1) (a) of the Procedural Rules the CMD was again held by conference call. Only Ms Kent from PKC Lets attended as the applicant's representative. The applicant and respondent did not take part.
  9. The Tribunal considers that the appropriate notice period has been given to the respondent. The Tribunal was satisfied that he had been appropriately notified of the application and the CMD.
  10. No representations were received from the Respondent. The Respondent had not contacted the Tribunal prior to the CMD.

## **B The Case Management Discussion**

1. At the second CMD the Tribunal asked Ms Kent to explain why not all documents requested in the second Direction had been lodged. She advised that the record of the engagement with the Housing Officer and PKC Lets should sufficiently set out the compliance with the pre action requirements and show that in this case the expectations of the pre action requirements had been exceeded by the continued involvement of the Letting Agent and Housing Officer in the respondent's management of his tenancy. Written representations had been made with regard to the case raised by the Tribunal at the first CMD and written

representations had been provided with regard to the issue of the date stated in part 4 of the Notice to Leave.

2. Ms Kent advised that in this case the tenant had not paid the full rent since the commencement of the tenancy. He had been offered and agreed to various payment arrangements and not adhered to any of them as set out in the paper apart. He was never entitled to Universal Credit during the tenancy period and this had been fully canvassed with him over the months of arrears management. He had simply not engaged and, to the surprise of the Housing Officer and PKC Lets, was currently also not engaging in trying to find an alternative property. He stated instead he would be looking to live with a friend as he felt he was not ready for a tenancy.
3. When the Notice to Leave was served, the cover letter, which unfortunately was not produced in evidence, had advised the respondent of the current arrears and signposted him to the advice about homeless advice team.
4. When asked to explain the continuing discrepancies between the two rent statements lodged, Ms Kent gave a full explanation of the reasons for this. First of all the computer printout originally lodged showed various adjustments on 1 March 2020, which essentially took off the rent due entries for the incorrect amount of £495 per month and then reinserted the correct rent charge of £475 per month, thus resulting in a positive balance occurring at some point on 1 March 2020 although this was in fact not the case. The computer printout further reflected the rent charges incorrectly because it showed the applicable rent charges on the first day of each month and an initial charge from 20 January 2020 to 31 January 2020 reflecting the pro rata 10 days at the start of the tenancy. The second rent statement gave the correct information of the rent account, showing the actual charges due on the correct dates and the actual arrears as of the date of the second CMD as £4,070.
5. Ms Kent stated the tenant had been in rent arrears throughout the duration of the tenancy, had not made any efforts to clear the arrears and had not engaged with the process of putting a payment plan in place. He had also not engaged with the process of finding alternative accommodation. Letters had been sent to him in terms of the pre action requirements and the respondent had been signposted to the appropriate organisations such as Shelter, the CAB and Welfare Rights but not made use of this information. He had been in discussion regarding potential benefit entitlement but agreed throughout the process that due to his employment he was not entitled to any benefits as his income had been too high to qualify. She submitted that thus the arrears at no point were caused by late or non payment of relevant benefits.
6. The decision is made on the basis of the information provided at the two CMDs, the written representations and the documents lodged in

evidence, which are referred to for their terms and held to be incorporated herein.

### **C Findings in Fact:**

- 1. The application was made on 9 February 2021.**
- 2. The parties entered into a Private Residential Tenancy for the property with a start date of 20 January 2020 (clause 6).**
- 3. The rent for the property was agreed at £475 per month payable in advance on the 20th day of each month**
- 4. Notice to Leave was sent on the respondents by email on 7 May 2020**
- 5. In terms of S 64 (5) of the Act the notice is held to have been received on 9 May 2020. It states as the relevant date in part 4 9 November 2020.**
- 6. Between 20 January 2021 and 14 April 2021 the applicant's representative PKC Lets and the Housing Office Staff of Perth and Kinross Council have been in ongoing contact with the respondent prior to and following the service of the Notice to Leave advising him of the terms of the tenancy, the arrears, potential entitlement to benefits, options of obtaining advice from CAB, Shelter, Welfare Rights and have tried to engage the respondent in addressing the increasing arrears levels.**
- 7. The respondent has not engaged in this process and not adhered to payment arrangements made.**
- 8. The respondent has been in arrears of rent since the start date of the tenancy.**
- 9. The arrears at the time of the decision are £4,070.**
- 10. The respondent did not qualify for relevant benefits during the tenancy period.**
- 11. The respondent is a single man living alone in the property.**

### **D Reasons for the Decision:**

#### **1. Relevant legislation:**

a) In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

(a) in any place where a hearing may be held;

(b) by videoconference; or

(c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

(a) identifying the issues to be resolved;

(b) identifying what facts are agreed between the parties;

(c) raising with parties any issues it requires to be addressed;

(d) discussing what witnesses, documents and other evidence will be required;

(e) discussing whether or not a hearing is required; and

(f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

b) However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

c) S 51 of the Act states:

*Eviction order*

**51 First-tier Tribunal's power to issue an eviction order**

(1) The First-tier Tribunal is to 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.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may or must find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

d) 62 Meaning of notice to leave and stated eviction ground

(1) References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,

(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.

(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.

e) 54 Restriction on applying during the notice period

(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.

[F1(2) The relevant period in relation to a notice to leave—

(a) begins on the day the tenant receives the notice to leave from the landlord, and

(b) in the case of a notice served before 3 October 2020, expires on the day falling—

(i) 28 days after it begins if subsection (3) applies,

(ii) three months after it begins if subsection (3A) applies,

(iii) six months after it begins if neither subsection (3) nor (3A) applies.

(c) in the case of a notice served on or after 3 October 2020, expires on the day falling—

(i) 28 days after it begins if subsection (3B) applies,

(ii) three months after it begins if subsection (3C) applies,

(iii) six months after it begins if neither subsection (3B) nor (3C) applies.

(3) This subsection applies if the only eviction ground stated in the notice to leave is that the tenant is not occupying the let property as the tenant's home.

(3A) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property,

(ii) that a member of the landlord's family intends to live in the let property,

(iii) that the tenant has a relevant conviction,

(iv) that the tenant has engaged in relevant anti-social behaviour,

(v) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour,

(vi) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004,

(vii) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or

(b) the only eviction grounds stated in the notice to leave are—

(i) the eviction ground mentioned in subsection (3), and

(ii) an eviction ground, or grounds, mentioned in paragraph (a).

(3B) This subsection applies if the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(a) that the tenant is not occupying the let property as the tenant's home,

(b) that the tenant has a relevant conviction,

(c) that the tenant has engaged in relevant anti-social behaviour, or

(d) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour.

(3C) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property,

(ii) that a member of the landlord's family intends to live in the let property,

(iii) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004,

(iv) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or

(b) the only eviction grounds stated in the notice to leave are—

(i) an eviction ground, or grounds, mentioned in subsection (3B), and

(ii) an eviction ground, or grounds, mentioned in paragraph (a).]

(4) The reference in subsection (1) to using a copy of a notice to leave in making an application means using it to satisfy the requirement under section 52(3).

**f) Ground 12 in Schedule 3 of the Act states**

**Rent arrears**

12(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

[F26(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—  
(a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant—

(i) is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day, and

(ii) has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, and

(b) the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.]

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

(a) for three or more consecutive months the tenant has been in arrears of rent, and

(b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.

[F27(3A) Sub-paragraph (3B) applies where the First-tier Tribunal is satisfied—

(a) that the eviction ground named by sub-paragraph (1) applies, and

(b) that all or part of the rent in respect of which the tenant is in arrears as mentioned in that eviction ground relates to the period during which paragraph 5 of schedule 1 of the Coronavirus (Scotland) (No.2) Act 2020 is in force.

(3B) Where this sub-paragraph applies, in considering for the purposes of sub-paragraph (3)(b) whether it is reasonable to issue an eviction order against the tenant, the First-tier Tribunal is to consider the extent to which the landlord has complied with pre-action requirements before applying for the eviction order.]

(4) In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

(5) For the purposes of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971),

(ii) a payment on account awarded under regulation 91 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.

[F28(6) In sub-paragraph (3B), “pre-action requirements” means such requirements as the Scottish Ministers may specify in regulations.

(7) Regulations under sub-paragraph (6) may in particular make provision about—

(a) information to be provided by a landlord to a tenant including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy,

(b) steps to be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,

(c) such other matters as the Scottish Ministers consider appropriate.]

**g) Coronavirus (Scotland) Act 2020 Schedule 1 paragraph 10 Errors in notices**

10(1) Where a notice to which this paragraph applies is completed without taking proper account of paragraphs 1 to 9—

- (a) the notice is not invalid by reason of that error, but
- (b) it may not be relied upon by the landlord for the purpose of seeking an order for possession (however described) until the date on which it could have been relied upon had it been correctly completed.
- (2) Where sub-paragraph (1) applies, the period for which the notice remains in force for the purpose of seeking an order for possession (however described) is to be calculated by reference to the period which would have applied had the notice been correctly completed.
- (3) This paragraph applies to—
  - (a) a notice to leave within the meaning of section 62 of the Private Housing (Tenancies) (Scotland) Act 2016 served on a tenant,
  - (b) a notice served on a tenant under section 14(2)(a) or 36(2)(a) of the Housing (Scotland) Act 2001,
  - (c) a notice served on a tenant under section 19 or 33(1)(d) of the Housing (Scotland) Act 1988,
  - (d) a notice served on a tenant in accordance with section 112(1) of the Rent (Scotland) Act 1984, while this paragraph is in force.

## **2. Reasons:**

- a) The Respondent did not make any written representations and did not participate in either of the CMDs. The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case.
- b) The Tribunal was satisfied that the information given by Ms Kent at the two CMDs was reliable and credible and had not been contradicted by the respondent and could thus be accepted as factually correct by the Tribunal.
- c) The application was based on a Notice to Leave given after 7 April 2020, the date the Coronavirus (Scotland) Act 2020 came into force, and thus the changes to the Act introduced by schedule 1 paragraphs 3 and 4 of the Coronavirus (Scotland) Act 2020 apply to this case.
- d) The Notice to Leave was given before 3 October 2020 and thus the notice period stated in S 54 (2) (b) (iii) of 6 months applies as further defined in S 64 of the Act.
- e) The application was made after 6 October 2020 and thus the provision of ground 12 (3B) of schedule 3 of the Act applies with regard to the compliance with pre-action requirements.
- f) The Notice to Leave on the face of it did not comply with the statutory requirements of giving the required 6 months notice period as the date stated in part 4 of the Notice to Leave as the first day the application could be made was one day short of the correct calculation of said date. The notice was deemed to have been received on 9 May 2020 and, given the 6 months notice period applicable in terms of sections 54 and 64 should have stated as the relevant date 10 November 2020. However, the Tribunal considered, as argued in the paper apart amendment by Ms Kent, that in this case paragraph 10 of schedule 1 to the Coronavirus (Scotland) Act 2020 applies as the applicant had clearly not taken "proper account of paragraphs 1 to 9" of said schedule and thus miscalculated the date by one day. The application was raised after the correct date, 10 November 2020, had passed and thus the application could benefit of the saving provision regarding errors in notice of paragraph 10 of schedule 1 of the Coronavirus (Scotland) Act 2020



- g) There was no valid defence to the action. It is not disputed that the respondent had been in rent arrears from the start of the tenancy and thus in arrears of more than 3 months when the Notice to Leave was issued on 7 May 2020 and at the time the Tribunal considered the application. The amount of arrears of £4,070 is also not in dispute.
- h) The Tribunal was satisfied that the respondent did not qualify for relevant benefits during the tenancy period. The paper apart provides detailed information about the employment situation of the respondent and Ms Kent had advised the Tribunal that the respondent agreed that he did not qualify for relevant benefits when the matter was repeatedly discussed with him during the tenancy period.
- i) The Tribunal considered the issue of reasonableness of granting an order for eviction in detail. The respondent is a single man with no dependants. He resides in a tenancy for which he did not pay sufficient rent from the start of the tenancy and he made no serious efforts to adhere to any payment arrangements entered into to address the issue of arrears. He was in employment and did not qualify for relevant benefits and thus the rent arrears are not due to non payment or delayed payments of benefits. The rent arrears started on 20 January 2020 and thus before the impact of the Coronavirus related issues could have had any impact. The respondent had expressed his view that he was simply not ready for this tenancy but had failed to give any explanation as to why he was consistently not paying rent at all or only insufficient amounts.
- j) It has to be said that the Tribunal would have found it much easier to be satisfied that the pre-action requirements as set out in ground 12 (3B) of schedule 3 of the Act and The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 had been complied with if the applicant had provided documentary evidence in form of e.g. the templates provided to landlords on the Scottish Government website. However, ultimately the issue to be considered by the Tribunal is whether or not the necessary information was provided to the respondent and not whether this was done in a specific format. The applicant's representative had provided the detailed record of contact of the respondent with PCK Lets and the Council's Housing Officer.
- k) The Tribunal found it clear from these records that as early as 20 January 2020 PKC Lets on behalf of the applicant not only tried to make regular contact with the respondent but also at times were in touch with his employer to discuss the arrears and payment options.
- l) The record shows a regrettable lack of engagement of the respondent with all attempts to arrange a payment plan and to make use of the information provided to him about available help and advice. There has been a significant effort to stay in contact with the respondent throughout and as late as 18 March 2021 offers of payment plans had been made to the respondent. The record submitted shows that the homelessness officer closed the case on 14 April 2021 as the respondent simply had not engaged with that process either.
- m) The applicant is a private individual and so far has not received over £4,000 in rental income which was due to her in terms of the tenancy agreement. There is no suggestion that her conduct or the state of the property has in any way contributed to this situation. It is not acceptable to use the property of a private individual without paying the corresponding rent due without any apparent reason not to do so.

- n) The Tribunal thus considered that in terms of Ground 12 of Schedule 3 of the Act it is reasonable in all the circumstances to grant an eviction order in terms of S 51 of the Act.

## **E Outcome:**

### **Decision**

**The Tribunal grants an order for eviction in terms of S 51 of the Act on Ground 12 of Schedule 3 of the Act and specifies the date of 14 June 2021 as the date in terms of section 51 (4) of the 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.**

Petra Hennig-McFatrige

**Petra Hennig McFatrige  
Chair**

**14 May 2021  
Date**