



**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/21/2635**

**Re: Property at 79B Station Road, Kelty, KY4 0BL (“the Property”)**

**Parties:**

**Coromell Investments Ltd, 378 Brandon Street, Motherwell, ML1 1XA (“the Applicant”)**

**Mr John Lightfoot, 79B Station Road, Kelty, KY4 0BL (“the Respondent”)**

**Tribunal Members:**

**Petra Hennig-McFatrige (Legal Member) and Ahsan Khan (Ordinary Member)**

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

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

**A: Background**

1. The application for an order for eviction under S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act) was made by the Applicant on 25 October 2021 under Grounds 1 and 12 of schedule 3 of the Act.
2. The case history is set out in the Case Management Discussion (CMD) notes of 18 February and 26 April 2022, which are referred to for their terms and held to be incorporated herein.
3. By the date of the third CMD on 23 June 2022 the following documents had been lodged by the Applicant to support the application:
  - a. Copy Private Residential Tenancy (PRT) commencing 13 December 2019 for the property
  - b. Notice to Leave dated 19 April 2021 with confirmation of service by Sheriff Officers on 22 April 2021
  - c. S 11 Notice to Local Authority with confirmation of sending to Local Authority by email on 21 October 2021

- d. Rent Statement from 10 December 2019 up to and including 5 October 2021
  - e. Letter from Brighton & Beck Property Group to Alan Bruce dated 20 April 2021
  - f. Title information showing purchase of the property on 10 October 2019 by the Applicant as part of a portfolio purchase
  - g. style letters 1, 2 and 3 of Pre-Action Requirements dated 20 April, 29 April and 17 May 2021
  - h. Landlord registration information in the name of Coromell Investments Limited.
  - i. Affidavit by Mr Bruce dated 15.3.22.
  - j. Explanation of rent statement document
  - k. Rent statement run date 21.2.21
  - l. Letters to Respondent dated 15.1.20, 24.1.20, 14.2.20, 28.2.20, 20.3.20, 14.5.20, 13.7.20, 24.7.20, 31.7.20, 7.8.20, 14.8.20 (2x), 24.8.20, 1.10.20, 22.10.20, 1.12.20, 1.3.21, 16.3.21
  - m. Sheriff Officers confirmation of service 23.9.20 and Notice to Leave based on grounds 10 and 12 dated 18.9.20 and rent statement 18.9.20
  - n. Notice to Quit L&D Lets to Respondent dated 28.5.19,
  - o. S 33 Notice dated 28.5.19
  - p. Tenancy Agreement commencing 13.6.14.
  - q. Email 23 May 2022 from Mrs Bell explaining reason for sale of property
  - r. Two further letters by Applicant to Respondent dated 19 May 2022 regarding the application and access to the property
4. The third CMD was scheduled for 23 June 2022. Case papers and notification of the CMD were served on the Respondent by Sheriff Officers on 31 May 2022. The Tribunal was satisfied that the Respondent had the required notice of the CMD as set out in Rules 17 (2) and 24 (2) of the Procedural Rules.
5. No representations from the Respondent were received by the Tribunal.
6. The case documents are referred to for their terms and held to be incorporated herein.

**B: The Case Management Discussion:**

- 7. The CMD took place on 23 June 2022 by telephone conference call.
- 8. Mr Bruce, the director of Coromell Investments Ltd participated together with Mrs Bell from Easy Lets 4 U Ltd, the letting agent acting on behalf of the Applicant. The Respondent did not participate.
- 9. The Applicant explained that his company had purchased the property as part of a portfolio. The company deals in buying and selling property. The portfolio had been purchased from a bank. There was a loan in place against this. Early on it had become apparent that the Respondent was not engaging with the landlord, there were arrears in place and the Respondent had not co-operated in granting access for inspections. Mr Bruce stated he met the Respondent himself once to try to speak to him and to establish which, if any, changes were required to the property. However, the Respondent never was present when inspections were arranged and simply did not engage. This was having an impact on the business as the bank wished a re-valuation and no access could be gained. The rest of the portfolio had been sold without problem to other investors. Meanwhile the matter was having an adverse impact on Mr Bruce as he found himself in a different financial position following a separation. It looked like the Respondent had disappeared. He did not react to any correspondence. Mr Bruce stated he had a

- friend who lived nearby and had tried to visit the Respondent on various dates at different times of the day but the Respondent had never opened the door. Mr Bruce confirmed his intention to sell the property as soon as the Respondent was out of the property. He argued that it would be reasonable to now grant the order.
10. Mrs Bell confirmed that payments were still coming in from an unknown source to cover the reduced rent payments but the arrears continued and it was still not clear where the payments were coming from. They were not marked as payments from DWP or the Council and had no reference apart from the postcode. Access had still not been granted by the Respondent.

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

1. The property was let on a Private Residential Tenancy Agreement commencing on 13 December 2019.
2. The parties are the landlord and tenant of said Tenancy Agreement.
3. The tenancy is ongoing.
4. On 22 April 2021 the Applicant served a Notice to Leave on the basis of grounds 1 and 12 of schedule 3 of the 2016 Act on the Respondent by Sheriff Officers.
5. The Notice to Leave states as the date when proceedings can be raised the date of 23 October 2021 and gives information about why the grounds would apply.
6. The notice required under S 56 of the Act was issued to the local authority on 21 October 2021
7. The Respondent, who is a single male, had been residing in the property since 13 June 2014 under a previous Short Assured Tenancy with a different landlord.
8. The previous rental charge under the Short Assured Tenancy had been £360 per calendar month as per Clause 5 of the Short Assured Tenancy agreement.
9. The Applicant had purchased the property as part of a portfolio of properties in October 2019.
10. The rent payments stopped on 10 December 2019.
11. Rent payments commenced again on 4 January 2021 for the amount of £326.32.
12. The Applicant had agreed to a reduced rent of £326.32 as the Respondent had advised this was the amount of Housing Benefit he would be entitled to.
13. No payments have been made towards the arrears of rent.
14. The amount outstanding as at 23 June 2022 is £3,915.84.
15. Rent payments at the rate of £326.32 per calendar month continue from an unknown source, which does not bear the marks of a Housing Benefit or Universal Credit payment and only provides the postcode of the property as a reference.
16. The Applicant had taken steps to instruct a firm of solicitors with the sale of the property on or before 20 April 2021 and the sale of the property is still envisaged as soon as the Respondent has vacated the property.
17. The other portfolio properties have already been sold.
18. The funds are required to part-cover a loan outstanding against the properties.

19. The director of the Applicant company also requires funds due to an ongoing separation.
20. The Applicant sent to the Respondent letters complying with the requirements of the pre-action requirements stated in ground 12 of schedule 3 of the Act.
21. The Applicant sent to the Respondent approximately 20 letters between 15 January 2020 and 19 May 2022 asking the Respondent to address the arrears, grant access to the property for inspections and provide updated contact details, as the Respondent's telephone number provided on the lease is no longer in operation.
22. There had been various offers from the letting agent involved to take the Respondent to the relevant offices and organisations which he declined.
23. The Applicant tried to apply for direct payments with Universal Credit and completed the online form but was then advised that there was no Universal Credit claim in place.

#### **D: Reasons for decision**

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

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.

Power to determine the proceedings without a hearing

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

2016 Act

**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.

*Grounds under Schedule 3 of the 2016 Act*

Ground 1 Landlord intends to sell

- 1(1) It is an eviction ground that the landlord intends to sell the let property.
- (2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if the landlord—
  - (a) is entitled to sell the let property, and
  - (b) intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, and
  - (c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.]
- (3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example)—
  - (a) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,
  - (b) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market.

Ground 12 Rent arrears

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

...

- (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.
- (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.
- (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.

2. The Respondent has not made any representations and did not attend any of the 3 CMDs. The Respondent had fair notice of the representations of the Applicant forming the reasons for the application and has not challenged these. As no representations were received from the Respondent by the Tribunal, the facts of the case are not in dispute. This includes the matter of the accruing rent arrears as these were explicitly referred to in the Notice to Leave and the application and the intention of the Applicant to sell the property as stated in the affidavit and the letter from Messrs Brighton & Beck to the Applicant's director, which formed part of the case papers served on the Respondent. The reasons for the intention to sell as well as the continued lack of contact from and co-operation by the Respondent to grant access and to address the rent arrears were also referred to in the case documents and thus intimated to the Respondent as part of the reasonableness consideration. 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. The Respondent was made aware that the Tribunal could consider the case on its merits and make a decision at the CMD. No defence was lodged to the application.

3. As the Notice to Leave was served after 7 April 2020 the case is subject to the provisions of the Coronavirus (Scotland) Act 2020. The documents lodged and the Direction are referred to for their terms and held to be incorporated herein. The Tribunal makes the decision on the basis of the documents lodged by the Applicant and the representations made by Mrs Bell and Mr Bruce at the CMD stage.

4. In terms of S 54 of the Act a 6 months notice period applied and was given. The Applicant had served the notice required in terms of S 56 of the Act on the local authority and had complied with all formal requirements under the 2016 Act.

5. The Tribunal found that Ground 1 of Schedule 3 and 3A of the 2016 Act applies in this case. This is a discretionary ground of eviction. The Applicant provided a letter from Messrs Brighton and Beck dated 20 April 2021 to Mr Bruce, the Applicant's director, showing that the Applicant had provided instructions for the sale of the

property. Mr Bruce also provided a affidavit confirming the intention to sell and confirmed this at the CMD on 23 June 2022.

6. The Tribunal was satisfied that the company requires funds from the sale for part payment of an outstanding loan and that the company director himself requires funds due to a change in his family circumstances. The business of the Applicant is buying and selling properties and the continued failure of the Respondent to pay rent and to grant access to the property for re-valuation of the property and to inspect the state of the property has had a negative effect on the Applicant's business. The Applicant has provided a full explanation of the reasons for the sale of the property and how not granting the order would continue a situation negatively impacting on the Applicant's business and financial situation.

7. The Respondent has not engaged with the numerous attempts of the Applicant to resolve the matter. He has not provided any updates regarding his situation and had ignored all correspondence sent to him regarding rent arrears and access to the property. The Respondent has not engaged in the process before the First-tier Tribunal and has not raised any issues as to why it would not be reasonable to grant an eviction order. No specific issues regarding reasonableness arise from the information available. The Respondent is a single male occupant with no underage dependent children. No specific needs of the Respondent to live at the specific address have been raised. He has not provided any information advising of problems accessing suitable alternative accommodation. The length of time of occupancy of the property has been considered by the Tribunal but is in and of itself not a reason to prevent the landlord to exercise the right to deal with the property as required for the financial and business requirements of the landlord.

9. The landlord in this case has been both patient and pro-active in trying to manage the situation, had persistently tried to involve the Respondent and has given the Respondent ample notice to find alternative accommodation.

10. The Tribunal found that Ground 12 (2) of Schedule 3 and 3A of the 2016 Act applies in this case. This is a discretionary ground of eviction. There is clear evidence of the rent arrears accruing from the start of the PRT onwards to the date of the CMD, which exceeded the sum of three times the amount of monthly rent at the stage the Notice to Leave was issued and at the time of the last CMD. The Tribunal was satisfied that in terms of Ground 12 3(B) the Applicant has complied with all pre action requirements by sending numerous letters to the Respondent referring to the matters stated in the relevant Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. No payments apart from the payments listed in the rent statement submitted have been received and the Respondent has not engaged with the numerous attempts of the Applicant to resolve the matter. He has not provided any updates regarding his situation and had ignored all correspondence sent to him regarding rent arrears and access to the property.

11. The Respondent has not engaged in the process before the First-tier Tribunal and has not raised any issues as to why it would not be reasonable to grant an eviction order. No specific issues regarding reasonableness arise from the information available. The Respondent is a single male occupant with no underage dependent children. He has not provided any information indicating that the rent

arrears may have arisen from a late or incorrect benefit payment. There has been a prolonged and persistent failure by the Respondent to address the arrears despite the Applicant's repeated and pro-active steps to try and engage the Respondent.

13. In the case of *City of Glasgow District Council v Erhaiganoma* 1993 SCLR 592, The Inner House of the Court of Session stated at page 594 that "Where prima facie reasonableness has been made out, we think that it is then for the tenant to put circumstances before the court to show otherwise.". In the present case the Applicant had provided evidence of significant and persistent rent arrears and a well substantiated reason for the Applicant to sell the property. The Respondent had not responded to the application advancing any arguments that it was not reasonable to issue an eviction order, and had not participated in the CMDs. The Respondent had put forward no circumstances to show that it would not be reasonable for the Tribunal to issue an eviction order. In all the circumstances the Tribunal thus finds that it is reasonable to grant the eviction order on ground 1 of schedule 3 of the Act and on ground 12 of schedule 3 of the Act.

14. In terms of S 51(1) of the 2016 Act the Tribunal thus grants the application for an eviction order as it is satisfied that two of the eviction grounds in schedule 3 of the Act apply.

15. The Tribunal, having regard to the appeal period, determines that in terms of S 51(4) of the Act the tenancy ends on 24 July 2022.

### **Decision**

**The Tribunal grants an order for eviction in terms of S 51 of the Act on Grounds 1 and 12 of Schedule 3 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.**

**P. M**

**Petra Hennig McFatridge  
Legal Member/Chair**

**23 June 2022  
Date**