



**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/22/0773**

**Re: Property at Flat 15 Westwood House, 498 Gorgie Road, Edinburgh, EH11  
3DZ (“the Property”)**

**Parties:**

**Lar Housing Trust, F3 Buchan House, Carnegie Campus, Enterprise Way,  
Dunfermline, Fife, KY11 8PL (“the Applicant”)**

**Mr Jae Duncan, Flat 15 Westwood House, 498 Gorgie Road, Edinburgh, EH11  
3DZ (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and David Fotheringham (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined to make an eviction order against the Respondent**

**Background**

- 1 By application to the Tribunal dated 3 February 2022 the Applicant sought an eviction order against the Respondent in respect of the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). In support of the application the Applicant provided the following documentation:-
  - (i) Private Residential Tenancy Agreement between the parties dated 9 December 2019;
  - (ii) Notice to Leave dated 8 July 2021 stating that proceedings for possession will commence no earlier than 11<sup>th</sup> January 2022 and citing ground 12, together with proof of service on the Respondent by Sheriff Officers;

- (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to City of Edinburgh Council together with proof of service by email to the Council;
  - (iv) Rent Statement showing arrears of £6,680.04 as at 1 February 2022; and
  - (v) Copy letters from the Applicant to the Respondent in compliance with the pre-action requirements.
- 2 By Notice of Acceptance of Application dated 4 April 2022 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for the 15 June 2022 to take place by teleconference. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondent by Sheriff Officers.

### **Case Management Discussions**

- 3 The Case Management Discussion took place by teleconference on 15 June 2022. The Applicant was represented by Ms Kirsty Donnelly of TC Young Solicitors. The Respondent was not in attendance. The Tribunal noted that he had received proper notification of the Case Management Discussion and therefore determined to proceed in his absence.
- 4 Ms Donnelly advised that the Applicant sought an eviction order. The private residential tenancy between the parties had commenced in 2019 and a Notice to Leave under ground 12 had been served on the Respondent by Sheriff Officers on 8<sup>th</sup> July 2022 giving the extended six month notice period required by the coronavirus legislation. That period had now passed. No payments had been received since 18<sup>th</sup> January 2022 and arrears were increasing as a result. The current balance stood at £9,603.24. Ms Donnelly submitted that ground 12 was clearly established by the Applicant.
- 5 With regard to the question of reasonableness, Ms Donnelly submitted that the Applicant had complied with the pre-action requirements. Letters had been lodged with the application, but in addition to those the Applicant had tried to contact the Respondent via email. There had been no response. Ms Donnelly explained that the Applicant was 41 and the sole occupant of the property. He was believed to be employed as a prison officer and not entitled to any benefits. Approximately a year ago he had contacted the Applicant to advise that he had been unwell but he had returned to work. He proposed payments of £800 per month to cover the rent and pay an amount towards the arrears. The Applicant had encouraged him to apply for benefits for the period he was off work, but he did not do so. In August 2021, the Respondent contacted the Applicant to advise that he had been dismissed from his employment, however in September 2021 he contacted to say he had been reinstated and would be in touch to make a payment arrangement. His payments had since been sporadic. Ms Donnelly therefore submitted that the order was reasonable.

## Relevant Legislation

- 6 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Private Housing Tenancies (Scotland) Act 2016, as amended by the Coronavirus (Scotland) Act 2020, the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020 and the Coronavirus (Extension and Expiry) (Scotland) Act 2021:-

### **1 - Meaning of private residential tenancy**

1) A tenancy is a private residential tenancy where—

(a) the tenancy is one under which a property is let to an individual (“the tenant”) as a separate dwelling,

(b) the tenant occupies the property (or any part of it) as the tenant’s only or principal home, and

(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

(2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

### **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 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.

### **52 Applications for eviction orders and consideration of them**

(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—

(a) subsection (3), or

(b) any of sections 54 to 56 (but see subsection (4)).

(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

*(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.*

*(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—*

*(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or*

*(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.*

### **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.*

*(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. [ground 10]*

*(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, [ground 4]*

*(ii) that a member of the landlord's family intends to live in the let property, [ground 5]*

*(iii) that the tenant has a relevant conviction, [ground 13]*

*(iv) that the tenant has engaged in relevant anti-social behaviour, [ground 14]*

*(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, [ground 15]*

(vi) that the landlord is not registered by the relevant local authority under the *Antisocial Behaviour etc. (Scotland) Act 2004*, [ground 16]

(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*, [ground 17] 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, [ground 10]

(b) that the tenant has a relevant conviction, [ground 13]

(c) that the tenant has engaged in relevant anti-social behaviour, or [ground 14]

(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. [ground 15]

(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, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the landlord is not registered by the relevant local authority under the *Antisocial Behaviour etc. (Scotland) Act 2004*, [ground 16]

(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 [ground 17]

(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).

## **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.*

### **Schedule 3, Part 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 subparagraph (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. (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.*

- 7 The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 are also relevant to this application.

### **Findings in Fact and Law**

- 8 The parties entered into a Private Residential Tenancy Agreement dated 9 December 2019.
- 9 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
- 10 On 8<sup>th</sup> July 2021 the Applicant delivered a Notice to Leave to the Respondent by Sheriff Officers The Notice to Leave cited ground 12 of Schedule 3 of the 2016 Act and confirmed that proceedings would not be raised any earlier than 11<sup>th</sup> January 2022.

- 11 The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 12 In terms of Clause 7 of the said Tenancy Agreement the Respondent undertook to make payment of rent at the rate of £720 per calendar month.
- 13 As at the date of service of the Notice to Leave arrears in the sum of £3,160.04 were outstanding.
- 14 As at the date of the Case Management Discussion arrears in the sum of £9,603.24 were outstanding.
- 15 Despite repeated requests the Respondent has refused or delayed to make payment of the rent due.
- 16 The Applicant has complied with the pre-action requirements by advising the Respondent of his rental obligations and arrears outstanding, offering to enter into payment arrangements and directing him to advice agencies for support.
- 17 It is reasonable to make the order sought by the Applicant.
- 18 The provisions of ground 12 of Schedule 3 of the 2016 Act have been met.

### **Reasons for Decision**

- 19 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. The Respondent had been given the opportunity to take part in the proceedings through service of the application paperwork but had chosen not to do so. On that basis the Tribunal did not consider there to be any requirement to fix a hearing in the matter as there were no issues to be resolved.
- 20 The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicant's intention to rely upon ground 12 of Schedule 3 of the 2016 Act. The Tribunal was satisfied that the required notice had been given to the Respondent and therefore that application could be entertained.
- 21 The Tribunal accepted that there were rent arrears outstanding in the sum of £9,603.24 and the rent statement reflected that no rent had been paid since 18 January 2022. The Respondent's payments to the rent account had been sporadic, resulting in a significant balance of arrears. On that basis the Tribunal was satisfied that ground 12 had been met, in that rent had went unpaid for three or more months and there was at least one months rent arrears outstanding as at the date of the Case Management Discussion.

- 22 The Tribunal then considered the question of reasonableness. The Tribunal accepted the submissions from Ms Donnelly at the Case Management Discussion regarding the Respondent's personal circumstances, namely that he is aged 41, resides alone and is in employment. Taking into account the level of rent arrears, the lack of adherence by the Respondent to payment arrangements, the efforts by the Applicant to assist the Respondent and the significant level of arrears, the Tribunal ultimately considered it would be reasonable to make an order for eviction. The Respondent had failed to engage with the proceedings and there was therefore nothing before the Tribunal to contradict the position put forward on behalf of the Applicant by Ms Donnelly which the Tribunal found to be credible.
- 23 The Tribunal therefore determined to make an order for eviction against the Respondent. The decision of the Tribunal was unanimous.

### **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.**

Ruth O'Hare

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**Legal Member/Chair**

15 June 2022

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**Date**