



**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:** Reference number: FTS/HPC/EV/22/3768

Order granted on 15 February 2023 in the respondent's absence

Property: 3 Burnbank Grove, Straiton, Loanhead, EH20 9NX

Parties:

Zarrin Mushtaq, residing at 34 Foxhill Crescent, Leeds, LS16 5PD ("the Applicant")

Michael Patterson and Kylie Howard, residing at 3 Burnbank Grove, Straiton, Loanhead, EH20 9NX ("the Respondents")

**Tribunal Members:**

**Paul Doyle (Legal Member)**

**Elizabeth Currie (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") makes an order for possession of the Property in terms of section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016 under Ground 12 of schedule 3 to the 2016 Act.**

**Background**

1. The Applicant seeks recovery of possession of the Property in terms of Section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016 (the "2016 Act"). The Applicant lodged with the Tribunal Form E. The documents produced were a Tenancy Agreement, a Notice to Leave served on 11 August 2022, together with a notice under s.11 of the Homelessness (Scotland) Act 2003. A copy land certificate was lodged with the Tribunal which showed that the applicant is the heritable proprietor of the Property.

**Case Management Discussion**

2. A case management discussion took place by telephone conference at 10.00am on 15 February 2023. The Applicant was represented by Ms A McLachlan of Miller Becket & Jackson, solicitors. The respondents were neither present nor represented.

The time date and place of the case management discussion had been intimated to the respondents by Sheriff Officers.

3. The Tribunal made the following findings in fact at the Case Management Hearing.

(i) On 31 October 2019 the applicant and respondents entered into a private residential tenancy agreement for the property.

(ii) The rent in terms of the Tenancy Agreement was initially £900.00 per month.

(iii) The respondents have stopped paying rent since July 2021. At the date the application was submitted there were arrears of rent totalling £14,600.00, which is more than 3 months' rent. At today's date there are still arrears of rental totalling £10,800.

(iv) On 11 August 2022 the applicant served a notice to leave on the respondents in terms of s.50 of the Private Housing (Tenancies) (Scotland) Act 2016. On 6 September 2022, the applicant submitted an application to the tribunal.

(v) The Applicant seeks recovery of possession of the Property in terms Ground 12 of part 3 of schedule 3 to the 2016 Act. The rental was sixteen months in arrears at the date the application was submitted.

(vi) In either January 2022 or January 2023 the respondents paid £7,000 towards the arrears of rental, but no rental has been paid since then.

(vii) At some point during the tenancy the respondents have been in receipt of Universal Credit.

(viii) The respondents remain in the property.

4. The case was continued to a further case management discussion which took place on 14 April 2023 at 10am. The Applicant was represented by Ms A McLachlan of Miller Becket & Jackson, solicitors. The respondents were neither present nor represented.

5. The purpose of the continued Case Management Discussion was to allow the applicant to provide

(a) Clarification of the current arrears of rental

(b) An up to date rent statement to reflect payment made (and payments missed) since July 2021

(c) Details of the Applicants circumstances and what is known of the respondents' circumstances

10. The continuation also gave the respondents the opportunity to

(a) Clear the arrears of rental, and

(b) Provide details of their circumstances.

11. At the continued Case Management Discussion it was confirmed that there are still more than three months arrears of rental, and no rental payments have been made since the Case Management Discussion on 15 February 2023.

12. The respondents do not oppose the application for an order for repossession of the property and decline to give any detail about their circumstances.

13. There is no suggestion that the respondents are in arrears of rent either wholly or partly as a consequence of a delay or failure in the payment of a relevant benefit. The weight of reliable evidence indicates that it is reasonable to grant an order for repossession of the property. There is nothing to suggest that it is unreasonable to grant an order for repossession of the property.

### **Reasons for the Decision**

The Tribunal determined to make an Order for possession of the Property in terms of section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016. The basis for possession set out in in terms Ground 12 of part 3 of schedule 3 to the 2016 Act is established. The respondents offer no resistance to the application. For these reasons, the Tribunal determined to grant an Order for possession.

### **Decision**

For the foregoing reasons, the Tribunal determined to make an Order for possession of the Property in terms of section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016 under Ground 12 of part 3 of schedule 3 to the 2016 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.**

**Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.**

Paul Doyle

14 April 2023