



**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/20/0057**

**Re: Property at 2/L 563 South Road, Dundee, DD2 4QB (“the Property”)**

**Parties:**

**Mr Stephen Mackie, Mrs Christine Mackie, The Rowans, Bonnyton Road,  
Auchterhouse, Dundee, DD3 0QT (“the Applicant”)**

**Mr Andrew Ramsay, Mrs Helen Ramsay, 2/L 563 South Road, Dundee, DD2  
4QB; 2/L 563 South Road, Dundee, DD2 4QB (“the Respondents”)**

**Tribunal Members:**

**Valerie Bremner (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted in terms of Ground 12 of Schedule 3 of the 2016 Act in that the rent for the property has been continuously in arrears for a period of over three months in an amount greater than one month’s rent and this is not due to a failure or delay in payment of a relevant benefit. The Tribunal refused the Application as far as it related to Ground 11 of the Act.**

**Background**

This is an application for an Eviction Order in terms of Rule 109 of the Tribunal Rules.

The Application was lodged with the Tribunal on 8<sup>th</sup> January 2020 and was accepted by the Tribunal on 27<sup>th</sup> January 2020.

The Applicants were not present at the case management discussion but were represented by Mr Wilkie of the Property Management Company. The Respondents attended the Case Management Discussion along with their representative Mr Kinghorn of Dundee North Law Centre.

The Tribunal had the Application, a tenancy agreement, Notice to Leave and e mail giving intimation of this Notice, Notice in Terms of the Homelessness etc Scotland Act together with an email intimating the Notice and a rent statement.

There was a short discussion as to the correct address for the property but this was confirmed to be 2 L 563 South Road Dundee, DD2 4QB and not 2/R. This had been confirmed by Sheriff Officers who had served the Tribunal papers on the Respondents.

Mr Kinghorn advised that the background here was that the Respondents did not dispute that there were rent arrears continuously over a period of more than 3 months. The rent was paid by Housing Benefit but had been topped up by discretionary payments as the Housing benefit had not been sufficient to cover the full rent. The Respondents had not initially been aware that this discretionary payment had stopped and arrears had built up. The Respondents had 6 children and were keen to move on to other accommodation as the property was not suitable for them. The Respondent Mr Ramsay did not keep the best of health. Mr Kinghorn had been in touch with Dundee City Council and was of the view that the family were well placed to be rehomed but might first be put in temporary accommodation. It was not disputed that a Notice to Leave had been served and it was not suggested that the arrears had built up due to any delay or failure in the payment of a relevant benefit.

In support of Eviction under Ground 11 of the Act Mr Wilkie produced an agreement between his firm and Dundee Homefinder Service which appeared to represent in part a bond guarantee which was to be used instead of a deposit. Mr Wilkie's position was that the deposit was to be paid by the Respondents over a period of the first year of the tenancy agreement but he had no access to any written agreements between the Respondents and Dundee Homefinder Service. The Respondents did not appear to know that they were to pay a deposit in this way and the Tribunal indicated that further information would be required if the Tribunal was to exercise its discretion in terms of finding that it was reasonable to evict under Ground 11. No further information was available and the Tribunal was therefore not minded to grant an order in terms of Ground 11.

The Tribunal having considered the application and supporting papers granted an eviction order in terms of Ground 12, the Respondents having been in rent arrears over a continuous period in excess of 3 months of an amount exceeding one month's

rent when these arrears were not due to a delay or failure in the payment of a relevant benefit.

## **Findings in Fact**

1.The Applicants and Respondent entered into a Private Residential Tenancy agreement with effect from 10 April 2019 and the rent payable was £550 per calendar month.

2.The rent was payable on behalf of the Respondents by Housing benefit which did not cover all of the rent and discretionary payments had made up the difference before these were stopped.

3.The arrears are not due to a failure or delay in the payment of a relevant benefit to the Respondents. The arrears have continuously accumulated over the period of the entire tenancy. The arrears have exceeded the amount of one month's rent continuously since April 2019.

4.A Notice to Leave in proper form was served on the Respondents within the appropriate Notice period.

5.A Notice in term of the Homelessness etc ( Scotland ) Act 2003 was sent to the local authority in respect of this application.

6.There was information before the Tribunal to suggest that a deposit may have been due to be repaid by the Respondents over the first year of the tenancy agreement following a bond guarantee from Dundee Homefinder Service but the details of this were unclear and it appeared that the Respondents were not fully aware of this.

## **Reasons for Decision**

The Tribunal was satisfied that the Notice to Leave served was in proper form and that sufficient Notice had been given to the Respondents of the date when they required to leave the property and the date when the Applicants could apply to the Tribunal. In fact the date given in Part 4 of the Notice was a day more than was required. The Applicants' representative asked that this be regarded as a minor error and the Tribunal was prepared to accept that in terms of S73 of the 2016 Act, there being no objection by Mr Kinghorn for the Respondents. Only one Notice to Leave was served by email but it was served by sending to the email address of the Respondent Mr Ramsay which was the designated contact email address in the tenancy agreement. The Email was addressed to both of the Respondents and Mr Kinghorn did not suggest that the Notice to Leave had not been properly served. The Tribunal was satisfied that the Notice to Leave had been properly served on both Respondents in

terms of the Act. Given the amount of the arrears here which had accrued over the entire period of the tenancy the Tribunal was required to make an order in terms of Ground 12. In relation to Ground 11 the Tribunal was not satisfied that the information before it was sufficient to find that a deposit was not properly paid and accordingly found that it was not appropriate to grant an order under Ground 11 of the Act.

## **Decision**

The Tribunal determined that an Eviction Order should be granted in terms of Section 51 of the 2016 Act, under Ground 12 of Schedule 3 in that the Respondents have been in arrears of rent of an amount in excess of month's rent for a period in excess of three months and this is not due to a failure to a payment of a relevant benefit. The Tribunal refused to grant an order under Ground 11.

## **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.**

Miss Valerie Bremner

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**Legal Member/Chair**

13/03/2020

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**Date**