



**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 (“the 2016 Act”)**

**Chamber Ref: FTS/HPC/EV/20/1144**

**Re: Property at 21 Cairngorm Crescent, Wishaw, ML2 7PS (“the Property”)**

**Parties:**

**Mr Kenneth Corcoran, 35 Drumnessie Court, Cumbernauld, G68 9HG (“the Applicant”)**

**Mr Thomas Campbell, Ms Kerri Hendrickson, 21 Cairngorm Crescent, Wishaw, ML2 7PS (“the Respondent”)**

**Tribunal Members:**

**Nicola Weir (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession of the property be granted.**

**Background**

1. By application received on 4 May 2020, the Applicant applied to the Tribunal for an order for recovery of possession of the property in terms of Section 51 of the 2016 Act against the Respondents. The application sought recovery in terms of Ground 12 of Schedule 3 to the 2016 Act. Supporting documentation was submitted in respect of the application, including a copy of the lease, the Notices to Leave served on each of the Respondents, proof of email service of the Notices to Leave, the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003 and a Rent Statement showing the balance of rent arrears owing at the time of the application being made of £3,470.

2. On 3 June 2020, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. On 23 June 2020, a copy of the Application and supporting documentation was served on each of the Respondents by Sheriff Officer, together with intimation of the date, time and arrangements to take place by telephone conference call on 13 July 2020 at 2pm. Written representations were to be lodged by 13 July 2020. No written representations were submitted by the Respondents.

### **Case Management Discussion**

4. On 13 July 2020, at 2pm, the Applicant's representative, Ms Kirsty Morrison, of TC Young Solicitors had dialled in to the telephone conference Case Management Discussion. The Legal Member delayed the start of the Case Management Discussion until 2.10pm to see if the Respondents joined but they did not.
5. After introductions and introductory remarks by the Legal Member, Ms Morrison was asked to address the application. Ms Morrison confirmed that the Applicant is the owner of the Property and that he had entered into a Private Residential Tenancy with the Respondents which had commenced on 29 March 2020. The rental due in terms of the tenancy was £595 per calendar month. The Respondents had fallen into arrears with rent, such that the amount of arrears outstanding as at today's date is £4,065. Notices to Leave had correctly been served on the Respondents by email on 26 March 2020, specifying Ground 12 of Schedule 3 to the 2016 Act. When the Notices to Leave were served and when this application was submitted to the Tribunal, the rent had been in arrears for three or more consecutive months. Ms Morrison confirmed that this remained the position today and also that the amount of rent currently owing is substantially greater than one month's rent. Ms Morrison submitted that in these circumstances, it is mandatory for the Tribunal to grant the order for possession sought, in terms of Ground 12. Reference was also made to the Rental Statement submitted with the application.
6. The Legal Member asked if there had been any further payments received from the Respondents in terms of rent since the last payment shown in the Rent Account in December 2019. Ms Morrison confirmed that one payment had been received of £595 on 29 June 2020, which represented a full monthly rental payment but that still left the arrears balance as at today's date of £4,065. Ms Morrison further advised that there had been no contact from the Respondents to the Applicant nor the Applicant's representative since this application was made to the Tribunal, nor any explanation provided for the non-payment. The Respondents' personal and financial circumstances were not known to her. As far as she and her client are aware, the Respondents are still living in the Property.

## **Findings in Fact**

1. The Applicant is the owner and landlord of the Property.
2. The Respondents are the tenants of the Property by virtue of a Private Residential Tenancy dated and commencing on 29 March 2019.
3. The rent in terms of the lease is £595 per calendar month.
4. The Respondents initially made their due rental payments but the payments then became erratic and fell into arrears.
5. Rental payments due December 2019 and January and February 2020 were missed in their entirety.
6. Notices to Leave dated 26 March 2020, specifying Ground 12 of Schedule 3 to the 2016 Act, were served on both Respondents by email on 26 March 2020, in accordance with the terms of the lease, at which point the rental arrears owing were £2,280.
7. The date specified in the Notices to Leave as the end of the notice period was 26 April 2020.
8. The Tribunal Application was submitted on 4 May 2020, by which time rental payments due March and April 2020 had also been missed in their entirety and the rental arrears amounted to £3,470.
9. One payment has been made by the Respondents since December 2019, being the sum of £595 on 26 June 2020.
10. The rental arrears now amount to £4,065.
11. The Respondents have been called upon to make payment of the rental arrears but have failed to do so.
12. The Applicant has not been contacted by the Respondents and no explanation has been given for the non-payment of rent.
13. The Respondents are believed to still occupy the property.

## **Reasons for Decision**

14. The Respondent did not submit any written representations to the Tribunal and did not attend the CMD, having been properly and timeously notified of same. There was accordingly no issue taken and no contradictory evidence put forward in respect of the application by the Respondent.
15. The Legal Member was satisfied that the Notices to Leave were in correct form, served appropriately, gave the requisite period of notice and that these

Tribunal proceedings were thereafter brought timeously, after the date specified in the Notices to Leave, all in accordance with the terms of the Lease and the relevant provisions of the 2016 Act.

16. The Legal Member was also satisfied from the information contained in the application and supporting documentation, together with the oral submissions made by the Applicant's agent at the Case Management Discussion that the 'mandatory' arm of Ground 12 of Schedule 3 to the 2016 Act, namely 12(2) had been met, as follows:-

#### **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.]

#### **Textual Amendments**

**F26** Sch. 3 para. 12(2) repealed (temp.) (7.4.2020) by virtue of [Coronavirus \(Scotland\) Act 2020 \(asp 7\), s. 17\(1\), sch. 1 para. 1\(1\), \(3\)\(i\)](#) (with [ss. 11-13, sch. 1 para. 10](#))

**F27** Sch. 3 para. 12(3A)(3B) inserted (temp.) (27.5.2020) by virtue of [Coronavirus \(Scotland\) \(No.2\) Act 2020 \(asp 10\), s. 16\(1\), sch. 1 para. 5\(2\)\(a\)](#) (with [s. 9](#))

**F28** Sch. 3 para. 12(6)(7) inserted (temp.) (27.5.2020) by virtue of [Coronavirus \(Scotland\) \(No.2\) Act 2020 \(asp 10\), s. 16\(1\), sch. 1 para. 5\(2\)\(b\)](#) (with [s. 9](#))

#### **Commencement Information**

I12 Sch. 3 para. 12 in force at 1.12.2017 by [S.S.I. 2017/346, reg. 2, sch.](#)

The Legal Member also had no material before her to suggest that any delay or failure to pay rent by the Respondents was as a consequence of delay or failure in the payment of a relevant benefit in terms of Ground 12.

17. The Legal Member therefore concluded that the application does not require to go to an evidential hearing and that an order could be made at the Case Management Discussion for recovery of possession of the property.

## **Decision**

The Legal Member accordingly determines that an order for possession of the property should be granted.

## **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.**

Nicola Weir

**Legal Member/Chair**

**13 July 2020  
Date**