



**Decision 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/21/0820**

**Re: Property at 76D Frithside Street, Fraserburgh, Aberdeenshire, AB43 9JA (“the Property”)**

**Parties:**

**Hot Property Associates Ltd, Fairway House, Portland Road, East Grinstead, RH19 4ET (“the Applicant”)**

**Mr Blake Finan, 76D Frithside Street, Fraserburgh, Aberdeenshire, AB43 9JA (“the Respondent”)**

**Tribunal Members:**

**Petra Hennig-McFatrige (Legal Member) and Angus Lamont (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 2016 Act) was made by the Applicant's director on 3 February 2021 and accepted by the tribunal for further procedure on 11 May 2021.
- 2.** The following documents were lodged to support the application prior to the Case Management Discussion:
  - a.** Copy tenancy agreement commencing 3 July 2019
  - b.** Notice to Quit dated 24 July 2020 stating as the date when the application could be made to the tribunal as 27 January 2021
  - c.** Execution of service dated 16 April 2021 from Luis Forbes for personal service of the Notice to Leave on the Respondent on 24 July 2020

- d. Landlord Statement of arrears from Aberdeenshire Leasing to the Applicant showing £7,400 arrears as of 16 April 2021 with tenant ledger
  - e. email from Mr Calder, portfolio manager of the Applicant, sending S 11 notice to the Aberdeenshire Council and S 11 notice
  - f. Signed statement by Karolyn Miklan dated 27 April 2021 that in early November 2020 during a visit to the property for refurbishment reasons the Respondent confirmed receipt of the Notice to Leave and that at that time working out a resolution of the arrears was discussed.
  - g. email correspondence between the Respondent and Aberdeenshire Leasing between 17 September 2020 and 11 March 2021
  - h. arrears statement for the period July 2019 to May 2021
  - i. email from Applicant dated 29 April 2021 setting out how the pre-action requirements were complied with.
3. A Case Management Discussion (CMD) was scheduled for 22 June 2021. Case papers and notification of the CMD were served on the Respondent by Sheriff Officers on 20 May 2021. The report from Stirling Park Sheriff Officers dated 25 May 2021 included the information: "*On attending Flat D, the defender eventually answered the door and stated that he has paid the arrears and is in the process of moving out. The defender stated that he is a self employed fisherman and banks with Bank of Scotland.*".
  4. No representations from the Respondent were received by the Tribunal.
  5. The case documents are referred to for their terms and held to be incorporated herein.

**B: The Case Management Discussion:**

The CMD took place on 22 June 2021 by telephone conference call.

The Applicant's property portfolio manager Mr Andrew Calder participated, the Respondent did not participate.

Mr Calder confirmed that neither the Applicant nor the letting agent had had any recent contact from the Respondent.

Mr Calder advised that there had been no payments of the arrears and no further payments towards the rent since the application had been lodged and the arrears were now at the level of £8,250.

When asked to advise about compliance with the pre-action requirements, Mr Calder explained that his information was that Angie Holmes of Aberdeenshire Leasing, who have been acting for the Applicants as agents since October 2020, had sent an information pack, which he understood to be the information regarding the pre action requirements to the Respondent on 23 November 2020. He further explained that although these may not all be documented formally there had been many discussions with the Respondent about options to resolve the matter, advising the Respondent of the arrears and of his rent obligations and, as is shown in the email exchange, the Respondent had been repeatedly stating to the agent that he was in the process of moving out. The Respondent was in receipt of Universal Credit. None of this had been paid to the landlord.

The member of staff visiting the Respondent in November 2020 had confirmed that the Respondent had acknowledged service of the Notice to Leave in July 2020 and options to resolve the matter were discussed at the time.

The Applicant was relying on the Notice to Leave served in July 2020 and had not instructed further service of a Notice to Leave. At some point the Respondent had claimed that he had made some payments, however when this was investigated with Forbes Letting, the previous letting agent, it was found that no payments had in fact been made. On several occasions the Respondent had stated he was moving out, however he had not done so.

There may have been some confusion about documents when the Applicant changed letting agents. In any event, the Respondent had not paid any rent since 19 October 2019 and the arrears continue to accrue.

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

1. The property was let on a Private Residential Tenancy Agreement commencing on 3 July 2019
2. The parties are the landlord and tenant of said Tenancy Agreement.
3. The tenancy is ongoing and the Respondent still occupies the property.
4. The monthly rent payable in advance on the 3rd day of the month is £375 as per clause 8 of the Private Residential Tenancy.
5. Rent arrears accrued as per the Rent Statement showing arrears up to and including May 2021 and had increased by a further two months arrears since then.
6. On 24 July 2020 the Applicant served a Notice to Leave on the basis of ground 12 of schedule 3 of the 2016 Act on the Respondent by personal service through the then letting agent Forbes Letting
7. The Notice to Leave states as the date when proceedings can be raised the date of 27 January 2021 and gives information about arrears of £4025 accrued and states the Respondent was in rent arrears over three consecutive months.
8. As at the date of service of the Notice to Leave on 24 July 2020 the Respondent had been in arrears of rent for a consecutive period of 13 months.
9. The arrears of rent due as at the CMD were £8,250.
10. The Respondent has been in arrears of rent continuously since 3 July 2019 and thus for three or more consecutive months at the time the Notice to Leave was issued, at the time the application was made and at the time of the CMD, when the merits of the case were considered.
11. The arrears of rent are not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
12. The notice required under S 56 of the Act was issued to the local authority on 30 March 2021.

### **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*

### **Rent arrears**

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.

[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.]

2. The Respondent has not made any representations and did not attend the CMD. The facts of the case are not disputed. 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 rental statement up to May 2021. There was no opposition to the order being granted. 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 Tribunal makes the decision on the basis of the documents lodged by the Applicant and the information given at the CMD.

4. In terms of S 54 (2) (b) (iii) of the 2016 Act a 6 months notice period applied. The Notice to Leave was served on 24 July 2020. The date which would have been the first date when an application could be made in terms of S 62 (1) (b) of the 2016 Act calculated on the 6 months notice period applicable would have been 25 January 2021 rather than the date of 27 January 2021 stated on the notice. However, the Tribunal does not consider that the date reflecting a 2 day additional notice period would invalidate the Notice to Leave in particular in light of the wording of paragraph 10 of schedule 1 to the Coronavirus (Scotland) Act 2020 which states: " 10(1)Where a notice to which this paragraph applies is completed without taking proper account of paragraphs 1 to 9—

(a) the notice is not invalid by reason of that error, but

(b) it may not be relied upon by the landlord for the purpose of seeking an order for possession (however described) until the date on which it could have been relied upon had it been correctly completed." Here the application was not made until February 2021 and thus after the expiry of the correct notice period. The action was raised after the expiry of the correct notice period and the Respondent given adequate notice of the reasons for the Notice. The tribunal considered whether the documentation showed any reason for confusion as to the meaning and consequence of the notice served in July 2020, mainly because a different moving out date was mentioned in the email of the letting agent to the Respondent on 23 November 2020. However, it was clear from the subsequent correspondence from the Respondent in February and March 2021 that the Respondent was fully aware that he should have moved out and that he had undertaken to move out on 27 March 2021 (email 11 March 2021) and previously on 14 February 2021 (email of 3 February 2021). The tribunal was thus satisfied that the Respondent was fully aware of the terms of the relevant Notice to Leave.

5. The Tribunal found that Ground 12 of Schedule 3 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 tenancy onwards and that no payments had been made at all since October 2019. In terms of Ground 12 (4) of Schedule 3 of the 2016 Act there is no suggestion that the arrears would be " wholly or partly a consequence of a delay or failure in the payment of a relevant benefit." The evidence from the Respondent in his correspondence is rather that he is in receipt of Universal Credit and was applying for a loan to pay back arrears, which appears not to have been granted.

6. In terms of Ground 12 (3A) of Schedule 3 of the 2016 Act the tribunal explored the issue of reasonableness of an order being granted, in particular with regard to the issue of pre-action requirements. Although the tribunal considers that full compliance

as envisaged by the Scottish Government Guidance may not have been evidenced as the information package sent to the Respondent by the letting agent had not been lodged, it was clear from the email exchanges that the Respondent had been advised on many occasions by of the existing rent arrears, the terms of his tenancy and that as late as 18 October 2020 the letting agent had offered the Respondent that the notice could be withdrawn if Universal Credit payments could be arranged to be paid directly to the Applicant. This did not happen. The Applicant is already in receipt of Universal Credit and thus was clearly aware of the financial help available to him during the Covid pandemic. The Respondent had not made any payments at all for 20 months. The tribunal considered that the Applicant through the letting agent had over a protracted period of time negotiated with the Respondent, which did not result in any rental payments. Thus the tribunal considered that there had been at least material if not complete formal compliance with the pre-action requirements.

7. There was no information indicating that there are other reasons, such as family circumstances, which would make an eviction unreasonable. The Respondent is the sole tenant and lives on his own. He has made no attempt to deal with his rent arrears over a period of in total 24 months. The arrears started to accrue from the date of the tenancy start and prior to the Covid pandemic. The Respondent has not paid any rent at all for 20 months. He has not entered into a payment plan. He did not participate in the tribunal process, has not entered any representations and did not participate in the CMD.

8. The tribunal considered that it is reasonable in all the circumstances to grant the order for eviction on the basis of persistent rent arrears accumulated over a period of 24 months in terms of ground 12 of schedule 3 of the 2016 Act.

9. 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 one of the eviction grounds in schedule 3 of the Act applies. The Tribunal, having regard to the appeal period, determines that in terms of S 54(4) of the Act the tenancy ends on 23 July 2021.

## **Decision**

**The Tribunal grants an order for eviction in terms of S 51 of the Act on Ground 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.**

**Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland**

**(Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.**

**Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.**

**Petra Hennig McFatridge**

**22 June 2021**

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**Legal Member/Chair**

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**Date**