



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Housing (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/EV/21/1899**

**Re: Property at 17 Woodhead Crescent, Hamilton, ML3 8TB (“the Property”)**

**Parties:**

**Mr Antony Murphy, 3 Chateau Grove, Hamilton, ML3 7DS (“the Applicant”)**

**Michelle Campbell, 17 Woodhead Crescent, Hamilton, ML3 8TB (“the Respondent”)**

**Tribunal Member:**

**George Clark (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be granted without a Hearing and issued an Eviction Order against the Respondent.**

**Background**

1. By application, received by the Tribunal on 9 August 2021, the Applicant sought an Eviction Order against the Respondent in terms of Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Ground relied on was Ground 12 of Schedule 3 to the 2016 Act.
2. The application was accompanied by a copy of a Tenancy Agreement between the Parties, commencing on 14 August 2018 at a rent of £550 per month and letters to the Respondent indicating that there were rent arrears of £3,744.63 on 5 May 2021. The Applicant also provided a copy of a Notice to Leave dated 3 February 2021, with proof of posting on that day, intimating to the Respondent that the Applicant was seeking an Eviction Order under Ground 12 of Schedule 3 to the 2016 Act and that the application would not be submitted before 16 July 2021. The Applicant also submitted evidence of

his having complied with the pre-action requirements set out in the Rent Arrears Pre-Action Requirements (Coronavirus) Regulations 2020, namely copies of letters to the Respondent of 3 and 26 February and 4 June 2021. These letters signposted the Respondent to bodies which could provide housing advice and support, including Shelter Scotland and Citizens Advice Bureaux, websites which would provide information regarding possible entitlement to Universal Credit, Discretionary Housing Payments, and a reference to the Scottish Welfare Fund.

3. On 15 October 2021, the Tribunal advised the parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 5 November 2021. The Respondent did not make any written representations to the Tribunal.

### **Case Management Discussion**

4. A Case Management Discussion was held on the afternoon of 22 November 2021. The Applicant was represented by Mr John MacDonald of John Y Robertson solicitors, Hamilton. The Respondent was not present or represented. Mr MacDonald advised the Tribunal that rent arrears were now £4,082,79 and asked the Tribunal to issue an Eviction Order without a Hearing. He advised that there had been an error in the date given in the Notice to Leave as the date before which no application to the Tribunal would be made, but asked the Tribunal to excuse this clerical error, as the application had not been made until more than six months after the date of service of the Notice to Leave.

### **Reasons for Decision**

5. The Tribunal considered first the error in the Notice to Leave. Paragraph 10(1) of Schedule 1 to the 2020 Act states that where a Notice to Leave is completed without taking proper account of paragraphs 1-9, (a) the notice is not invalid by reason of the 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 properly completed. It is Paragraph 2 of Schedule 1 to the 2020 Act which sets the notice periods in respect of Private Residential Tenancies. The Tribunal was satisfied that, although the Notice to Leave did not provide the necessary six months period before which the Applicant could apply to the Tribunal for an Eviction Order under Ground 12, the Applicant was entitled to rely on Paragraph 10(1) of Schedule 1 to the 2020 Act, as the application had not in fact been made until 9 August 2021, which was more than six months after the date of the Notice to Leave.
6. Ground 12 of Schedule 3 to the 2016 Act, as amended by the 2020 Act, provides that it is an Eviction Ground that the tenant has been in arrears for three or more consecutive months, and that the Tribunal may find that Ground 12 applies if, at the beginning of the day on which the Tribunal first considers

the application for an Eviction Order, the tenant is in arrears by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy, the tenant 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, 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 and the Tribunal is satisfied that it is reasonable on account of that fact to issue an Eviction Order.

7. The Tribunal was satisfied that the requirements of Ground 12 had been met. Given the amount of the arrears, the steps that the Applicant had taken in writing three times to the Respondent advising her of agencies that could provide her with advice and support and the fact that the Respondent had failed to engage with that process in any way or to provide written representations to the Tribunal and had failed to appear or be represented at the Case Management Discussion, the view of the Tribunal was that it was reasonable to issue an Eviction Order under Ground 12.

### **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.**

# G. Clark

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**Legal Member/Chair**

**22 November 2021**  
**Date**