



**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/19/2800**

**Re: Property at 2 Etive Place, Irvine, Ayrshire, KA12 9LX (“the Property”)**

**Parties:**

**Steven Easton Limited, 2 Newfield Drive, Dundonald, Ayrshire, KA2 9EW (“the Applicant”)**

**Ms Jacqueline Little, 2 Etive Place, Irvine, Ayrshire, KA12 9LX (“the Respondent”)**

**Tribunal Members:**

**Neil Kinnear (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

**Background**

This is an application for an eviction order dated 6<sup>th</sup> September 2019 and brought in terms of Rule 109 (Application for an eviction order) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant seeks an eviction order in relation to the Property against the Respondent, and provided with its application copies of the private residential tenancy agreement, notice to leave and execution of service, section 11 notice, and rent arrears statement.

All of these documents and forms had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016*, and the procedures set out in that Act appeared to have been correctly followed and applied.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 4<sup>th</sup> October 2019, and the Tribunal was provided with the execution of service.

### **Case Management Discussion**

A Case Management Discussion was held on 6<sup>th</sup> November 2019 at Russell House, King Street, Ayr. The Applicant's Steven Easton and Amy Farrell appeared, and the Applicant was not represented. The Respondent did not appear, nor was she represented. The Respondent has not responded to this application at any stage either in writing or by any other form of communication.

The Applicant provided, in response to an enquiry by the Tribunal, proof of service of the section 11 notice, and also provided an updated rent arrears statement to today's date disclosing rent arrears of £7,173.50.

Mr Easton confirmed that he had rented the Property to the Respondent as landlord, but he had then transferred title to the Property to the Applicant in December 2018, as was disclosed on the Land Register title sheet for the Property.

The Tribunal was invited by the Applicant with reference to the application and papers to grant the order sought on ground 12 of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*.

The notice to leave dated 10<sup>th</sup> June 2019 narrated that rent arrears at that time amounted to £4,373.50, accumulated over a considerable period of months under the private residential tenancy agreement between the parties. Rental of £700.00 per month was payable in advance in terms of clause 7 of the private residential tenancy agreement, and the monthly rent has never been paid in full on any month since the commencement of the tenancy.

The notice to leave indicated that Applicant was relying on both grounds 11 and 12 of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*, but after the Tribunal explained that ground 11 was not appropriate to breach of the contractual term to pay rent, the Applicant did not rely on this ground in seeking an order.

### **Statement of Reasons**

In terms of Section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* ("the Act"), the 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.

Para 12 of Schedule 3 to the Act provides that it is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. The Tribunal must find that this ground applies if (1) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant 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 (2) 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 (3) 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.

The Tribunal is satisfied that ground 12 has been established. The tenant is in substantial arrears of rent which currently exceed one month's rent, and has been in arrears for a continuous period in excess of three months. The Tribunal is further satisfied that the tenant being in arrears is not wholly or partly due to any delay or failure in the payment of a relevant benefit. There has been no evidence to establish any such reason for rent arrears.

### **Decision**

In these circumstances, the Tribunal will make an order for possession of the house let on the tenancy as sought in this application.

### **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.**

Neil Kinnear

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**Legal Member/Chair**

06/11/19  
\_\_\_\_\_  
**Date**