



**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/22/1038**

**Re: Property at Flat 2, 1 Newbells Court, Edinburgh, EH6 6RY (“the Property”)**

**Parties:**

**Picture Living Investments GP LLP, 305 Grays Inn Road, London, WC1X 8QR (“the Applicant”)**

**Mr Maciej Mateusz Zbeig, Flat 2, 1 Newbells Court, Edinburgh, EH6 6RY (“the Respondent”)**

**Tribunal Members:**

**George Clark (Legal Member) and Linda Reid (Ordinary 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 determined without a Hearing and issued an Eviction Order against the Respondent.**

By application, received by the Tribunal on 10 June 2022, the Applicant sought an Eviction Order against the Respondent under 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, namely that the Respondent has been in rent arrears for three or more consecutive months.

The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties commencing on 5 May 2019 at a rent of £695 per month and a Notice to Leave, dated 21 September 2021, with proof of service by sheriff officer, advising of the Applicant’s intention to apply for an Eviction Order under Ground 12 of Schedule 3 to the 2016 Act and that an application would not be made before 22 March 2022. A Rent Statement to 1 June 2022 indicated rent arrears of £8,823.60. No rent had been paid since 4 May 2021.

The Applicant's solicitors provided, by way of evidence that the Rent Arrears Pre-Action Requirements (Coronavirus) Regulations 2020 had been complied with, a letter from them to the Respondent dated 8 April 2022, which enclosed a copy of a Scottish Government guidance leaflet.

On 20 September 2022, 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 11 October 2022. The Respondent did not make any written representations to the Tribunal.

### **Case Management Discussion**

A Case Management Discussion was held by means of a telephone conference call on the morning of 27 October 2022. The Applicant was represented by Mr Kenneth Caldwell of Patten & Prentice LLP, solicitors, Greenock. The Respondent was not present or represented.

Mr Caldwell told the Tribunal that he understood the Respondent is still living in the Property and that he has no dependants living with him. The Respondent has his own tiling business. He had not paid any rent at all since May 2021. Various attempts had been made since then to contact him to discuss the arrears and the letting agents for the Applicant had advised him that emails in line with the Pre-Action requirements had been sent by them in June and July 2021 and in March 2022. This was in addition to the letter that the Applicant's solicitors had sent on 8 April 2022. The last communication from the Respondent had been on 6 September 2022, when he had asked the letting agents for an extension to his leaving date. This had been refused, due to the level of arrears. The Respondent had hung up on a call from the letting agents to tell him that the arrears now exceeded £11,000. In these circumstances, Mr Caldwell asked the Tribunal to find that it was reasonable to issue an Order for Eviction.

### **Reasons for Decision**

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied the information and documentation before it was sufficient to enable it to decide the application without a Hearing.

Section 51 of the 2016 Act states that 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.

Ground 12 of Schedule 3 to the Act states that it is an Eviction Ground that the tenant has been in rent 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 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 has been in in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, that 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.

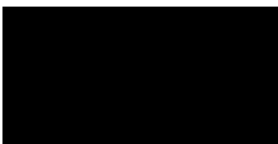
The Tribunal was satisfied that the Respondent has been in rent arrears for three or more consecutive months and that the current arrears exceed one month's rent. No evidence had been presented to indicate that the Respondent's being in arrears might be wholly or partly a consequence of a delay or failure in the payment of a relevant benefit. Accordingly, the only matter for the Tribunal to determine was whether it was reasonable to issue an Eviction Order.

The Tribunal noted that the Respondent has not paid any rent at all for 17 months and does not appear to have offered any explanation for this failure. He had chosen not to be present or represented at the Case Management Discussion and had made no written representations for the Tribunal to consider. It appeared that he is self-employed or in employment and that he has no dependants living with him. The arrears are very substantial and are ongoing.

Having considered carefully all the evidence before it, the Tribunal decided that it was reasonable to issue an Eviction Order against the Respondent.

### **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.**



**George Clark  
Legal Member/Chair**

**27 October 2022  
Date**