



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

**Chamber Ref: FTS/HPC/EV/23/1191**

**Re: Property at 1/3, 36 Scott Street, Perth, PH1 5EH (“the Property”)**

**Parties:**

**Mr Steve Allan, Beech Close, Manse Road, Perth, PH2 7AF (“the Applicant”)**

**Miss Kelly Mangan, 1/3, 36 Scott Street, Perth, PH1 5EH (“the Respondent”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member) and Elizabeth Dickson (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for an eviction order should be granted.**

**Background**

- 1. The Applicant seeks an eviction order in terms of Section 51 of the 2016 Act. A tenancy agreement, Notice to leave, email to the Respondent with the Notice to leave, rent statement and section 11 notice were lodged in support of the application.**
- 2. A copy of the application was served on the Respondent by Sheriff Officer. Both parties were notified that a case management discussion (“CMD”) would take place by telephone conference call at 2pm on 24 August 2023 and that they were required to participate.**
- 3. The CMD took place at 2pm on 24 August 2023. The Applicant was represented by his letting agent, Mr Hall. The Respondent did not participate.**

## **The CMD**

4. Mr Hall told the Tribunal that there has been no recent contact from the Respondent, but she is still residing at the property. The Tribunal noted that one of the two pre action letters which had been lodged with the application appeared to be addressed to a third party. Mr Hall said that this had been lodged in error and that the third party was a previous tenant. He stated that pre action letters were sent to the Respondent on 30 November 2022 and 7 February 2023. The rent arrears have increased since the rent statement was lodged and now stand at £4420. The last payment was for £200 in May. Efforts have been made to set up a repayment arrangement, without success. The Landlord would have been willing to allow the tenancy to continue if the rent charge was being met and a contribution to the arrears. The arrears started in January 2021, when the Respondent became unemployed. On many occasions she told them that she was getting her universal credit sorted out and would make payments. However, Mr Hall does not know whether she has claimed or is in receipt of benefits. In response to questions from the Tribunal, Mr Hall said that the Respondent is about 30 years of age and lives at the property alone. Communication has been poor and although he does not believe that she has any health issues or disabilities, he does not know for sure. He was unable to provide any information about the Applicant but stated that this is the only property they manage for him.

## **Findings in Fact**

5. The Applicant is the owner and landlord of the property.
6. The Respondent is the tenant of the property in terms of a private residential tenancy agreement.
7. The Respondent is due to pay rent at the rate of £380 per month.
8. The Respondent has been in arrears of rent since January 2021.
9. The Respondent currently owes the sum of £4420 in unpaid rent.
10. The Applicant served a Notice to leave on the Respondent on 25 November 2022.
11. The Applicant has issued information to the Respondent in compliance with the Rent Arrears Pre action Protocol.
12. The Respondent resides at the property alone.

## Reasons for Decision

13. The application was submitted with a Notice to Leave dated 25 November 2022, together with a copy of an email which establishes that the Notice was sent to the Respondent on the same date. The Notice states that an application to the Tribunal is to be made on ground 12, rent arrears over three consecutive months. Part 4 of the notice indicates that the earliest date that an application to the Tribunal can be made is 26 December 2022.
14. The application to the Tribunal was made after expiry of the notice period. The Tribunal is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a copy of the Section 11 Notice which was sent to the Local Authority. The Tribunal is therefore satisfied that the Applicant has complied with Section 56 of the 2016 Act.
15. Section 51(1) of the 2016 Act states, “The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.” Ground 12 of Schedule 3 (as amended by the Coronavirus (Recovery and Reform (Scotland) Act 2022 states “(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 in 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.”
16. Sub-Paragraph (4) states, “In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider - (a) 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, and (b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Minister in regulations.” Relevant benefits are defined in sub-paragraph (5) and include housing benefit and universal credit. The Pre Action-Requirements Regulations include the provision of clear information relating to the terms of the tenancy agreement, the level of the arrears, the tenant’s rights in relation to eviction proceedings and how the tenant can access information and advice.
17. The Tribunal is satisfied that the Respondent currently owes the sum of £4420 and that she has been in arrears of rent for three or more consecutive months, both at the date of service of the Notice to leave and the CMD.
18. The Tribunal proceeded to consider whether it would be reasonable to grant the order and noted the following: -
  - (a) The Tribunal is satisfied that the Applicant has complied with the Rent Arrears Pre-Action Protocol. The application was accompanied by two undated letters which provide information in compliance with the protocol. One of the letters is

addressed to a third party and was submitted in error. However, Mr Hall was able to provide the Tribunal with the dates on which the pre action letters were sent to the Respondent.

- (b) The Tribunal is also satisfied that there is no evidence that the arrears are attributable to a delay or failure in the payment of a relevant benefit. The Respondent did not participate in the CMD or provide any information regarding her circumstances. The Applicant was only able to advise the Tribunal that the Respondent became unemployed during the pandemic and that she said on several occasions that she had made a claim for benefits. No evidence of this was ever provided and there have been no direct payments to the rent account from the DWP.
- (c) The Respondent has failed to engage with the Applicant regarding the arrears. She has offered no explanation for her failure to pay her full rent charge or contribute to the arrears.
- (d) The Applicant has given the Respondent over 2 years to address the arrears and resume payments of rent, before seeking an eviction order.

19. The Tribunal concludes that the Applicant has complied with the requirements of the 2016 Act and that the eviction ground has been established. For the reasons outlined in paragraph 18, the Tribunal is also satisfied that it would be reasonable to grant the order for eviction.

## **Decision**

20. The Tribunal determines that an eviction order should be granted 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.**