



**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/21/0285**

**Re: Property at Flat 2-3, 34 Peninver Drive, Linthouse, Glasgow, G51 4JS (“the Property”)**

**Parties:**

**Mr Grant David Gowdy, c/o Martin and CO West End, 172 Woodlands Road, Glasgow, G3 6LL (“the Applicant”)**

**Miss Marie Barton, Flat 2-3, 34 Peninver Drive, Linthouse, Glasgow, G51 4JS (“the Respondent”)**

**Tribunal Members:**

**Andrew Upton (Legal Member) and Gerard Darroch (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 under Ground 12.**

**STATEMENT OF REASONS**

1. This application called for its Case Management Discussion by teleconference call on 25 March 2021 together with the related application CV/21/0259. The Applicant was represented by Ms Matheson, solicitor. The Respondent was neither present nor represented.
2. In this application the Applicant seeks an eviction order under ground 12 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”), as amended by the Coronavirus (Scotland) Act 2020. In short, the Applicant’s position is that the Respondent has been in arrears of rent for a period in excess of three calendar months, a Notice to Leave has been given

and expired, the Respondent remains in occupation and it is reasonable to grant the eviction order.

3. In terms of the 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 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.

**52 Applications for eviction orders and consideration of them**

- (1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.
- (2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—
  - (a) subsection (3), or
  - (b) any of sections 54 to 56 (but see subsection (4)).
- (3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.
- (4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.
- (5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—
  - (a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or
  - (b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

**54 Restriction on applying during the notice period**

- (1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.

- (2) The relevant period in relation to a notice to leave—
  - (a) begins on the day the tenant receives the notice to leave from the landlord,
  - (b) in the case of a notice served before 3 October 2020, expires on the day falling—
    - (i) 28 days after it begins if subsection (3) applies,
    - (ii) three months after it begins if subsection (3A) applies,
    - (iii) six months after it begins if neither subsection (3) nor (3A) applies, and
  - (c) in the case of a notice served on or after 3 October 2020, expires on the day falling—
    - (i) 28 days after it begins if subsection (3B) applies,
    - (ii) three months after it begins if subsection (3C) applies,
    - (iii) six months after it begins if neither subsection (3B) nor (3C) applies.
- (3) This subsection applies if the only eviction ground stated in the notice to leave is that the tenant is not occupying the let property as the tenant's home.
- (3A) This subsection applies if—
  - (a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—
    - (i) that the landlord intends to live in the let property,
    - (ii) that a member of the landlord's family intends to live in the let property,
    - (iii) that the tenant has a relevant conviction,
    - (iv) that the tenant has engaged in relevant anti-social behaviour,
    - (v) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour,
    - (vi) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004,
    - (vii) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or
  - (b) the only eviction grounds stated in the notice to leave are—
    - (i) the eviction ground mentioned in subsection (3), and
    - (ii) an eviction ground, or grounds, mentioned in paragraph (a).
- (3B) This subsection applies if the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—
  - (a) that the tenant is not occupying the let property as the tenant's home,

- (b) that the tenant has a relevant conviction,
  - (c) that the tenant has engaged in relevant anti-social behaviour, or
  - (d) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour.
- (3C) This subsection applies if—
- (a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—
    - (i) that the landlord intends to live in the let property,
    - (ii) that a member of the landlord's family intends to live in the let property, Private Housing (Tenancies) (Scotland) Act 2016
    - (iii) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004,
    - (iv) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or
  - (b) the only eviction grounds stated in the notice to leave are—
    - (i) an eviction ground, or grounds, mentioned in subsection (3B), and
    - (ii) an eviction ground, or grounds, mentioned in paragraph (a).
- (4) The reference in subsection (1) to using a copy of a notice to leave in making an application means using it to satisfy the requirement under section 52(3).

## **62 Meaning of notice to leave and stated eviction ground**

- (1) References in this Part to a notice to leave are to a notice which—
- (a) is in writing,
  - (b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,
  - (c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and
  - (d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.
- (2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.

- (3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).
- (4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.
- (5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.

### **73 Minor errors in documents**

- (1) An error in the completion of a document to which this section applies does not make the document invalid unless the error materially affects the effect of the document.
- (2) This section applies to—
  - (a) a notice under section 14(3), 16(3)(c), 22(1) or 61(1),
  - (b) the document by which a referral is made to a rent officer under section 24(1),
  - (c) the document by which an application is made to a rent officer under section 42(1), and
  - (d) a notice to leave (as defined by section 62(1)).

### **Schedule 3, Ground 12 Rent arrears**

- (1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.
- (2) ...
- (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.
- (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.
  - (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."
4. For the purposes of section 62(1)(d), the Scottish Ministers have prescribed the form of a Notice to Leave by virtue of Regulation 6 of the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 ("the Notices and Forms Regulations"): *"A notice to leave given by the landlord to the tenant under section 50(1)(a) (termination by notice to leave and tenant leaving) of the Act must be in the form set out in schedule 5."*
5. For the purposes of Ground 12(6) of Schedule 3 to the 2016 Act, the Scottish Ministers have prescribed pre-action requirements in the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020:-

**“4.— Pre-action requirements for private residential tenancies**

- (1) For the purposes of paragraph 12(3B) of schedule 3 of the 2016 Act<sup>1</sup>, the Scottish Ministers specify the pre-action requirements set out in paragraphs 2 to 4.
  - (2) The provision by the landlord to the tenant of clear information relating to—
    - (a) the terms of the tenancy agreement,
    - (b) the amount of rent for which the tenant is in arrears,
    - (c) the tenant's rights in relation to proceedings for eviction (including the pre-action requirements set out in this regulation), and
    - (d) how the tenant may access information and advice on financial support and debt management.
  - (3) The making by the landlord of reasonable efforts to agree with the tenant a reasonable plan to make payments to the landlord of—
    - (a) future payments of rent, and
    - (b) the rent for which the tenant is in arrears.
  - (4) The reasonable consideration by the landlord of—
    - (a) any steps being taken by the tenant which may affect the ability of the tenant to make payment to the landlord of the rent for which the tenant is in arrears within a reasonable time,
    - (b) the extent to which the tenant has complied with the terms of any plan agreed to in accordance with paragraph (3), and
    - (c) any changes to the tenant's circumstances which are likely to impact on the extent to which the tenant complies with the terms of a plan agreed to in accordance with paragraph (3).”
6. Notwithstanding the fact that the Respondent has been afforded an opportunity to oppose this application and has chosen not to do so, then Tribunal still requires to be satisfied that the requirements of the 2016 Act for the granting of an eviction order are met.
7. The first issue for the Tribunal to address is the Notice to Leave. It is dated 15 July 2020 and was served by sheriff officers on 15 July 2020. It is in the prescribed form. It specifies Ground 12 of Schedule 3 to the 2016 Act. The issue arises at Part 3 of the Notice. Part 3 requires that a landlord: “State particulars of how [the landlord believes] the ground(s) have arisen... [and] give as much

detail as possible including relevant dates, and in cases of rent arrears inset the amount of arrears outstanding and the period over which it has built up.”

8. In the Notice, the Applicant specified that the Respondent had been in arrears since March 2019, which is supported by the rent account schedule. However, the Applicant also specified that the amount of rent arrears was £8,000. That was supported by a “Statement of Account” prepared by Messrs. Martin & Co on 13 July 2020. The difficulty is that the said Statement of Account was wrong. It does not take account of payments made by or on behalf of the Respondent during 2019. A correct Rent Account Schedule has been produced by the Applicant with this application. It shows that, at the date of service of the Notice to Leave, the rent arrears were actually £4,918.17. Accordingly, the Notice to Leave is inaccurate insofar as it specifies the incorrect sum. The question for the Tribunal is what, if any, effect does that error have on the Notice to Leave?
9. Ms Matheson’s submission was that the error does not invalidate the Notice to Leave. She said that the purpose of the Notice to Leave was to give notice to the Respondent that she had been in rent arrears for a continuous period in excess of three calendar months (which she had been), and that the Applicant would raise proceedings on the expiry of a six month period of notice. The error affected neither of those things. The correct period of notice had been given, and Ground 12 was applicable regardless.
10. Having considered the matter, the Tribunal agrees with Ms Matheson’s analysis. It is our view that the error, though overstating the arrears by a sum in excess of £3,000, was minor within the meaning of section 73 of the 2016 Act. It did not materially affect the effect of the Notice, which was to tell the Respondent that she was in arrears and had been for a period in excess of three calendar months. It is noteworthy that the Respondent took no steps to address the Notice to Leave thereafter, for example by disputing the level of arrears specified therein.
11. Accordingly, the Tribunal is satisfied that Notice to Leave was given and the required period of notice expired. The requirements of Ground 12 are made out. Additionally, the Applicant has lodged copy correspondence with the Tribunal which shows that the Applicant took steps to contact the Respondent to discuss her arrears and how repayment could occur. We were told by Ms Matheson that the Respondent did not engage with the Applicant. Accordingly, having regard to all of the circumstances, the Tribunal was satisfied that it was reasonable to grant an eviction order.

## **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.

# A Upton

25/03/2021

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Legal Member/Chair

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Date