



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

**Chamber Ref: FTS/HPC/EV/19/1366**

**Re: Property at 14 The Row, Douglastown, Forfar, DD8 1TL (“the Property”)**

**Parties:**

**Mr Roderick Smith Hill, Deneside, Douglastown, Forfar, DD8 1TL (“the Applicant”)**

**Mr Alistair Stuart Hill, 14 The Row, Douglastown, Forfar, DD8 1TL (“the Respondent”)**

**Tribunal Members:**

**Petra Hennig-McFatridge (Legal Member)**

**Decision in absence of the Respondent**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for eviction should be granted and the charge period in terms of S 216 (4) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 reduced to 48 hours on cause shown.**

**Background:**

The application was made on 3 May 2019. The application asked for eviction of the Respondent on the basis of Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act).

Attached to the application were:

1. the Private Rented Tenancy Agreement for tenancy commencing 5 November 2018,
2. copy Notice to Leave dated 25 March 2019 with the date on which proceedings could first be raised stated as 29 April 2019,
3. Certificate of Service for said Notice to Leave by Sheriff Officers confirming service on the Respondent on 27 March 2019,
4. Copy S 11 Notice,

5. statement of arrears up to and including 5 May 2019 for the property showing arrears as at that date of £2,000.

A Case Management Discussion (CMD) was scheduled for 31 July 2019 and both parties advised of the date, time and venue.

A certificate of service by Advertisement on the Respondent dated 30 July 2019 was provided by the First-tier Tribunal.

No representations were received from the Respondent. The Respondent had not contacted the Tribunal prior to the CMD and did not attend.

The Tribunal was satisfied that he had been appropriately notified of the application and the CMD.

On 30 July 2019 the Applicant's solicitors Miller Hendry provided an up to date statement of arrears showing the arrears as at 30 July 2019 at £3,500.

### **The Case Management Discussion**

The Applicant's wife Mrs Hill and the Applicant's legal representative Ms Stronach from Messrs Miller Hendry attended the CMD. The Respondent did not attend. Ms Stronach advised that the arrears still remain at £3,500.

She referred the Tribunal to the documents lodged with the application, which are referred to for their terms and held to be incorporated herein. She explained that the Respondent was currently barred from entering Douglastown due to bail conditions and that he had not occupied the property for some months. Unknown individuals had been seen by to remove furniture from the property. No rent had been paid since December 2018. The Applicant was not aware of anything suggesting that the payment problems are in any way linked to issues regarding relevant benefits.

Although a deposit had been paid by the Respondent this was still lodged with a relevant deposit scheme and is currently not accessible to the Applicant.

Ground 12 of Schedule 3 to the Act states:

#### *Rent arrears*

12 (1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if— (a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant—

(i) 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

(ii) 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

(b) 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

### **Findings in Fact:**

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1. The parties entered into a Private Residential Tenancy for the property with a start date of 5 November 2018 (clause 6).
2. Rent of £500 per month is payable in advance on the 5<sup>th</sup> of the month.
3. From 5 January 2019 to 31 July 2019 no payments were received.
4. The Applicant issued to the Respondent a Notice to Leave dated 25 March 2019.
5. This was served by Sheriff Officers on 27 March 2019.
6. It detailed that the ground on which the Applicants intend to apply to the First Tier Tribunal was "You are in rent arrears over three consecutive months" and in part 3 detailed that the arrears for the months of January, February and March 2019.
7. In part 4 it stated that an application would not be submitted to the Tribunal before 29 April 2019.
8. The Respondent has not made any payments towards the arrears and has not made further rent payments.
9. The outstanding amount as of 31 July 2019 is £3,500.
10. This constitutes more than one months rent.
11. As at 31 July 2019 the Respondent has been in arrears of rent for the property for 7 months.
12. The Respondent has not occupied the property since at least 3 June 2019 when Sheriff Officers attended and established that bail conditions prevent him from entering Douglstown.

### **Reasons for Decision**

The Tribunal considered that the facts of the case were not disputed. No representations were made by the Respondent and the Respondent did not attend the CMD.

In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

- (a) in any place where a hearing may be held;
- (b) by videoconference; or
- (c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

- (a) identifying the issues to be resolved;
- (b) identifying what facts are agreed between the parties;
- (c) raising with parties any issues it requires to be addressed;
- (d) discussing what witnesses, documents and other evidence will be required;
- (e) discussing whether or not a hearing is required; and
- (f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

- (a) may make a decision without a hearing if the First-tier Tribunal considers that—
- (i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and
  - (ii) to do so will not be contrary to the interests of the parties; and
- (b) must make a decision without a hearing where the decision relates to—
- (i) correcting; or
  - (ii) reviewing on a point of law, a decision made by the First-tier Tribunal.
- (2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

The Respondent did not make any written representations and did not attend the CMD. The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case.

**S 51 of the Act states:**

*Eviction order*

**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 or must 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.

**Ground 12 in Schedule 3 of the states**

*Rent arrears*

- 12 (1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.
- (2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—
  - (a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant—
    - (i) 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
    - (ii) 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
  - (b) 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.

It was not disputed that the Respondent has been in arrears for more than 3 consecutive months at the time the Tribunal first considered the case on its merits. The Respondent was aware that the Tribunal could consider the case on its merits and make a decision at the CMD. No defence was lodged to the application. The Tribunal on the basis of the updated schedule accepted that the arrears on the day were more than one month's rent as the arrears were £3,500 and the monthly rent is £500. The Respondent has not provided any information that would indicate that the

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arrears of rent over the period is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

The Tribunal thus considered that in terms of Ground 12 (1) and (2) of Schedule 3 of the Act the Tribunal must find that the ground applies and thus in terms of S 51(1) must issue an order for eviction.

The Applicant's Representative had requested that the charge period in terms of S 216 (4) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 should be reduced to 48 hours as the Respondent has not occupied the premises for months. The Tribunal considered that the explanation was sufficient to reduce the charge period to 48 hours.

#### **Decision**

**The Tribunal grants an order for eviction in terms of S 51 of the Act on Ground 12 (1) and (2) of Schedule 3 of the Act and, taking into account the appeal period, specifies a the day on which the private residential tenancy is brought to an end as 31 August 2019 and reduces the charge period on cause shown to 48 hours in terms of S 216(4) of the Bankruptcy and Diligence etc. (Scotland) Act 2007.**

#### **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.**

Petra Hennig-McFatrige

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**Legal Member/Chair**

31.7.19  

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**Date**