



**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/20/2392**

**Re: Property at 48 Westerton Terrace, Carronshore, Falkirk, FK2 8HP (“the Property”)**

**Parties:**

**Mr Stewart Smyth, 16 Broadfield Crescent, Fernhill Heath, Worcester, WR3 7TN (“the Applicant”)**

**Mr Matthew Salisbury, 48 Westerton Terrace, Carronshore, Falkirk, FK2 8HP (“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 an eviction order should be granted.**

**A: Background**

1. The application for an order for eviction under S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 was made by the Applicant's representatives Harper Macleod LLP on 12 November 2020
2. The following documents were lodged to support the application prior to the Case Management Discussion:
  - a. Copy tenancy agreement
  - b. Rent Statements up to 6 January 2021
  - c. Copy S 11 Notice
  - d. Copy Notice to Leave dated 4 May 2020 together with Track and Trace receipt.
  - e. Letters dated 8 April 2020, 8 July 2020, 16 September 2020, 5 November 2020 and 5 December 2020 from the Applicant to the Respondent setting out the rent arrears and giving information regarding pre-action requirements
3. On 3 December 2020 the Respondent was served by Sheriff Officers with the case papers and the notification for the Case Management Discussion (CMD) on

7 January 2021. The Tribunal was satisfied that the Respondent had the required notice of the CMD as set out in Rules 17 (2) and 24 (2) of the Procedural Rules.

4. No representations from the Respondent were received by the Tribunal.
5. By correspondence of 8 December 2020 the Applicant's representatives moved for an amendment of the sum outstanding to £5,060 and provided an updated rent statement
6. By correspondence of 6 January 2021 the Applicant's representatives moved for an amendment of the sum outstanding to £5,520 and provided an updated rent statement.

**B: The Case Management Discussion:**

1. The CMD took place on 7 January 2021 by telephone conference call.
2. Neither the Applicant nor the Respondent participated. The Applicant was represented by Ms Grosvenor from Harper Macleod LLP.
3. Ms Grosvenor confirmed that neither the Applicant nor the representatives had had any contact from the Respondent. The Applicant had also tried to gain access to the property due to water ingress having been reported from the flat below the property and the Respondent had not cooperated with this. Proceedings are pending for the Applicant to gain entry to the property.
4. Only one payment of rent had been received since the commencement of the tenancy on 3 January 2020. Thereafter the arrears accrued as shown on the Schedule of Rent Statements lodged. The arrears of rent were now £5,520 which represents 12 months of unpaid rent.
5. She was able to clarify that the letter from the Minister of Local Government, Housing and Planning referred to in and enclosed with the letters from the Applicant to the Respondent of 5 November 2020 and 5 December 2020 included information about eviction proceedings during the Covid - 19 restrictions, information and links to relevant information on websites of the Government, Shelter and other organisations regarding relevant benefits, making arrangements to pay arrears and information regarding advice to tenants.
6. She confirmed that the Notice to Leave had been sent on 4 May 2020 by recorded delivery.
7. Ms Grosvenor moved for the application to be granted.

**C: Findings in Fact**

1. The property was let on a Private Residential Tenancy Agreement commencing on 3 January 2020.
2. The parties are the landlord and tenant of said Tenancy Agreement.
3. The tenancy is ongoing and the Respondent still occupies the property.
4. The monthly rent for the property is £460 payable monthly in advance on the 3rd day of each month.
5. Rent arrears accrued as per the Rent Statements
6. On 4 May 2020 the Applicant sent a Notice to Leave and Rent Schedule covering the period of 4 January 2020 to 4 May 2020 to the Respondent. Service was carried out by recorded delivery.
7. The Notice to Leave states as the date when proceedings can be raised the date of 9 November 2020 and as the ground for the Notice that arrears of rent have built up since February 2020 and the Respondent was in rent arrears over three consecutive months. The attached rent schedule shows arrears accumulating since 3 February 2020 and arrears of the amount of £1,840

8. No further payments of rent have been made since.
9. The arrears of rent due and outstanding as at the date of the CMD on 7 January 2021 are £5,520.
10. The Respondent has been in arrears of rent for three or more consecutive months at the time the Notice to Leave was issued, at the time the application was made and at the time of the CMD when the merits of the case were considered.
11. The arrears of rent are not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
12. The notice required under S 56 of the Act was issued to the local authority on 11 November 2020 by email
13. The Applicant had provided the Respondent with relevant information regarding the terms of the tenancy agreement, rent arrears, eviction proceedings, financial support and debt management and a request to negotiate a solution for the payment of the arrears in letters of 8 April 2020, 8 July 2020, 16 September 2020, 5 November 2020 and 5 December 2020

### **D: Reasons for decision**

#### 1. Relevant legislation:

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.

Power to determine the proceedings without a hearing

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

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 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.

### *Grounds under Schedule 3 of the 2016 Act*

#### **Rent arrears**

12(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 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.

[F2(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.

[F3(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.]

2. The Respondent has not made any representations and did not attend the CMD. The facts of the case are not disputed. There was no opposition to the order being granted. 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. The Respondent was made 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.

4. As the Notice to Leave was served after 7 April 2020 the case is subject to the provisions of the Coronavirus (Scotland) Act 2020.

5. In terms of S 54 (2) (b) (iii) the Act as amended a 6 months notice period applied. The Notice to Leave was served by recorded delivery and deemed to have been received on 6 May 2020 in terms of S 62 (5) of the Act. The date to be entered as the first day when proceedings could be raised was stated as 9 November 2020. The relevant notice period was provided taking into account the provisions of S 62 (5) of the Act. The action was raised after the expiry of the notice period and the Respondent given adequate notice of the reasons for the Notice. The Applicant had served the notice required in terms of S 56 of the Act on the local authority on 11 November 2020.

6. The Tribunal found that Ground 12 (3) of Schedule 3 of the 2016 Act applies in this case. This is a discretionary ground of eviction. There is clear evidence of the rent arrears accruing over the period of the tenancy. No payments apart from the first rental payment had been received. The Respondent has missed 12 rental payments and the arrears are £5,520. The Applicant has taken active steps to try to resolve this and to assist the Respondent in arranging a payment plan. He has provided ample information to the Respondent regarding sources of advice and assistance with debt management and financial support available and has continued to take these steps even after the action was raised. On the face of it the ground has been established. The Respondent has not made any representations to dispute the arrears and has not in any way engaged with the attempts of the Applicant to negotiate a solution.. The Respondent has provided no indication to the Applicant or the Tribunal that the arrears of rent were in any way linked to a delay or failure of payment of relevant benefits. The Applicant had provided the necessary information required in the pre-action requirements as set out in paragraph 4 of The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 as required in ground 12 (3B) of schedule 3 of the Act. The Tribunal accordingly, having considered all relevant factors, finds that it is reasonable to issue an eviction order in terms of ground 12 of schedule 3 of the Act.

7. In terms of S 51(1) of the Act the Tribunal thus grants the application for an eviction order as it is satisfied that one of the eviction grounds in schedule 3 of the Act applies. The Tribunal, having regard to the appeal period, determines that in terms of S 54(4) of the Act the tenancy ends on 7 February 2021.

**Decision**

The Tribunal grants an order for eviction in terms of S 51 of the Act on Ground 12 of Schedule 3 of the Act

**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**  
Legal Member/Chair

**7 January 2021**  
Date