

**Housing and Property Chamber**  
First-tier Tribunal for Scotland



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016**  
Chamber Ref: FTS/HPC/EV/19/4083

**Re: Property at 2 1/L Eliza Street, Dundee, DD4 6TF (“the Property”)**

**Parties:**

**Mrs Ianthe Kinninmoth, Craigend, Gartness Road, Drymen, G63 0BH (“the Applicant”)**

**Mr Ian Maich, 2 1/L Eliza Street, Dundee, DD4 6TF (“the Respondent”)**

**Tribunal Members:**

**Shirley Evans (Legal Member)**

**Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for repossession of the Property under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right to appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent.

The order will include a power to Officers of Court to eject the Respondent and family, goods, servants, dependants, employees and others together with their goods, gear and whole belongings further and from the Property and to make the same void and redd that the Applicant or others in her name may enter thereon and peaceably possess and enjoy the same.

**Background**

1. By application dated 23 December 2019 the Applicant's solicitors applied to the Tribunal for an order for possession of the Property under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016.
2. The Application was accepted by the Tribunal on 3 January 2020.

3. On 24 January 2020 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 14 February 2020. The Tribunal advised both parties that a Case Management Discussion ("CMD") under Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017("the Regulations") would proceed on 28 February 2020. The paperwork was served on the Respondent by Stuart Miller, Sheriff Officer, Glasgow, on 27 January 2020 and the certificate of service was received by the Tribunal administration.
4. The Respondent did not make any representations by 14 February 2020.

### **Case Management Discussion**

5. The Tribunal proceeded with the Case Management Discussion on 28 February 2020. The Applicant was represented by Mr Piggott from Messrs Friends Legal. The Respondent was represented by Mr Marshall from Dundee North Law Centre.
6. The Tribunal had before it a Private Residential Tenancy Agreement signed by both parties on 20 October 2018, a rent statement to 18 October 2019, a Notice to Leave dated 28 October 2019 with an Execution of Service from Sheriff Officers dated 31 October 2019 and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 with a covering email addressed to Dundee City Council dated 18 December 2019.
7. Mr Marshall lodged an unsigned Short Assured Tenancy which showed a commencement date of 14 December 2012. Mr Piggott was given an opportunity by the Tribunal to consider the Short Assured Tenancy.
8. Mr Marshall had hoped the Respondent would be in attendance. He explained the reason he wished to refer the Tribunal to the Short Assured Tenancy agreement was to show the Respondent had resided at the Property since 2012. He had originally hoped that the Respondent would be able to reduce the arrears of rent to under a month in which case the length of residency could be considered by the Tribunal in relation to reasonableness. He accepted the Private Residential Tenancy Agreement lodged by the Applicant and signed by both parties was the governing tenancy between the parties.
9. Mr Marshall explained that unfortunately the Respondent had not been able to reduce the arrears to under one month. He explained the Respondent was a single man who lived alone at the Property and was in employment. There were accordingly no benefits issues. He made an offer to pay £150 per week for rent and arrears which by his calculation would reduce the arrears by £200 per month.
10. Mr Piggott advised that he was appearing for a principal agent and that his instructions were, in the event of an appearance by or on behalf of the Respondent, to move for the CMD to be adjourned for written representations.

The Tribunal asked whether he would like a short adjournment to take instructions as to whether the offer made to pay £150 per week would be acceptable and noted that in terms of Clause 4 of the Private Residential Tenancy Agreement the monthly rent was £450. Mr Piggot advised that a short adjournment was in order to enable him to take instructions.

11. After the adjournment, Mr Piggot advised that his instructions were to seek an order to evict. However after enquiry from the Tribunal, he was not able to advise the Tribunal as to the current level of arrears and accordingly another short adjournment was granted for him to establish the current arrears.
12. After the second short adjournment Mr Piggot advised the arrears were £910. With reference to the rent statement lodged the Tribunal noted that this was a static arrear from October 2019. Mr Piggot referred the Tribunal to the Notice to Leave and the Sheriff Officer's Execution of Service lodged with the Application and moved for an order to evict to be granted there being over 3 consecutive months arrears totalling over one month's rent and no benefits issues.
13. Mr Marshall in response advised that the Notice to Leave appeared to be in order and that he understood from the Respondent that the arrears were in the region of £1200.

### **Findings in Fact**

14. The Applicant and the Respondent agreed by way of a Private Residential Tenancy Agreement signed by both parties on 20 October 2018 in relation to the Property that the Respondent would pay a monthly rent of £450 to the Applicant.
15. Prior to 20 October 2020 the Respondent had lived at the Property under a Short Assured Tenancy Agreement from June 2012.
16. Arrears of rent have accrued since March 2019. Current arrears are £910.
17. In terms of the rent statement arrears have accrued for over three consecutive months. The amount of arrears exceeds the monthly rent of £450.
18. A Notice to Leave was served on the Respondent by way of Sheriff Officers on 31 October 2019.
19. There are no outstanding benefit's issues. The Respondent is in employment.
20. A Notice in terms of Section 11 of the Homelessness etc. (Scotland) Act 2003 with a covering email addressed to Dundee City Council was intimated on 18 December 2019.

### Reasons for Decision

21. The Tribunal considered the documents before it and the oral submissions made by both parties. The Tribunal was satisfied that the Respondent was in arrears of rent for over three consecutive months and in excess of a month's rent due. This was accepted by Mr Marshall who also accepted that he was satisfied the Notice to Leave was in order. The Tribunal was satisfied that the arrears had not accrued due to a delay or failure of a relevant benefit, it being made clear to the Tribunal that the Respondent was in employment. The Tribunal was satisfied that a Section 11 Notice had been served on Dundee City Council. The Tribunal was satisfied that Ground 12 of Schedule 3 of the 2016 Act had been satisfied and that therefore the Applicant was entitled to an order for repossession of the Property.

### Decision

22. The Tribunal granted an order for repossession of the Property.

### 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.

Shirley Evans

Legal Member/Chair

Date

28 February 2020