



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 109 of the Private Housing  
(Tenancies)(Scotland) Act 2016**

**Chamber Ref: FTS/HPC/EV/23/3630**

**Re: Property at 9F Ballantine Place, Perth, PH1 5RR (“the Property”)**

**Parties:**

**Mr Scott Jempson, 8 Oakdene Crescent, Scone, Perth, PH2 6PG (“the Applicant”)**

**Mr Stewart Lawrie, 9F Ballantine Place, Perth PH1 5RR (“the Respondent”)**

**Tribunal Members:**

**Ms Susanne Tanner KC (Legal Member) and Ms Ahsan Khan (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) was satisfied that the following grounds were established by the Applicant:**

- (i) Ground 12 in Schedule 3, part 3 to the 2016 Act, in that on the day the tribunal considered the application for an eviction on its merits the Respondent was in rent arrears greater than one month’s rent and had been in arrears of rent for a continuous period of more than three consecutive months up to and including that day; that rent arrears were not wholly or partly a consequence of a delay or failure in**

**payment of a relevant benefit; and that it was reasonable to make an order for eviction; and**

- (ii) Ground 12A in Schedule 3, Part 3 to the 2016 Act in that: the Respondent has accrued rent arrears under the tenancy in respect of one or more periods; the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy when notice to leave was given to the tenant on this ground in accordance with section 52(3) of the 2016 Act, and that it was reasonable to make an order for eviction; and**

**made an order for eviction in terms of Section 51 of the 2016 Act.**

**The decision of the tribunal was unanimous.**

### **Statement of Reasons**

1. A Case Management Discussion (CMD) took place on 5 March 2024. A CMD in a related civil application involving the same parties also took place on the same day (CV/23/3639) and the tribunal made an order for payment against the Respondent for payment of rent arrears in the sum of (£4780.00) for the period to 1 November 2023.
2. The Applicant attended the CMD in relation to both Applications..
3. The Respondent did not attend the CMD, or the CMD in relation to the related civil application.
4. The tribunal decided to proceed with the eviction application in the absence of the Respondent. The tribunal was satisfied that the requirements of rule 24(1) of the 2017 Rules regarding the giving of notice of a CMD had been duly complied with and proceeded with the Application upon the representations of the party present and all the material before it.

5. The tribunal heard from the Applicant in relation to the eviction Application. He withdrew reliance on Ground 1A during the CMD. He sought the Respondent's eviction from the Property on Grounds 12 and 12A, given the level of rent arrears at the time that the Notice to Leave was served, and at present. He submitted that both grounds were met in terms of the rent arrears and that it was reasonable to make an eviction order.
6. The Applicant said that the Respondent has substantial rent arrears and that he has been in rent arrears for more than six months. The Applicant referred to the rent statement produced as supporting evidence for the Application, which is for the period from the start of the tenancy on 1 September 2019 to 1 December 2023. When the Notice to leave was served on 4 July 2023, the rent arrears were £3,340.00. The Respondent paid partial rent of £400 on 1 August 2023. No payments of rent or arrears were made by the respondent in September, October and November 2023. One payment of £500.00 was made on 22 December 2023. No payments have been made since that time. The rent statement produced for the period shows that as at 1 December 2023 the rental arrears were £5,240. The Applicant stated that they are now £6580.00 as at 1 April 2024.
7. The Applicant has followed the pre-action protocol. He said that he has also spoken to the Respondent both in person and on the telephone. The Respondent has not provided any payment plan to clear the arrears. The Respondent is not paying rent as it falls due. The Respondent has complained to the Applicant that he does not know what day of the month he is going to receive his pension payments but has not provided any good reason why he is not paying his rent or making payment towards his arrears. The Applicant believes the Respondent to be around 66 years' old and is a single retired man living alone. The Applicant has not been made aware by the Respondent that he has any vulnerabilities. The tenancy was arranged through the local authority and they provided a bond. The Applicant has tried to assist the Respondent at various times during the tenancy. He reduced the rent from £460.00 to £400.00 for a period from 1 October 2020 to 1

October 2022. The tenant's mother, Ms Moffat paid £230 of the rent falling due each month during that period. The Applicant has only made one payment of rent to the Applicant since 1 August 2023. The Applicant is experiencing adverse effects on his own finances and has had to borrow money from family members and use credit cards to meet the outgoings in respect of the Property. The mortgage for the Property has increased to the point that, even if the rent was paid, the Applicant would not receive enough rent to cover the mortgage, insurance and other necessary outgoings. At present, the Applicant has no regular means to meet the outgoings for the Property from his income due to his own commitments. This is the Applicant's only rental property and he wishes to sell it should he get vacant possession.

8. The Respondent was served with the Application paperwork and notice of the CMD. He has not opposed the Application for eviction or asked for it to be adjourned. He has not lodged any submissions or evidence and has not made contact with the tribunal since the Application paperwork and notice of the CMD were served. The Applicant spoke to the Respondent the day before the CMD on the telephone and the Respondent indicated that he was aware of the CMD taking place on 12 April 2024. The tribunal proceeded in his absence, as discussed above.

### **Findings in Fact**

9. The Applicant and Respondent entered into a Private Residential Tenancy agreement in respect of the Property which began on 1 September 2019.
10. The rent due under the tenancy agreement was £460 per calendar month from the start of the tenancy to 30 September 2020. It was £400 per calendar month from 1 October 2020 to 31 October 2022. Since 1 November 2022 it has been £460 per calendar month.

11. The Respondent has accrued rent arrears under the tenancy in respect of one or more periods.
12. The rent arrears as at 4 July 2023 were £3340.00.
13. A Notice to leave was served in terms of Grounds 1A, 12 and 12A of Schedule 3 of the 2016 Act on 4 July 2023.
14. The only payments of rent made by the Respondent since the Notice to leave was served were £400 on 1 August 2023 and £500 on 22 December 2023.
15. The Respondent has not provided any proposals for payment of the arrears and he is not meeting rent payments as they fall due.
16. The rent arrears as at 12 April 2024 were £6580.00.
17. As at 12 April 2024, the Respondent was in rent arrears greater than one month's rent and had been in arrears of rent for a continuous period of more than three consecutive months up to and including that day.
18. The rent arrears are not wholly or partly a consequence of a delay or failure in payment of a relevant benefit.
19. The cumulative amount of the Respondent's rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy when notice to leave was given to the tenant on ground 12A in accordance with section 52(3) of the 2016 Act.
20. The Respondent has not opposed the Application for eviction.

## **Discussion**

21. The tribunal was satisfied after considering submissions from the Applicant that the requirements of both Grounds 12 and 12A were met, including a decision that it was reasonable to make an eviction order in the circumstances. In relation to reasonableness, the tribunal accepted the Applicant's submissions that it was reasonable to make an eviction order. The Respondent has not opposed the Application for eviction or lodged any submissions. He did not attend the Case Management Discussion despite notification. The tribunal has not been made aware by the Respondent of any vulnerabilities, or issues in respect of relevant benefits that may have led to all, or part, of the rent arrears. The Applicant is suffering the adverse effects of the rent arrears and the Respondent's continued failure to meet rent payments falling due. In all the circumstances the tribunal decided that it was reasonable to make 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.**

Susanne Tanner

**12 April 2024**