



**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/19/1064**

**Re: Property at Old Lodge Cottage, Strachan, Banchory, AB31 6LT (“the Property”)**

**Parties:**

**Mr David John Bickerton, Mr James Carwithen Greenwood, Trustees of Lady Rosamund Anne Gladstone's 1987 Trust, Bishops, High Street, Widdington, Saffron Walden, Essex, CB11 3SQ; Old Severn Bridge House, Purton Etloe, Blackeney, Gloucestershire, GL15 4AX; Glen Dye Lodge, Bridge of Dye, Strachan, Banchory, AB31 6LT (“the Applicant”)**

**Mr Johnathan Vines, Old Lodge Cottage, Strachan, Banchory, AB31 6LT (“the Respondent”)**

**Tribunal Members:**

**George Clark (Legal Member) and Helen Barclay (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be granted and issued an Eviction Order against the Respondent**

**Background**

By application, received by the Tribunal on 4 April 2019, the Applicant sought an Eviction Order against the Respondent. The Grounds relied on were Grounds 11 and 12 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”).

The application was accompanied by copies of a Private Residential Tenancy Agreement between the Parties, commencing on 21 December 2017 at a monthly rent of £400, a Rent Statement showing arrears as at 31 March 2019 of £1,637.58 and a Notice to Leave dated 30 March 2019, advising the Respondent that an application would not be submitted to the Tribunal before 30 March 2019. A later Rent Statement provided by the Applicant showed arrears as at 31 July 2019 of

£2,692.61. In the application, the Applicant also stated that the Respondent had breached a number of the terms of the tenancy, including failing to prevent water pipes freezing in cold weather, the requirement to keep the Property clean and also stated that the Respondent had kept three dogs in the Property without consent.

A Case Management Discussion held on 26 June 2019, was adjourned to a Hearing on 9 August 2019 as there appeared to be an issue regarding the Respondent's Housing Benefit, which had stopped on 31 March 2019. There were also further evidential issues in relation to the application under Ground 11 of Schedule 3 to the 2016 Act.

The Hearing scheduled for 9 August 2019 was postponed.

### **The Hearing**

A Hearing took place at the Credo Centre, John Street, Aberdeen on the afternoon of 3 October 2019. On the previous day, the Respondent's representative, the Civil Assistance Office of Aberdeenshire Council advised the Tribunal that, whilst a lump-sum payment of £2,272.71 had been made by the Council directly to the Applicant, to cover unpaid Housing Benefit, the Respondent accepted that there was no defence to the application under Ground 12 of Schedule 3 to the 2016 Act. Accordingly, the Respondent would not be present or represented at the Hearing. The Applicant was represented by Rachel Sedgewick and Rab Davidson Glen Dye Estate, who confirmed that the arrears of rent currently stand at £1,219.90.

### **Reasons for Decision**

Section 51 of the 2016 Act provides that the 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 to the Act applies.

Ground 12 of Schedule 3 to the 2016 Act states that it is an Eviction Ground that the tenant has been in rent arrears for three or more consecutive months and that the Tribunal must find that Ground 12 applies if, at the beginning of the day on which the Tribunal first considers the application for an Eviction Order on its merits, the tenant 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 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 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. The Tribunal was satisfied from the Rent Statements provided by the Applicant that the rent had been continuously in arrears since 1 May 2019 and that, even taking into account the lump sum paid to the Applicant on 18 September 2019, the arrears as at the date of the Hearing exceeded one month's rent. Accordingly, the Tribunal was satisfied that the arrears relied on were not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, that the requirements of Ground 12 had been met and that the Tribunal was bound to issue an Eviction Order against the Respondent.

As Ground 12 was a mandatory Ground, it was not necessary for the Tribunal to go on to consider the application under Ground 11 of Schedule 3 to the 2016 Act.

### **Decision**

The Tribunal determined that the application should be granted and issued an Eviction Order against the Respondent.

## 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.

Mr George Clark

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**Legal Member/Chair**

3 October 2019

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**Date**