



**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/22/1783**

**Re: Property at 11 Station Brae, Peterculter, AB14 0PX (“the Property”)**

**Parties:**

**P & C Developments Ltd, Fuaran, Malcolm Road, Peterculter, AB14 0NX (“the Applicant”)**

**Miss Jessica Powell, 11 Station Brae, Peterculter, AB14 0PX (“the Respondent”)**

**Tribunal Members:**

**Martin McAllister (Legal Member) and Elizabeth Currie (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted against the Respondent in respect of the Property.**

**Background**

1. This is an application for recovery of the Property. The application is dated 7<sup>th</sup> June 2022. The Applicant is seeking recovery under Ground 12, Part 3 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 as amended by Schedule 1 (3) (a) of the Coronavirus (Scotland) Act 2020. This ground states that it is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. The date and time of the Hearing was intimated to parties who were given the opportunity to make written representations and/or lodge productions.
2. The Tribunal had a copy of the Sheriff Officer’s execution of service on the Respondents dated 11<sup>th</sup> November 2022 which was in respect of intimation of the date and time of the case management discussion.

## **Preliminary Matters**

3. The case management discussion was held by audio conference on 13<sup>th</sup> December 2022. Mr Philip Harris and Mrs Caroline Harris, directors of the Applicant were present. Ms Annie Zdravkova, trainee solicitor represented the Respondent who was not present. The Legal Member outlined the purpose of a case management discussion and the terms of Rule 17 of the Chamber Rules:

### *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*

4. Prior to the case management discussion, the Respondent's representative had submitted an email dated 6<sup>th</sup> December 2022 in which she indicated that the Respondent did not intend to contest the application for eviction but was seeking a delay of ten to twelve weeks for execution of such an order to allow alternative housing to be obtained. The email stated that the request was in terms of Rule 16 (A)(d) of the Tribunal Rules.

5. The email stated that the Respondent lives in the Property with her three children, that Covid-19 had a detrimental impact on her employment which meant that she had been able to make only partial rental payments and that this had allowed arrears of rent to accrue.
6. Prior to the case management discussion, the Applicant had submitted an updated rent statement showing the rent outstanding to be £8,057.15 with the calculation of rent due to 14<sup>th</sup> December 2022.
7. Mr Harris confirmed that the Applicant was seeking an order of eviction on the ground that the Respondent has been in rent arrears for three or more consecutive months as evidenced by the rent statements which had been submitted.
8. Ms Zdravkova confirmed that she was offering no opposition to the eviction order being granted but was seeking the tribunal to delay the date of execution of the order for the reasons set out in her email.
9. Parties acknowledged that there was no reason for a Hearing to be fixed and that the matter could be dealt with at the case management discussion.

### **Documents before the tribunal**

- 10.1 Copy of the private residential tenancy agreement for the Property dated 15<sup>th</sup> November 2018 showing the commencement of the tenancy to be 15<sup>th</sup> November 2018 and the monthly rent to be £1,200.
- 10.2 Copy rent statement from 15<sup>th</sup> November 2018 showing the rent outstanding on 21<sup>st</sup> June 2021 to be £4,734.15.
- 10.3 Copy rent statement from 15<sup>th</sup> November 2018 showing rent outstanding as at 14<sup>th</sup> December 2022 to be £8,057.15.
- 10.4 Notice to Leave dated 8<sup>TH</sup> May 2022 and served on the same day.
- 10.5 Notice to the local authority in terms of Section 11 of The Homelessness etc. (Scotland) Act 2003.

10.6 Print of Title Sheet for ABN76858 (the Property).

### **Findings in Fact**

11.1 The Applicant is the owner of the Property.

11.2 The Applicant and the Respondent entered into a Private Residential Agreement for the Property on 15<sup>th</sup> November 2018.

11.3 The start date for the tenancy was 15<sup>th</sup> November 2018.

11.4 The monthly rent for the Property is £1200 per month.

11.5 The Applicant gave the Respondent Notice to Leave on 8<sup>th</sup> May 2022.

11.6 The Respondent resides at the Property.

### **Findings in Fact and Law**

12.1 The Private Residential Agreement dated 15<sup>th</sup> November 2018 contains eviction grounds including Ground 12: "It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months."

12.2 The Notice to Leave which was dated 8<sup>th</sup> May 2022 referred to Ground 12 which was being relied on by the Applicant as the reason for seeking recovery of the Property.

12.3 The Notice to Leave indicated that any proceedings for eviction would not be commenced prior to 6<sup>th</sup> June 2022.

12.4 As at the date of the case management discussion, the Respondent is in rent arrears for three or more consecutive months.

### **The Law**

The following provisions of the Private Housing (Tenancies) (Scotland) (Act) 2016 include the amendments made by the Coronavirus Act 2020

*Section 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 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.*

*(introduced by section 51)*

### **Schedule 3, Part 12**

#### *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.*

*(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.*

*(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.*

### **Evidence and Submissions**

13. The tribunal had regard to the documentation which had been lodged by the Applicant.

14. The rent statements showed that there have been arrears of rent since 2019.

15. The Respondent's representative did not dispute that the eviction ground was met.

16. The Respondent's representative did not submit that it was unreasonable to evict the Respondent but submitted that she be given more time to find alternative housing. She said that the Respondent had been working but is now a student and lives in the Property with three children aged ten, sixteen and seventeen. Another child, aged nineteen, was no longer living in the Property. Ms Zdravkova said that the Respondent had particular concerns about the possible disruption to the schooling of the youngest child if he had to move school.

17. Ms Zdravkova said that the local authority had accepted that it had to house the Respondent but the problem was that there is a shortage of houses of a suitable size to accommodate the family. She said that the local authority had confirmed to the Respondent that the Respondent and her family would be provided with temporary accommodation whilst awaiting permanent rehousing. She said that a period of ten to twelve weeks would allow more time for a house to be found.

18. Mr Harris said the Applicant has three buy to let properties and that, because of the level of arrears, it is reasonable for the Property to be recovered as soon as possible. He said that he and his wife own the Applicant company and it is their main source of income. He said that they were suffering financially because the rent was so much in arrears. He said that, to allow the Respondent to stay in the Property for another three months would mean further arrears of £3,600 to accrue.

## Discussion and Reasons

19. The tribunal had regard to the documentation which had been lodged by the Applicant.

20. The rent statements showed that there have been arrears of rent since 2019.

21. The Respondent's representative did not dispute that the eviction ground was met and that the order of eviction be granted.

22. The documentation lodged by the Applicant evidenced that appropriate notice had been given to the Respondent and that the appropriate intimation had been given to the local authority in terms of the Homelessness etc. (Scotland) Act 2003.

23. The tribunal considered if the requirements of Ground 12 were met. There clearly was arrears of more than three months and the Respondent had been in arrears since 2019.

24. In considering whether or not it is reasonable to extend the time for execution of the order the tribunal required to consider all the circumstances.

25. Ms Zdravkova did not submit any reason why it was more likely that the Respondent would be housed by the local authority were the date for execution of the order extended.

26. The tribunal was required to balance the Applicant's position against that of the Respondent. It accepted that the Applicant was and is suffering financially as a result of the non-payment of rent.

27. Weighing matters, the tribunal considered that it was reasonable to grant the order of eviction. The tribunal did not consider it reasonable to extend the period of execution of the order for ten or twelve weeks. Because of the time of year and the fact that public offices would be closed over the festive period, the tribunal determined that the order could not be implemented prior to 24<sup>th</sup> January 2022.

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order of eviction be granted.**

## **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.**

**Martin McAllister**

**Martin J. McAllister  
Legal Member  
13<sup>th</sup> December 2022**