



**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/22/2056**

**Re: Property at 55 Kingsfield, Linlithgow, West Lothian, EH49 7SL (“the Property”)**

**Parties:**

**Mr Gary Clinton, 46 St Magdalenes, Linlithgow, EH49 6AQ (“the Applicant”)**

**Mrs Karen Anderson, 55 Kingsfield, Linlithgow, West Lothian, EH49 7SL (“the Respondent”)**

**Tribunal Members:**

**Alison Kelly (Legal Member) and Ann Moore (Ordinary Member)**

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

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

**Background**

On 23<sup>rd</sup> June 2022 the Applicant lodged an Application with the Tribunal under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondent from the property under grounds 5,11 and 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.

Lodged with the application were: -

1. Copy Tenancy Agreement with a commencement date of 1<sup>st</sup> September 2021 and a monthly rent of £675;
2. Copy Notice to Leave dated 1<sup>st</sup> April 2022 for 27<sup>th</sup> June 2022;
3. Section 11 Notice;

4. Pre Action Protocol letters x 4
5. Rent Schedule

The Application was accepted by the Tribunal but a direction was issued asking the Applicant to address the Tribunal at the Case Management Discussion on the facts that the narrative in the Notice to Leave only dealt with Grounds 5 and 12, and that the Notice to leave was served prematurely in relation to Ground 12.

The Application was served on the Respondent by Sheriff Officers on 9<sup>th</sup> November 2022.

The Applicant appointed a solicitor who lodged a fresh Notice to Leave in respect of the rent arrears, dated 6<sup>th</sup> September 2022 for 7<sup>th</sup> October 2022 and affidavits from the Applicant and his stepson in respect of Ground 5.

### **Case Management Discussion**

The Case Management Discussion (“CMD”) took place by teleconference. The Applicant was present, and was represented by Mr McKeown, Trainee Solicitor, of Jackson Boyd, Solicitors. The Respondent did not attend and was not represented.

The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules.

Mr McKeown moved for eviction. He addressed ground 5 but conceded that it had not been referred to in the narrative of the Notice to Leave and therefore did not pursue it as a ground of eviction.

Mr McKeown addressed ground 12. He did concede that the initial Notice to Leave had been served before the Respondent was fully in arrears by three months and it was therefore served prematurely. He also conceded that there was no legal basis for the Tribunal to base the eviction under ground 12 on the second Notice To Leave.

Mr McKeown then addressed Ground 5. He made reference to the affidavits lodged and submitted that the Applicant’s stepson met the criteria under Ground 5 as a qualifying relative. He referred to the affidavits which confirmed that Calum Bremer, the Applicant’s stepson, would occupy the property for at least three months following the Respondent leaving, as he was a student and had to leave the accommodation he was currently occupying.

The Tribunal was satisfied from the affidavits that Ground 5 had been met.

Mr McKeown addressed the Tribunal on reasonableness. He submitted that the Respondent was now substantially in arrears and that this was having a detrimental effect on the Applicant’s own finances. The Applicant confirmed that the arrears were currently £7075. He also confirmed direct to the Tribunal that he was a self employed guitar tutor and that he had to pay his tax in January 2023. He confirmed that the lack of payment of the rent meant that he might not be able to meet that tax payment. He had managed to have the mortgage payment reduced from £580 per month to £280 as he was now paying interest only, and that his stepson would only be able to cover the mortgage payment. The Applicant supports his wife and eight year old son.

Mr McKeown confirmed that the Respondent lived alone in the property and is a self employed caterer.

### **Findings in Fact**

1. The parties entered into a Tenancy Agreement in respect of the property;
2. The Tenancy Agreement commenced on 1<sup>st</sup> September 2021;
3. The rent was £675 per month;
4. A Notice To Leave dated 1<sup>st</sup> April 2022 was served timeously and correctly in relation to Ground 5 of Schedule 3;
5. This Application was served on the Respondent by Sheriff Officer on 9<sup>th</sup> November 2022;
6. The Applicant's stepson intends to occupy the property as soon as the Respondent vacates;
7. The Applicant's stepson qualifies as a family member in terms of Ground 5;
8. The Respondent owes rent of £7075;
9. The Applicant finds himself in financial difficulty as a result of the non-payment of rent.

### **Reasons for Decision**

It is usually mandatory to grant an application under Ground 5 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 provided that notices have been served correctly. However, Section 2 and Schedule 1 of the Coronavirus (Scotland) Act 2020 amended the legislation as follows:

*1(1)The Private Housing (Tenancies) (Scotland) Act 2016 applies, in relation to a notice to leave within the meaning of section 62 of that Act served on a tenant while this paragraph is in force, in accordance with the modifications in this paragraph.*

*(2)Section 51(2) (First-tier Tribunal's power to issue an eviction order) has effect as if the words "or must" were repealed.*

*(3)Schedule 3 (eviction grounds) has effect as if—*

*(a)in paragraph 1(2) (landlord intends to sell)—*

*(i)in the opening words, for the word "must" there were substituted " may ",*

*(ii)after paragraph (a), the word "and" were repealed,*

*(iii)after paragraph (b) there were inserted ", and*

*(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.",*

*(b)in paragraph 2(2) (property to be sold by lender)—*

*(i)in the opening words, for the word "must" there were substituted " may ",*

*(ii)after paragraph (b), the word “and” were repealed,*

*(iii)after paragraph (c) there were inserted “, and*

*(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*

*(c)in paragraph 3(2) (landlord intends to refurbish)—*

*(i)in the opening words, for the word “must” there were substituted “ may ”,*

*(ii)after paragraph (b), the word “and” were repealed,*

*(iii)after paragraph (c) there were inserted “, and*

*(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*

*(d)in paragraph 4(2) (landlord intends to live in property)—*

*(i)for the word “must” there were substituted “ may ”,*

*(ii)the words from “the landlord” to “3 months” were paragraph (a),*

*(iii)after paragraph (a) there were inserted “, and*

*(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,*

*(e)in paragraph 6(2) (landlord intends to use for non-residential purpose)—*

*(i)for the word “must” there were substituted “ may ”,*

*(ii)the words from “the landlord” to “home” were paragraph (a),*

*(iii)after paragraph (a) there were inserted “, and*

*(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,*

*(f)in paragraph 7(2) (property required for religious purpose)—*

*(i)in the opening words, for the word “must” there were substituted “ may ”,*

*(ii)after paragraph (b) the word “and” were repealed,*

*(iii)after paragraph (c) there were inserted “, and*

*(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*

*(g)in paragraph 8 (not an employee)—*

*(i) in the opening words of sub-paragraph (2), for the word “must” there were substituted “ may ”,*

*(ii) for paragraph (c) there were substituted—*

*“(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*

*(iii) sub-paragraph (3) were repealed,*

*(iv) in sub-paragraph (4), for the words “sub-paragraphs (2) and (3)” there were substituted “ sub-paragraph (2) ”,*

*(h) in paragraph 10(2) (not occupying let property)—*

*(i) in the opening words, for the word “must” there were substituted “ may ”,*

*(ii) after paragraph (a), the word “and” were repealed,*

*(iii) after paragraph (b) there were inserted “, and*

*(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*

*(i) in paragraph 12 (rent arrears), sub-paragraph (2) were repealed,*

*(j) in paragraph 13(2) (criminal behaviour)—*

*(i) in the opening words, for the word “must” there were substituted “ may ”,*

*(ii) after paragraph (a), the word “and” were repealed,*

*(iii) after paragraph (b) there were inserted “, and*

*(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”.*

The Tribunal now has to decide if it is reasonable to grant the eviction order.

The Tribunal were of the view in this case. that the Applicant had established Ground 5 by provision of affidavits.

The Tribunal therefore had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order. The Tribunal found the Applicant to be credible and reliable. He had made approaches to the Respondent which had all been ignored. The Respondent had not responded to the Tribunal application, nor appeared at the CMD. The Tribunal accepted that there was a significant level of

arrears and that those had led to financial difficulty for the Applicant. The Tribunal considered it reasonable to grant the 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.**

**Alison Kelly**

**Legal Member/Chair**

**12 December 2022**  
**Date**