



**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 (“2016 Act”)**

**Chamber Ref: FTS/HPC/EV/23/1970**

**Re: 64 Montrose Street, Brechin, Angus, DD9 7DE (“the Property”)**

**Parties:**

**Mr Calum Sinclair, 13 Kirkbank Road, Burntisland, KY3 9HX (“the Applicant”)**

**Miss Kayleigh Tasker, 64 Montrose Street, Brechin, Angus, DD9 7DE (“the Respondent”)**

**Tribunal Members:**

**Pamela Woodman (Legal Member) and Helen Barclay (Ordinary Member)**

**Present:**

The case management discussion in relation to case reference FTS/HPC/EV/23/1970 took place at 2pm on 12 October 2023 by teleconference call (“**the CMD**”). The Applicant was not present but was represented by Norman Law, Property Manager of Shiells, solicitors and estate agents. The Respondent was neither present nor represented at the CMD. The clerk to the Tribunal was Leigh Morrissey.

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted under ground 12A of schedule 3 to the 2016 Act against the Respondent.**

**BACKGROUND**

1. An application had been made to the Tribunal under section 51(1) of the 2016 Act and in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure)

Regulations 2017, as amended. More specifically, the application was made in terms of rule 109 (*Application for an eviction order in relation to a private residential tenancy*) of the HPC Rules.

2. The order sought from the Tribunal was an eviction order against the Respondent in respect of the Property.
3. The application form (original dated 15 June 2023 and revised dated 13 July 2023) was accompanied by copies of various documents, including:
  - a. the private residential tenancy agreement between the Applicant and the Respondent dated 25 February 2020 (“**Tenancy Agreement**”).
  - b. “rent book” which referred to entries from 25 February 2020 to 20 February 2023 in one column and from 25 February 2020 to 25 June 2023 in another column - it did not include a running total of arrears but stated that there were arrears of £5,437.50.
  - c. a notice to leave dated 11 May 2023 from Shiells, solicitors and estate agents, on behalf of the Applicant, addressed to the Respondent at the Property (“**Notice to Leave**”), which stated that the eviction grounds were “You are in rent arrears over three consecutive months” and “You have substantial rent arrears (equivalent to 6 months’ worth of rent)” and that there were arrears of £4,937.50 and that an application would not be submitted to the Tribunal for an eviction order before 11 June 2023.
  - d. a notice under section 11(3) of the Homelessness etc. (Scotland) Act 2003, together with the covering e-mail dated 15 June 2023 sending it to the local authority.
  - e. pre-action correspondence from Shiells, solicitors and estate agents, to the Respondent at the Property dated 18 May 2023, 25 May 2023 and 1 June 2023.
4. A notice of acceptance of the application was issued dated 9 August 2023 under rule 9 of the HPC Rules, confirming that the application paperwork had been received between 15 June 2023 and 13 July 2023.
5. The Tribunal had been provided with a certificate of intimation issued by James B. Booth (sheriff officer) of Walker Love, which certified that the paperwork from the Tribunal (including notification of the date, time and dial-in details for the case management discussion) had been served on the Respondent on 5 September 2023 by depositing them through a letterbox in the Property.
6. The possession/eviction grounds stated in the (revised) application form were: “Ground 12 & 12a – The tenant has owed rent for 3 consecutive months. The tenant is in substantial arrears. The PRT was created on 25<sup>th</sup> February 2020 and to date £4,812.50 in rent has been paid. As of 25<sup>th</sup> June 2023 the arrears stand at £5,437.50.”

7. The Respondent had not provided written representations and did not attend the CMD.
8. The Tribunal noted that the Applicant was the registered landlord of the Property.
9. The Tribunal also noted that the Applicant was the registered proprietor of the Property (title number ANG38786).
10. This decision arises out of the CMD.

### **PROCEEDINGS, NAMELY THE CMD**

11. Mr Law confirmed that the Respondent was still in occupation of the Property.
12. Mr Law confirmed that the Respondent had not made any payment of rent since 20 February 2023 and that, when he last attended the Property to carry out an inspection, the Respondent told him that she could not afford to pay the rent because she had bought a car and a car was parked outside.
13. Mr Law confirmed that the rent was £250 per month but that, as the Respondent was being paid weekly when the tenancy commenced, it was agreed that she would pay at a rate of £62.50 per week. He agreed that, calculated over a 12 month period, rent at a rate of £62.50 per week (as stated in the Tenancy Agreement) amounted to more than £250 per month (i.e. £270.83 per calendar month) but confirmed that, in practice, the Respondent had only been charged £250 per month.
14. Mr Law noted that the arrears of rent, as at the date of the CMD, were £6,187.50.
15. Mr Law noted that there had been no correspondence from the Respondent after the papers from the Tribunal had been served and that he had also, unsuccessfully, tried to contact her by phone and e-mail.
16. Mr Law noted that the e-mail address for the Respondent stated in the Tenancy Agreement was the Respondent's grandmother's e-mail address and had been included because the Respondent did not have, at that time, her own e-mail address. He noted that the Respondent had later provided her personal e-mail address and corresponded from that personal e-mail address which included, as part of it, the name of the Respondent and some numbers. E-mails from and to that personal e-mail address in relation to the Property had been included in the paperwork provided to the Tribunal. He confirmed that it was to that personal email address (which included the name of the Respondent) that the Notice to Leave had been sent.
17. During a short adjournment, Mr Law provided a copy of the e-mail sending the Notice to Leave to the Respondent at her personal e-mail address on 11 May 2023.

## **FINDING IN FACT**

18. The Tenancy Agreement stated that:

- a. The start date of the tenancy was 25 February 2020;
- b. Rent was payable at a rate of £62.50 per week (which was equivalent to £3,250 per calendar year and £270.83 per calendar month);
- c. Payments of rent were due to be paid on or before the Friday of each week;
- d. No rent deposit was payable; and
- e. Notices to be served under the Tenancy Agreement were to be served using the e-mail addresses set out in the Tenancy Agreement.

19. An amount equivalent to three months' rent (based on 13 weeks at a rate of £62.50 per week) was £812.50.

20. An amount equivalent to six months' rent (based on 26 weeks at a rate of £62.50 per week) was £1,625.

21. The Tribunal was satisfied, on the balance of probabilities, that:

- a. no payment of rent had been made since 20 February 2023;
- b. as at 11 May 2023, being the date of service of the Notice to Leave, the arrears of rent amounted to £4,937.50 (based on a monthly rent of £250 per calendar month, rather than the higher rate of £62.50 per week provided for in the Tenancy Agreement);
- c. as at 15 June 2023, being the date of the original application to the Tribunal, the arrears of rent amounted to £5,187.50 (based on a monthly rent of £250 per calendar month, rather than the higher rate of £62.50 per week provided for in the Tenancy Agreement); and
- d. as at 13 July 2023, being the date of the revised application to the Tribunal, the arrears of rent amounted to £5,437.50 (based on a monthly rent of £250 per calendar month, rather than the higher rate of £62.50 per week provided for in the Tenancy Agreement).

22. The Tribunal was satisfied, on the balance of probabilities, that both as at the date of service of the Notice to Leave and (even though this was not a requirement) as at the date of the CMD, there were more than three consecutive months in which there were arrears of rent and there were arrears of rent of significantly more than £1,625 (being the equivalent of six months' rent at £62.50 per week).

## **REASON FOR DECISION**

23. The Tribunal was satisfied, on the balance of probabilities:

- a. the Notice to Leave was valid and had been validly served, it having been accepted by the Tribunal that the e-mail address for notices had been varied

by the actings of the parties through the use of the Respondent's own personal e-mail address (rather than that of her grandmother) for correspondence relating to the Property;

- b. the pre-action requirements had been met;
- c. for three or more consecutive months the Respondent had been in arrears of rent;
- d. there was more than one period of arrears;
- e. the cumulative amount of the rent arrears exceeded the equivalent of six months' rent under the Tenancy Agreement when the Notice to Leave was given to the Respondent;
- f. the delay in payment of the rent was not as a result of a delay or failure in the payment of a relevant benefit; and
- g. it was reasonable to grant an eviction order in the circumstances of this case. This was on the basis that:
  - i. There had continuously been arrears (of some amount) for over 21 months prior to the CMD.
  - ii. The Respondent was understood to be in employment and not in receipt of benefits.
  - iii. There had been no payment made since 20 February 2023, a period of over 7 months prior to the CMD.
  - iv. The Applicant had a mortgage of the Property and the non-payment of rent was causing him financial difficulties, particularly as he was a self-employed fishmonger and his income had been badly hit as a result of difficulties in the hospitality sector.
  - v. There were no dependents living with the Respondent.
  - vi. The Respondent had made a choice to buy a car, rather than pay rent.
  - vii. The Respondent had failed to engage in any way with the Tribunal's process and had not provided any submissions.
  - viii. It would not be in the interests of either party for the rent arrears to continue to increase.

24. Accordingly, the Tribunal found that both ground 12 (rent arrears) and ground 12A (substantial rent arrears) of schedule 3 to the 2016 Act applied. Given that the rent

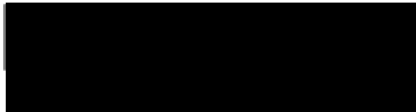
arrears were so significant, in choosing one ground under which to grant an eviction order, the Tribunal determined that the more appropriate ground was ground 12A.

## **DECISION**

25. The Tribunal granted the application under section 51(1) of the 2016 Act for an eviction order on the basis of ground 12A (substantial rent arrears).

### **Right of Appeal**

**In terms of Section 46 of the Tribunals (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.**



*12 October 2023*

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**Chair**

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**Date**