



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)**

**Chamber Ref: FTS/HPC/EV/23/2037**

**Property at 10 Bongate Gardens, Jedburgh, TD8 6DP (“the Property”)**

**Parties:**

**Mr Michael Juska, 17 Sydney Terrace, Edinburgh, EH7 6SR (“the Applicant”)**

**Ms Alisha Sinclair, 10 Bongate Gardens, Jedburgh, TD8 6DP (“the Respondent”)**

**Tribunal Members:**

**Josephine Bonnar (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 the application for an eviction order should be granted.**

**Background**

- 1. The Applicant seeks an eviction order in terms of Section 51 of the 2016 Act. A tenancy agreement, Notice to Leave, Section 11 Notice and rent statement were lodged in support of the application.**
- 2. A copy of the application was served on the Respondent by Sheriff Officer. Both parties were advised that a case management discussion (“CMD”) would take place by telephone conference call on 21 September 2023 at 2pm and that they were required to participate. .**
- 3. The CMD took place on 21 September 2023. The Applicant was represented by Ms Grierson. The Respondent did not participate and was not represented.**

4. Ms Grierson told the Tribunal that the Respondent was still living in the property but there had been no recent contact with her. There had been no payments to the rent account since July and the arrears had increased to £2511.61.
5. The Tribunal noted that the Applicant had not submitted an updated rent statement prior to the CMD. In addition, the rent statement lodged with the application was unclear. One page indicated that the sum due on 15 May 2023 was £463.86. Another page of the document stated £1149.23. The latter also showed a balance carried forward of £855 on 3 April 2023. Ms Grierson told the Tribunal that the Applicant's current agent had taken over the previous company. There had been a changeover between the two companies and the sum carried forward was probably the sum outstanding at the date of the changeover. In response to questions from the Tribunal, Ms Grierson stated that letters had been issued to the Respondent in compliance with the Rent Arrears Pre Action Protocol. She confirmed that copies of these letters could be lodged.
6. The Tribunal determined that a further CMD would be arranged and issued a direction for further information and documents.
7. In response to the direction the Applicant lodged a bundle of documents which included two rent statements, a number of emails to the Respondent in compliance with the Pre Action Protocol, some emails from the Respondent and emails from the DWP indicating that applications for direct payments from Universal credit to the rent account had been refused.
8. The parties were notified that a further CMD would take place by telephone conference call on 8 December 2023 at 10am. The Applicant was represented by Ms Paterson. The Respondent did not participate and was not represented.

## **The CMD**

9. Ms Paterson told the Tribunal that the Respondent continues to reside at the property. The letting agents have tried to meet with her to discuss her rent arrears but she always cancels the meetings. The last payment made to the rent account was £400 in July 2023. She recently telephoned to report that the boiler was not working. During the call she said that she would make a payment of £500 on 1 December but did not do so. She also stated that she is 23 weeks pregnant, is still working and has two young children living at the property with her. The arrears have increased to £3648.62.
10. In response to questions from the Tribunal Ms Paterson confirmed that they have made a number of attempts to obtain payments direct from Universal Credit, but these were declined. They do not know if she receives any benefits or how many hours she works. The two children at the property are young and understood to be at primary school. The Respondent has not advised them if

she has approached the Local Authority about housing. The Applicant has 4 rental properties, all managed by her agency. Ms Paterson thinks that he will re-let the property if he recovers possession of same, although this has not been discussed.

### **Findings in Fact**

11. The Applicant is the owner and landlord of the property.
12. The Respondent is the tenant of the property in terms of a private residential tenancy agreement.
13. The Respondent is due to pay rent at the rate of £97.91 per week.
14. The Respondent has been in arrears of rent since January 2020 and has made no payments to the rent account since 4 July 2023.
15. The Respondent currently owes the sum of £3648.62 in unpaid rent.
16. The Applicant served a Notice to leave on the Respondent on 18 May 2023.
17. The Applicant has issued information to the Respondent in compliance with the Rent Arrears Pre action Protocol.
18. The Applicant has made extensive efforts to engage with the Respondent regarding the arrears.
19. The Respondent has made several offers of payments but has not adhered to any payment arrangements.
20. The Respondent resides at the property with two children.
21. The Respondent is in employment.
22. The Applicant owns 3 other rental properties.

### **Reasons for Decision**

23. The application was submitted with a Notice to Leave dated 17 May 2023, together with a Sheriff Officer certificate of service which establishes that the Notice was served on the Respondent on 18 May 2023. The Notice states that an application to the Tribunal is to be made on ground 12, rent arrears over three consecutive months. Part 4 of the notice indicates that the earliest date that an application to the Tribunal can be made is 16 June 2023.
24. The application to the Tribunal was made after expiry of the notice period. The Tribunal is satisfied that the Applicant has complied with Section 52(3), 54 and

62 of the 2016 Act. The Applicant also submitted a copy of the Section 11 Notice which was sent to the Local Authority. The Tribunal is therefore satisfied that the Applicant has complied with Section 56 of the 2016 Act.

25. Section 51(1) of the 2016 Act states, “The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.” Ground 12 of Schedule 3 (as amended by the Coronavirus (Recovery and Reform (Scotland) Act 2022 states “(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. (3) The First-tier Tribunal may find that the ground named in 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.”
26. Sub-Paragraph (4) states, “In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider - (a) whether the tenant’s being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, and (b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Minister in regulations.” Relevant benefits are defined in sub-paragraph (5) and include housing benefit and universal credit. The Pre Action-Requirements Regulations include the provision of clear information relating to the terms of the tenancy agreement, the level of the arrears, the tenant’s rights in relation to eviction proceedings and how the tenant can access information and advice.
27. From the documents submitted and the information provided at the CMD, the Tribunal is satisfied that the Respondent currently owes the sum of £3648.62 and that she has been in arrears of rent for three or more consecutive months, both at the date of service of the Notice to leave and the CMD.
28. The Tribunal proceeded to consider whether it would be reasonable to grant the order and noted the following: -
  - (a) The Tribunal is satisfied that the Applicant has complied with the Rent Arrears Pre-Action Protocol. The Applicant submitted a number of emails to the Respondent which provided all information required in terms of the protocol. In addition, the Applicant’s agent has attempted to meet with the Respondent to discuss the arrears on many occasions.
  - (b) The Respondent responded to some emails and made repayment proposals but did not adhere to these. She also stated in an email that she is in employment locally and that her 2 children attend a local school.
  - (c) The Tribunal is also satisfied that there is no evidence that the arrears are attributable to a delay or failure in the payment of a relevant benefit. The Respondent did not participate in the CMD or provide any information regarding her circumstances. The Applicant was only able to advise the Tribunal that the Respondent has stated that she is employment. This is

understood to be accurate information because various attempts have been made to obtain payments direct from the DWP which have been unsuccessful.

- (d) The arrears are substantial and there have been no payments made to the rent account since July 2023. Until April 2023, payments were made by Housing benefit every 4 weeks. These payments stopped when the Respondent started work. Since then, she has made only one payment of £400.
- (e) The Respondent recently told the letting agent that she is expecting another child. However, they have been unable to verify that information.
- (f) The application is affected by the Cost of Living Act 2022. This means that the Respondent has almost 4 months to obtain alternative accommodation.

29. The Tribunal concludes that the Applicant has complied with the requirements of the 2016 Act and that the eviction ground has been established. For the reasons outlined in paragraph 26, the Tribunal is also satisfied that it would be reasonable to grant the order for eviction.

### **Decision**

30. The Tribunal determines that an eviction order should be granted 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.**



**Josephine Bonnar, Legal Member**

**8 December 2023**