

**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/23/3903**

**Re: Property at 39 Philips Wynd, Hamilton, ML3 8PA (“the Property”)**

**Parties:**

**Carolann Fleming, 51 Ocein Drive, Jackton, G75 8RJ (“the Applicant”)**

**Jill Wilson, Mr Alan Lawson, 39 Philips Wynd, Hamilton, ML3 8PA (“the Respondents”)**

**Tribunal Members:**

**Joel Conn (Legal Member) and Helen Barclay (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

**Background**

1. This is an application by the Applicant for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”). The PRT in question was by the Applicant to the Respondents commencing on 8 February 2020.
2. The application was dated 4 November 2023 and lodged with the Tribunal on 5 November 2023, with an amended application and further supporting documents lodged on 24 November 2023. This made the application subject to the *Cost of Living (Tenant Protection) (Scotland) Act 2022* though that Act has now expired. As eviction is sought under Ground 12A the saving provisions for 2022 Act (under regulation 3 of *The Cost of Living (Tenant Protection) (Scotland) Act 2022 (Saving Provisions) Regulations 2024*) allow us still to consider that ground for eviction, though otherwise no longer in force. There

are no additional material requirements under that Act in regard to how Ground 12A operates.

3. The application relied upon a Notice to Leave dated 4 October 2023 in terms of section 50 of the *Private Housing (Tenancies) (Scotland) Act 2016*, intimated upon the Respondents by email to the email addresses within the Tenancy Agreement on the same date. The Notice relied upon Ground 12A of Schedule 3 Part 1 of the 2016 Act, being that “the tenant has substantial rent arrears” and stating that arrears to 4 October 2023 were £6,600. A rent statement was said to have been sent with the Notice and we were provided with the statement said to have been sent (though we did not find the layout of the document clear, so it was not obvious how it was supposed to be read so as to evidence that total). The rent stated in the Tenancy Agreement lodged was £600 a month, meaning the arrears of £6,600 as at the date of the Notice to Leave were eleven months of arrears. The Notice intimated that an application to the Tribunal would not be made before 4 November 2023.
4. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon South Lanarkshire Council on 27 October 2023 was provided with the application. There was further evidence of the Applicant (via her letting agent, Chattelle Estates) providing pre-action protocol information in standard form to the Respondents on 18 August 2023 and in a further abbreviated form on 25 August 2023 (both by email).

### **The Hearing**

5. The matter called for a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 2 April 2024 at 10:00. We were addressed by Graeme McDonald, director, Chattelle Estates, for the Applicant. There was no appearance from the Respondents.
6. We were informed by the clerk that no contact had been received from the Respondents (nor on their behalf) with the Tribunal. The Applicant’s agent stated that there had been no contact from the Respondents since an email from the first Respondent on 13 February 2024 where she referred to seeking an update from Money Matters and from the local authority. No further contact had been received. In regard to material communication from the Respondent on the arrears, there had been contact on 31 July 2023 when the first Respondent emailed to say that the rent arrears would be caught up on “when I have funds” and that she would be in touch. The Applicant’s agent identified the last material contact as having occurred on 29 August 2023, when the first Respondent emailed, referred to having contacted Money Matters for advice, and offered to start payments of £800/month from September 2023 (when she said the Respondents were next to be paid). No payments had then been made. The Applicant’s agent believed that the Respondents remained in occupation of the Property.

7. We considered that the Respondents had received clear intimation of the CMD from Sheriff Officers. Having not commenced the CMD until around 10:05, we were satisfied to consider the application in the Respondents' absence. In any case, no attempt was made by the Respondents to dial in late to the CMD.
8. At the CMD, the Applicant's agent confirmed that the application for eviction was still insisted upon. The application papers contained a rent statement covering arrears to 30 November 2023. (This statement was in materially clearer format to the state sent with the Notice to Leave, though we did note some inconsequential errors in this notice which did not aid comprehension.) This second rent statement showed the last payment of rent was on 30 May 2023, which at that time brought arrears down to £3,600 but no rent was then paid on 1 June 2023 or since. The arrears shown on the statement (for the period up to 30 November 2023) were £7,200 and the Applicant's agent said no rent had been received since. This meant there were a further five months of unpaid rent and arrears to the date of the CMD were £10,200, covering the period to 30 April 2024.
9. The Applicant's agent said that there had never been any rent payments through benefits, nor reference to any attempt to obtain benefits. He said that recent contact had been made with the local authority who confirmed no benefit application was pending, but that there was a pending application for rehousing. The Applicant's agent said that the local authority had disclosed that at least one of the Respondents remained in employment.
10. The Applicant's agent provided the following further information relevant to a consideration of reasonableness:
  - a. The Property was a two-bedroom flat.
  - b. The Respondents were believed to reside there with no children nor dependents (though the Applicant's agent accepted that this situation may have altered since last there was material contact).
  - c. The Property was not adapted for the Respondents' use nor was it especially suitable for their needs.
  - d. Money Matters, a debt advice agency, had contacted the Applicant's agent's office by telephone around December 2023 seeking information on the arrears and asking for the last date of payment. When the Applicant's agent responded, Money Matters said that they no longer acted for the Respondents.
  - e. Around December 2023 the Applicant's agent had requested a property inspection and provided a proposed date. The Respondents responded to say that the date was not suitable and that they would return with an alternative date, but this had not occurred.
  - f. During the period of the Tenancy, there had been interruptions in payments around the start of the pandemic and when the Respondents had made contact to say that there had been changes in employment. The Applicant had sought to work with the Respondents to provide them time to catch up on the arrears.
  - g. The Respondents were believed to be employed in some capacity related to deliveries. There had been no reference by the Respondents to any

changes of employment since prior to the proposal of 28 August 2023. The Applicant thus did not know the reason for the complete lack of payment since 30 May 2023.

11. No motion was made for expenses but the Applicant's agent reserved the Applicant's position in regard to seeking any expenses of debt recovery if a subsequent application was raised for rent arrears and other sums due under the Tenancy.

### **Findings in Fact**

12. On or about 6 February 2020 the Applicant let the Property as a Private Residential Tenancy to the Respondents under a lease with a commencement date of 8 February 2020 ("the Tenancy").
13. In terms of clause 8 of the Tenancy Agreement, the Respondents required to pay rent of £600 a month in advance on the 1<sup>st</sup> day of each month.
14. On 4 October 2023, the Applicant's agent drafted a Notice to Leave in correct form addressed to the Respondents, providing the Respondents with notice, amongst other matters, that they were in rent arrears equivalent to a period of eleven months and detailing arrears said to be due at that date of £6,600, and that eviction was sought in terms of Ground 12A of Schedule 3 Part 1 of the 2016 Act.
15. The Notice to Leave provided the Respondents with notice that no application would be raised before the Tribunal prior to 4 November 2023.
16. The Applicant's agent served a copy of the Notice to Leave on the Respondents on 4 October 2023 by email, in accordance with clause 4 of the Tenancy Agreement.
17. The Applicant raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 12A of Schedule 3 Part 1 of the 2016 Act.
18. As at the date of the Notice to Leave, rent arrears were equivalent to eleven months' of rent arrears arising from irregular payments through a period from 1 April 2020 until 30 May 2023 (resulting in arrears of £3,600) and then entirely missed rental payments from 1 June to 1 October 2023 (resulting in additional arrears of £3,000).
19. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon South Lanarkshire Council by the Applicant's agent on 27 October 2023.
20. The Applicant's agent provided the Respondents with pre-action protocol information by way of email on 18 August and 25 August 2023.

21. As of 2 April 2024, the Respondent remained in arrears of rent in the amount of £10,200 which is equivalent of seventeen months of rent.
22. The Respondents do not claim to have paid any amount of the arrears of £10,200 remaining as at 2 April 2024.
23. The sum of arrears remaining as of 2 April 2024 is neither wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, other than any referable to an act or omission of the Respondents.
24. On 22 February 2024, the Tribunal intimated to each of the Respondents the date and time of the CMD of 2 April 2024 by Sheriff Officer.
25. The Respondents have no children nor dependents residing with them.
26. The Property is not specially adapted for the use of the Respondents.
27. The Property or its location is not especially suitable for the Respondents.
28. The Respondents made a proposal for payment of rent on 28 August 2023 but then failed to make payments.
29. The Respondents have made no payment of rent since 30 May 2023 and have not communicated with the Applicant nor her agent regarding the reason for non-payment.
30. The Respondents have failed to cooperate with the Applicant's agent in regard to a request for access to the Property for an inspection, made by the agent in December 2023.

### **Reasons for Decision**

31. The application was in terms of rule 109, being an order for eviction from a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been correctly drafted and served upon the Respondents.
32. Ground 12A of the said Schedule applies if:
  - (1) *It is an eviction ground that the tenant has substantial rent arrears.*
  - (2) *The First-tier Tribunal may find that the ground named by subparagraph (1) applies if—*
    - (a) *the tenant has accrued rent arrears under the tenancy in respect of one or more periods,*
    - (b) *the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy when notice to leave is given to*

*the tenant on this ground in accordance with section 52(3), and*

*(c) the Tribunal is satisfied that it is reasonable to issue an eviction order.*

*(3) In deciding under sub-paragraph (2) whether it is reasonable to issue an eviction order, the Tribunal is to consider—*

*(a) whether the tenant being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit,*

*(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers under paragraph 12(4)(b) (and continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022).*

*(4) For the purpose of this paragraph—*

*(a) references to a relevant benefit are to—*

*(i) a rent allowance or rent rebate under the Housing Benefit Regulations 2006 (S.I. 2006/213),*

*(ii) a payment on account awarded under regulation 93 of those Regulations,*

*(iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,*

*(iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,*

*(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.*

33. The arrears information provided at the CMD clearly showed that Ground 12A was satisfied in regard to the length of arrears and amount outstanding. The arrears were substantial, were not addressed by the Respondents, and no communication was made as to a dispute as to the arrears amount. Further there was no meaningful communication as to the reason for the arrears, and a proposal made to pay rent and reduce arrears had been made but then not honoured. Further, we were satisfied that there is nothing to suggest that Respondents' failure to pay is related to an issue with benefits. We were thus satisfied that Ground 12A was made out.

34. We require, in terms of the Act as amended, to consider the reasonableness of the application even in regard to such substantial arrears. We were satisfied that it was reasonable for the Applicant to seek eviction given the amount, the duration of the arrears, and the lack of communication on the arrears. The lack of communication in regard to access for an inspection, the involvement of a money adviser who was not then properly instructed, and the broken payment proposal of August 2023, are further factors that we think are appropriate to consider when assessing reasonableness. The arrears are substantial and

there is the absence of any material engagement by the Respondents. We held that it is reasonable to evict in all these circumstances. We were not minded to grant any additional suspension of the order to evict given the lack of information from the Respondents.

35. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time under Ground 12A.

### **Decision**

36. In all the circumstances, we grant an order against the Respondents for eviction from the Property under section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* further to ground 12A of Schedule 3 of that Act.

### **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.**

J. Conn

**Legal Member/Chair**

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2 April 2024  
**Date**