



**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/24/2531**

**Re: Property at Flat 2/2, 43 Royal Street, Gourock, PA19 1PP (“the Property”)**

**Parties:**

**Gourock Property Company LTD, 18 Nicolson Street, Greenock, PA15 1JV (“the Applicant”)**

**Mr Ross Mulholland, Flat 2/2, 43 Royal Street, Gourock, PA19 1PP (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Elizabeth Williams (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order.**

**Background**

1. By application to the Tribunal dated 4 June 2024 the Applicant sought an eviction order against the Respondent in respect of the property under Rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”) and section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant relied upon ground 12 of Schedule 3 of the 2016 Act. In support of the application the Applicant provided the following documentation:-
  - (i) Private residential tenancy agreement between the parties dated 24 July 2023;
  - (ii) Notice to Leave dated 16 April 2024 stating that proceedings will not be raised any earlier than 17 May 2024 together with proof of delivery by recorded delivery mail to the Respondent;

- (iii) Section 11 notice to Inverclyde Council together with proof of sending by email;
  - (iv) Rent Statement; and
  - (v) Copy letter from Patton and Prentice Solicitors to the Respondent dated 31 May 2024 in compliance with the rent arrears pre-action protocol.
2. By Notice of Acceptance of Application a Legal Member of the Tribunal with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. The application was therefore referred to a Case Management Discussion (“CMD”) on 16 December 2024, to take place by teleconference. Notification was sent to the parties in accordance with Rule 17(2) of the Rules of Procedure.
  3. Said notification together with a copy of the application paperwork was served upon the Respondent by Sheriff Officers on 7 November 2024.
  4. Both parties were invited to make written representations in advance of the CMD. On 6 November 2024 and 13 December 2024 the Tribunal received emails from the Applicant’s representative, Patton and Prentice Solicitors, with updated rent statements. No written representations were received from the Respondent.

### **Case Management Discussion**

5. The CMD took place on 16 December 2024 by teleconference. Mr Ross O’Donnell of Patton and Prentice Solicitors represented the Applicant. The Respondent did not attend. The Tribunal noted that he had received notification of the CMD in accordance with Rule 17(2) of the Rules and had been given the opportunity to submit written representations and participate in the CMD. The Tribunal therefore determined to proceed with the CMD in his absence.
6. The Tribunal asked Mr O’Donnell for his submissions on the application. For the avoidance of doubt the following is a summary of what was discussed and does not constitute a verbatim account of the CMD.
7. Mr O’Donnell advised that the Applicant sought an order for eviction. The application pertained to a private residential tenancy that commenced on 28 July 2023. Mr O’Donnell referred to the tenancy agreement that had been lodged with the application which stated a contractual rent of £350 per month. There had been issues with the payment of rent from the start of the tenancy. Despite the commencement date of 28 July 2023, no rent was paid by the Respondent until 7 October 2023. The Respondent then made two additional payments to the rent account, being a payment of £550 on 16<sup>th</sup> December 2023 and a payment of £600 on 10<sup>th</sup> February 2024. The arrears had since rapidly increased in the absence of any further payments.
8. In April 2024 a notice to leave had been sent to the Respondent by recorded delivery mail. At that point the arrears were £1300. The notice to leave was

accompanied by a covering letter urging the Respondent to make contact and enter into a repayment arrangement. Despite this no further payments were received. The notice to leave became “live” on 17 May 2024. On 31<sup>st</sup> May 2024 the Applicant’s representative sent the Respondent a letter with information required under the rent arrears pre-action protocol. No reply was received from the Respondent. The application was therefore submitted to the Tribunal on 3 June 2024. At that point the arrears stood at £2000.

9. Mr O’Donnell referred to the rent statement that had been lodged in advance of the CMD, which noted the arrears now stood at £4100. Nothing had been paid since 10 February 2024 therefore ten consecutive months had now passed with no rent being paid. The Respondent should have paid £5600 over the course of the tenancy to date. He had only paid £1500. The Applicant had made several attempts to contact the Respondent by way of telephone and had hand delivered letters to the property. The Respondent was not engaging in any way. He appeared to have buried his head in the sand.
10. In terms of the Respondent’s circumstances, Mr O’Donnell explained that he was 33 years old and resided alone. He did have a child but the child resided with their mother and the Respondent had no contact with them. The Respondent’s current employment circumstances were unknown. He was believed to have previously worked as a labourer on a casual basis, and as an employee of IBM. Neighbours had advised that he left the property early in the morning and returned late in the evening. There was no suggestion of any housing benefit entitlement.
11. The Tribunal adjourned to deliberate, during which time Mr O’Donnell left the call, before resuming the CMD and confirming its decision.

### **Relevant Legislation**

12. The legislation the Tribunal must apply in its determination of the application are the following provisions of the Private Housing Tenancies (Scotland) Act 2016:-

#### ***1 - Meaning of private residential tenancy***

*1) A tenancy is a private residential tenancy where—*

*(a) the tenancy is one under which a property is let to an individual (“the tenant”) as a separate dwelling,*

*(b) the tenant occupies the property (or any part of it) as the tenant’s only or principal home, and*

*(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.*

*(2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.*

## **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.*

## **52 Applications for eviction orders and consideration of them**

*(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.*

*(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—*

*(a) subsection (3), or*

*(b) any of sections 54 to 56 (but see subsection (4)).*

*(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.*

*(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.*

*(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—*

*(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or*

*(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.*

## **54 Restriction on applying during the notice period**

*(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.*

*(2) The relevant period in relation to a notice to leave—*

*(a) begins on the day the tenant receives the notice to leave from the landlord, and*

*(b) in the case of a notice served before 3 October 2020 expires on the day falling—*

*(i) 28 days after it begins if subsection (3) applies,*

*(ii) three months after it begins if subsection (3A) applies,*

*(iii) six months after it begins if neither subsection (3) nor (3A) applies.*

*(c) in the case of a notice served on or after 3 October 2020, expires on the day falling—*

*(i) 28 days after it begins if subsection (3B) applies,*

*(ii) three months after it begins if subsection (3C) applies,*

*(iii) six months after it begins if neither subsection (3B) nor (3C) applies*

*(3) This subsection applies if the only eviction ground stated in the notice to leave is that the tenant is not occupying the let property as the tenant's home. [ground 10]*

*(3A) This subsection applies if—*

*(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—*

*(i) that the landlord intends to live in the let property, [ground 4]*

*(ii) that a member of the landlord's family intends to live in the let property, [ground 5]*

*(iii) that the tenant has a relevant conviction, [ground 13]*

*(iv) that the tenant has engaged in relevant anti-social behaviour, [ground 14]*

*(v) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour, [ground 15]*

*(vi) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]*

*(vii) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, [ground 17] or*

*(b) the only eviction grounds stated in the notice to leave are—*

*(i) the eviction ground mentioned in subsection (3), and*

*(ii) an eviction ground, or grounds, mentioned in paragraph (a)*

*(3B) This subsection applies if the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—*

*(a) that the tenant is not occupying the let property as the tenant's home, [ground 10]*

*(b) that the tenant has a relevant conviction, [ground 13]*

*(c) that the tenant has engaged in relevant anti-social behaviour, or [ground 14]*

*(d) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour. [ground 15]*

*(3C) This subsection applies if—*

*(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—*

*(i) that the landlord intends to live in the let property, [ground 4]*

*(ii) that a member of the landlord's family intends to live in the let property, [ground 5]*

*(iii) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]*

*(iv) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or [ground 17]*

*(b) the only eviction grounds stated in the notice to leave are—*

*(i) an eviction ground, or grounds, mentioned in subsection (3B), and*

*(ii) an eviction ground, or grounds, mentioned in paragraph (a).*

## **62 Meaning of notice to leave and stated eviction ground**

*(1) References in this Part to a notice to leave are to a notice which—*

*(a) is in writing,*

*(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,*

*(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and*

*(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.*

*(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.*

*(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).*

*(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.*

*(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.*

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

*(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 by subparagraph (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.*

*(4) 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 Ministers in regulations.*

### **Findings in Fact**

13. The Applicant let the property to the Respondents under a tenancy agreement dated 17 May 2023.
14. The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
15. In terms of Clause 8 of the said tenancy agreement the Respondent undertook to make payment of rent at the rate of £350 per calendar month.
16. On 16 April 2024 the Applicant delivered a notice to leave to the Respondent by recorded delivery mail.
17. The Notice to Leave included ground 12 of Schedule 3 of the 2016 Act and confirmed that proceedings would not be raised any earlier than 17 May 2024.
18. The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
19. As at the date of service of the Notice to Leave arrears in the sum of £1300 were outstanding.
20. As at the date of this decision arrears in the sum of £4100 are outstanding.
21. The last payment to the rent account was a payment of £600 on 10 February 2024.

22. The Applicant has offered to enter into payment plans with the Respondent and has directed him to agencies for advice and support. The Applicant has provided the Respondent with the information required under the rent arrears pre-action protocol.
23. The Respondent has not engaged with the Applicant regarding payment of the rent and arrears.
24. The Respondent is 33 years old and resides alone. The Respondent has a child who does not live with him.
25. The Respondent is believed to be in employment.
26. The arrears are not due to any failure or delay in the payment of a relevant benefit.

### **Reasons for Decision**

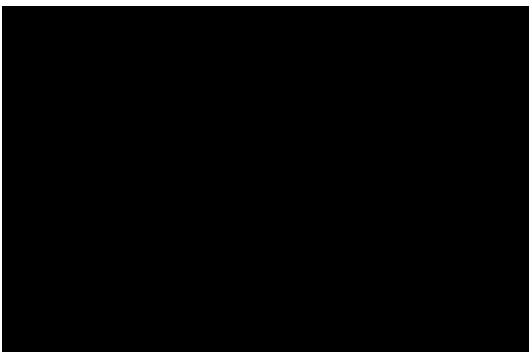
27. The Tribunal determined that it had sufficient information upon which to make a decision at the CMD and that to do so would not be prejudicial to the parties. The Respondent had made no written representations regarding the application and had not participated in the CMD. Accordingly the Tribunal did not identify any facts in dispute, nor any issues to be resolved, that would require a hearing to be fixed. The Tribunal was satisfied that it could make relevant findings in fact based on the information provided by the Applicant.
28. The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicant's intention to rely upon ground 12 of Schedule 3 of the 2016 Act. The Tribunal was satisfied that the Notice to Leave complied with the provisions of sections 54 and 62 of the 2016 Act and therefore that application could be entertained.
29. The Tribunal therefore considered whether ground 12 of Schedule 3 of the 2016 Act had been met.
30. The Tribunal accepted, based on the Notice to Leave submitted by the Applicant, that rent arrears of £1300 were outstanding when the notice to leave was sent to the Respondents. The Tribunal also accepted, based on the updated rent statement produced by the Applicant, that the sum had increased to £4100 as at the date of the CMD. The Respondent had not put forward any representations to contradict the evidence from the Applicant in this regard. The Tribunal was therefore satisfied that the Respondent had been in arrears for three or more consecutive months, both at the date of service of the notice to leave and as at the date of the CMD.
31. The Tribunal then considered the reasonableness of making an eviction order, which required the Tribunal to identify those factors relevant to reasonableness and determine what weight to apply to these.
32. The Tribunal took into account the fact that the arrears had rapidly increased and the Respondent had repeatedly failed to meet the rent due, with no reasonable

explanation as to why this was the case. The arrears had more than tripled since the notice to leave was served, with no rent having been paid for ten consecutive months. The Tribunal applied significant weight to these as relevant factors. The Tribunal was further satisfied that the arrears were not due to any failure or delay in the payment of a relevant benefit, on the basis that no evidence had been produced by the Respondent to suggest this was the case, and he had disclosed no information to the Applicant regarding any entitlement to benefits.

33. The Tribunal considered the Applicant's compliance with the rent arrears pre-action protocol and was satisfied that the Applicant through his representative had provided the Respondent with the information required under the protocol. The Applicant had produced a letter that had been sent to the Respondent by Patton and Prentice Solicitors to evidence this.
34. The Tribunal also had regard to the Respondent's circumstances, noting that he was a single male who resided alone. He had not disclosed any health issues or vulnerabilities, and was believed to be in employment. Whilst the overall impact of eviction on tenants is always a cause for concern, the Tribunal was aware the local authority would have an obligation to provide the Respondent with accommodation were an eviction order granted, at the very least on an emergency basis.
35. Accordingly, taking the above factors into account as relevant to the assessment of reasonableness, the Tribunal ultimately concluded that the balance weighed in favour of making an eviction order and ground 12 had been met.
36. The decision of the Tribunal was unanimous.

### **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.**



**16 December 2024**

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Date