



**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/19/0654**

**Re: Property at 180 Califer Road, Forres, Moray, IV36 1JD (“the Property”)**

**Parties:**

**Cluny Properties, 91 High Street, Forres, Moray, IV36 1AA (“the Applicant”)**

**Mr Mark Thomson, 180 Califer Road, Forres, Moray, IV36 1JD (“the Respondent”)**

**Tribunal Members:**

**Melanie Barbour (Legal Member)**

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

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

Background

1. An application had been received under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession under a private residential tenancy by the Applicant against the Respondents for the Property.
2. The application contained:-
  - a copy of the tenancy agreement,
  - a copy of the notice to leave with evidence of service
  - a copy section 11 Notice
  - a copy of the rent statement
3. The Applicants’ representative Ms Garner and Ms Bishop from Cluny Properties, appeared on behalf of the Applicant. There was no appearance by the Respondent.

4. Notice of the Hearing and the application had been served on the Respondent by sheriff officers on 18 April 2019. As I was satisfied that the Respondent had been served with notice of today's hearing I was therefore prepared to proceed with today's hearing in his absence.

#### Hearing

5. The Applicant's representative referred me to the papers which had been lodged in support of the application, including the tenancy agreement, the notice to leave, and rent account statement. I noted that the notice to leave had been served by recorded delivery mail and had been signed on 24 January 2019.
6. She advised that the notice to leave sought eviction under ground 12, rent arrears for a period of more than 3 months.
7. She advised that the current level of arrears were £1,107.88. She advised that when the notice to leave was served on the Respondent the arrears were £1350; and when the application was made to the Tribunal the arrears were £627.53. She advised that there had been arrears on the rent account for a period exceeding three consecutive months.
8. She advised that the respondent had paid the first month's rent, however thereafter rent had been paid by either his employer or universal credit thereafter. She understood that he was no longer works. She advised that they had received two payments of universal credit of £397.84 on 16 April and £397.84 on 16 May. She was not aware if there were any issues with outstanding benefit payments. She advised that they had tried to contact the Respondent to see if they could support him with his rent arrears, however they had never been able to contact him. She advised that they had also contacted the local council's housing options service and they had also tried to contact the Respondent, but again they had been unable to make contact with him. Given the arrears and failure by the Respondent to speak to them or the council about this matter they were left with no option but to seek an order for eviction.
9. The Applicant's representative advised therefore that the Respondent was in rent arrears for a period of more than three consecutive months, and those rent arrears totalled more than one months' rent, and she was not aware of any outstanding benefits issues causing the arrears.
10. She advised therefore that the Applicant was seeking an order for recovery of the possession of the property under the rent arrears ground.

#### Findings in Fact

11. The Tribunal found the following facts established:-

12. There existed a private residential tenancy between the Applicant and the Respondent. It had commenced on 14 September 2018. The tenancy agreement had been signed by the parties on 14 September 2018.
13. The tenancy was for the property 180 Califer Road, Forres, IV36 1JD.
14. The tenant is Mark Thomson.
15. The landlord is Cluny Properties.
16. Clause 8 of the Tenancy Agreement provides that the rent for the property is £450 per calendar month thereafter. It is payable in advance and due on the 14th of each month.
17. There was a notice to leave addressed to the Respondent. It contained information for the Respondents as to why an eviction order was sought. It was dated 23 January 2019. It confirmed that proceedings would not be brought until 25 February 2019. It had been sent to the Respondents by recorded delivery mail and had been signed on 24 January 2019.
18. The ground in the notice to leave was ground 12 "you are in rent arrears over three consecutive months".
19. That rent arrears had been outstanding since 14 October 2018.
20. There were rent arrears outstanding at the date of the application, namely £627.53, which totalled at least one month's rental due under the tenancy.
21. There appeared to be rent arrears outstanding at today's date totalling £1107.88, at least one month's rental due under the tenancy.
22. That the arrears did not appear to have been caused by any delay or failure in the payment of a relevant benefit.
23. The section 11 notice had been sent to the local authority providing them with notice of the intention to raise recovery proceedings.

#### Reasons for Decision

24. Section 51 of the 2016 Act provides the Tribunal with a power to grant an order for eviction for a private residential tenancy, if it found that one of the grounds in schedule 3 of the Act applies.
25. The ground which the Applicant seeks eviction under is ground 12 rent arrears.
26. Sub paragraph 1 states that "It is an eviction ground that the tenant has been in rent arrears for three or month consecutive months."

27. Sub paragraph 2 provides that the Tribunal must find that the grounds named in sub-paragraph 1 applies if (a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant-(i) is in arrears of rent by an amount equal to or greater than the amount which would be payment as one month's rent under the tenancy on that day; and (ii) has been in arrears of rent ... for a continuous period, up to and including that day, of three or more consecutive months; and (b) the Tribunal is satisfied that the tenant's being in arrears is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
28. I noted that the Applicant's agents have been unable to make contact with the Respondent to try and resolve the rent arrears, and they have therefore no knowledge of there being any delay in the payment of benefits towards rent. I also noted that the Respondent is now in receipt of universal credit which is being paid into the rent account. As the Respondent did not take part in today's hearing I have no other evidence before me regarding the question of benefits for this tenant. On balance therefore, I consider that the terms of sub-paragraph 2 are met and accordingly, I find that the ground in sub paragraph 1 applies; and therefore I consider that I am required to grant an eviction order in terms of ground 12 rent arrears.

### Decision

29. The Tribunal grants an order in favour of the Applicant against the Respondents for recovery of possession of the private residential tenancy under ground 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

### **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.**

Melanie Barbour

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**Legal Member/Chair**

20. 5. 19

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**Date**