



**Amended 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**

**Chamber Ref: FTS/HPC/EV/22/1062**

**Re: Property at Flat 5, 3-5 Old Courthouse, Commerce Street, Arbroath, DD11 1NA (“the Property”)**

**Parties:**

**Sunniside Homes Ltd, India Buildings, 86 Bell Street, Dundee, DD1 1HN (“the Applicant”)**

**Mr Edward Brown, Flat 5, 3-5 Old Courthouse, Commerce Street, Arbroath, DD11 1NA (“the Respondent”)**

**Tribunal Members:**

**Ms H Forbes (Legal Member) and Ms A Moore (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted.**

**Background**

1. This is an application received in the period between 11<sup>th</sup> April and 16<sup>th</sup> May 2022 and made in terms of Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (‘the Rules’). The Applicant is the landlord of the Property, and the Respondent is the tenant, in terms of a private residential tenancy agreement that commenced on 3<sup>rd</sup> June 2020 at an agreed rent per month of £350. The Applicant is seeking an eviction order under ground 12.
2. The Applicant lodged a copy of the tenancy agreement, copy Notice to Leave dated 15<sup>th</sup> September 2021 stating that an application for an eviction order would not be submitted before 18<sup>th</sup> March 2022, with evidence of service, copy section 11 notice with evidence of service, copy correspondence to the Respondent and a rent statement showing arrears in the sum of £3534.64.
3. Service of the application and notification of a Case Management Discussion was made upon the Respondent by Sheriff Officers on 20<sup>th</sup> July 2022.

## **The Case Management Discussion**

4. A Case Management Discussion took place by telephone conference on 15<sup>th</sup> August 2022. The Applicant was represented by Ms Amy Lewis, Belvoir. The Respondent was not in attendance.
5. The Tribunal considered the terms of Rule 29. The Tribunal determined that the Respondent had been given reasonable notice of the time and date of the CMD, together with details on joining the telephone conference. The Tribunal determined that the requirements of Rule 17(2) had been satisfied and that it was appropriate to proceed with the application in the absence of the Respondent upon the representations of the Applicant and the material before the Tribunal.
6. Ms Lewis said there had been no recent communication from the Respondent. The outstanding arrears are now £4447.14. The Respondent last paid £50 in July 2022.
7. Responding to questions from the Tribunal, Ms Lewis said the Respondent is believed to live alone with no dependants. He has been in and out of work, and is believed to be in receipt of housing support, but there is no direct payment to the Applicant. Ms Lewis was not aware of any delay in the payment of a relevant benefit. The Respondent appears to be avoiding contact with the Applicant's representatives. Belvoir took over management of the Property in April 2021.
8. Responding to questions from the Tribunal considering whether the pre-action requirements as set out in The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 had been complied with, Ms Lewis referred to entries on their system showing the Respondent had been contacted on 19<sup>th</sup> May 2021 with detailed information regarding the arrears and available assistance, and a letter had been sent on 28<sup>th</sup> May 2021. The Respondent had received the required information in writing along with notification of the payment plan agreed between the parties on 10<sup>th</sup> March 2022. There had been other emails and telephone calls discussing the rent arrears, including a letter on 21<sup>st</sup> March 2022. Ms Lewis said she was not convinced that the Respondent is still living in the Property.

## **Findings in Fact and Law**

9.
  - (i) The parties entered into a private residential tenancy agreement in respect of the Property commencing on 3<sup>rd</sup> June 2020 at an agreed rent per month of £350.
  - (ii) Notice to Leave has been served upon the Respondent.
  - (iii) The Respondent has been in arrears of rent for three or more consecutive months.

- (iv) At the date of the CMD, the Respondent was in arrears of rent by an amount greater than the amount payable as one month's rent.
- (v) The Respondent's rent arrears are not due to a delay or failure in the payment of a relevant benefit.
- (vi) The pre-action requirements for private residential tenancies have been met.
- (vii) It is reasonable to grant an eviction order.

### **Reasons for Decision**

10. Ground 12 of Schedule 3 of the Act provides that it is an eviction ground if the tenant has been in rent arrears for three or more consecutive months. The Tribunal must find that this applies if (1) at the beginning of the day on which the Tribunal first considers the application for an eviction order, the tenant is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day; (2) the tenant has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months; and (3) the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
11. The Tribunal is satisfied that Ground 12 has been established.
12. The Tribunal is satisfied that the necessary Notice to Leave has been correctly issued to the Respondent in terms of the Act.
13. No evidence was provided to the Tribunal to show that the arrears were due to a delay or failure in the payment of a relevant benefit. The pre-action requirements were met, although the Tribunal would point out that it would be preferable if the representative had lodged copies of all the pre-action requirement letters and email with the application.
14. In considering whether it was reasonable to grant the eviction order, the Tribunal considered the fact that the arrears were considerable, and that a *prima facie* case in respect of reasonableness had been made out on behalf of the Applicant.
15. The Respondent was not in attendance to put forward any reasons why it would not be reasonable to grant the order, despite having been notified of the application and the CMD.
16. The Tribunal took into account the representations made regarding the circumstances of both parties. In all the circumstances, the Tribunal considered it reasonable to grant the order sought.

## **Decision**

17. An eviction order in respect of the Property is granted.

## **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.**

# H Forbes

Legal Member/Chair

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**15<sup>th</sup> August 2022**  
**Date**