



**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/19/1614**

**Re: Property at 561A South Road, Charleston, Dundee, DD2 4QB (“the Property”)**

**Parties:**

**Mrs Sarah Whyte, 49 Broadford Terrace, Broughty Ferry, Dundee, DD5 3EF (“the Applicant”)**

**Ms Caroline Lamb, 561A South Road, Charleston, Dundee, DD2 4QB (“the Respondent”)**

**Tribunal Members:**

**Helen Forbes (Legal 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 against the Respondent.**

**Background**

This is an application for an eviction order dated 19<sup>th</sup> May 2019, made under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”).

The Applicant seeks an eviction order in respect of the Property on grounds 11, 12 and 13 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”). The Applicant lodged a copy of the Private Rented Tenancy agreement which commenced on 8<sup>th</sup> October 2018, copy Notice to Leave as required under section 52(3) of the Act, and notice to the local authority as required under section 56(1) of the Act. A rent statement was also provided, showing rent arrears at £1,582 on 7<sup>th</sup> January 2019. Rent for the Property was £113 per week. The Applicant stated in the application that the Respondent had made one payment of £113 at the start of the tenancy and no other payments had been made. The Applicant referred to the

Respondent leaving the Property unsecured, and stealing white goods from the Property and selling them, and consequent charges by the Procurator Fiscal in relation to this matter.

By email dated 15<sup>th</sup> July 2019, the Applicant informed the Tribunal that she was aware of a previous Tribunal decision involving the Respondent at another address, whereby she incurred rent arrears and a payment order was made against her. She also stated that a single payment had been made to her by the Respondent and that the Respondent had asked her to drop the theft charges relating to the white goods.

Intimation of the Case Management Discussion was made upon the Respondent by Sheriff Officers on 4<sup>th</sup> July 2019. No representations were received from the Respondent.

### **The Case Management Discussion**

A Case Management Discussion ("CMD") took place on 12<sup>th</sup> August 2019 at the Dundee Carers' Centre, Seagate House, 132-134 Seagate, Dundee. The Applicant was in attendance accompanied by a Supporter, Anna Coleman. The Respondent was not in attendance. The Tribunal was satisfied that the requirements of Rule 24(1) had been complied with and notice of the CMD given, and that it was appropriate to continue with the CMD in terms of Rule 29.

The Applicant said she had received one payment of £135 from the Respondent on 28<sup>th</sup> June 2019. The Respondent had contacted her and said she would start making payment weekly of £135 and try to clear the rent arrears, No further payments have been made. The rent arrears are now £4,621. The Respondent makes intermittent contact with the Applicant and stated recently that she had replaced the white goods. The Applicant asked her to send a photograph of the new white goods but she did not receive this.

In relation to Ground 11, the Applicant said there were various breaches of the tenancy agreement as the Respondent had not only stolen the white goods, but had damaged items within the Property and had not maintained the Property in terms of the tenancy agreement. In relation to Ground 13, the Applicant said the Respondent's criminal case would be heard on 25<sup>th</sup> October 2019 and she was not aware if the Respondent had an existing criminal conviction.

Responding to questions from the Tribunal, the Applicant said the Respondent had been in receipt of Universal Credit and the Applicant received one payment of rent from Universal Credit. The Respondent then told her she had started work and there were no further payments from Universal Credit.

### **Findings in Fact**

1. The parties entered into a tenancy agreement which commenced on 8<sup>th</sup> October 2018 with a weekly rent of £113.
2. The Respondent has been in arrears of rent for three or more consecutive months.

3. At the date of the Case Management Discussion, the Respondent is in arrears of rent in the sum of £4,621, which is an amount greater than the amount payable as one month's rent.
4. The rent arrears do not appear to be due to a delay or failure in the payment of a relevant benefit.

### **Reasons for Decision**

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 ground 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.

The Tribunal is satisfied that the necessary documents were validly and correctly prepared and served in terms of the requirements of the Act. The Tribunal is satisfied that Ground 12 has been established. There was no evidence before the Tribunal to show that the arrears were due to a delay or failure in the payment of a relevant benefit. In terms of Section 51(1) of the Act, the Tribunal must issue an eviction order if it finds that one of the eviction grounds named in Schedule 3 applies.

The Tribunal made no findings in relation to Grounds 11 and 13.

### **Decision**

The Tribunal determined 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.**

H Forbes

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**Legal Member/Chair**

12th August 2019  
Date