



**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/19/2024**

**Re: Property at 153F Victoria Road, Torry, Aberdeen, AB11 9NB (“the Property”)**

**Parties:**

**Mr Gary Malcolm, 12D North Methven Street, Perth, Kinross (“the Applicant”)**

**Parkhill Properties, 81 Rosemount Place, AB25 2YE (“the Applicant’s Agent”)**

**Ms Theresa Banks, 153F Victoria Road, Torry, Aberdeen, AB11 9NB (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member)**

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

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

- 1 By application dated 1<sup>st</sup> July 2019 the Applicant applied to the Tribunal for an order for repossession against the Respondent under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). In support of the application the Applicant provided the following documentation:-
  - (i) Tenancy Agreement between the parties dated 28<sup>th</sup> September 2018;
  - (ii) Notice to Leave dated 3<sup>rd</sup> May 2019 citing ground 12 and confirming that proceedings would be raised no earlier than 3<sup>rd</sup> June 2019; and
  - (iii) Notice to Aberdeen City Council under section 11 of the Homelessness (Scotland) Act 2003;

In response to a request from the Tribunal the Applicants subsequently confirmed that the Notice to Leave had been sent recorded delivery and also hand delivered to the Respondent and provided an email from a Shelter Housing Advisor on her behalf confirming receipt. The Applicant's Agent further provided a rent statement showing arrears of £1571.23 as at 27 June 2019 and email correspondence with the Respondent regarding the outstanding arrears.

- 2 By Notice of Acceptance of Application dated 15th August 2019 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 2<sup>nd</sup> October 2019.
- 3 On 29th August 2019 the Respondent was served with a copy of the application together with notification of the date, time and location of the Case Management Discussion by Sheriff Officers.

#### **Case Management Discussion**

- 5 The Case Management Discussion took place at the Credo Centre Aberdeen on 2<sup>nd</sup> October 2019. Emma Gray appeared on behalf of the Applicant's Agent. The Respondent was not present. The Tribunal was satisfied that the Respondent had received proper notification of the Case Management Discussion and therefore determined to proceed in her absence.
- 6 Ms Gray confirmed that the arrears had increased to £2741.23. The last payment received was on 15<sup>th</sup> February 2019 for £71.23 which was a payment received from Aberdeen City Council. There had been no explanation as to why the payments from the Council had stopped. Ms Gray confirmed that the Respondent had been employed and had lost her job. The Applicant's Agent had tried to engage with her and had sought assistance from a caseworker from the Cyrenians. They had tried to come up with payment plan and were supporting her with paperwork however no additional payments had been forthcoming. There was no evidence to suggest any further payments of benefit would be due.
- 7 Ms Gray then explained that her office had received a call from the Council in the last week requesting clarification on the Respondent's position regarding the tenancy. The Respondent had advised that she did not wish to return to the property and was seeking accommodation with the local authority. Ms Gray explained that the Respondent appeared to have vacated the property but had not formally terminated the tenancy or returned the keys. The Applicant therefore sought an order for repossession.

#### **Findings in Fact**

- 7 The parties entered into a Tenancy Agreement dated 28<sup>th</sup> September 2018 in respect of the Property;
- 8 The rent due under the terms of the Tenancy Agreement was £300 per month;
- 9 The arrears as at the date of the Case Management Discussion amount to £2471.23;
- 10 The rent account has been in arrears for three or more consecutive months;
- 11 The rent arrears are not a result of any delay or failure in the payment of housing benefit.

### **Reasons for Decision**

- 12 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. The Tribunal noted that the application paperwork had been served upon the Respondent by Sheriff Officers. She had not taken the opportunity to make written representations, nor had she attended the Case Management Discussion.
- 13 The Tribunal noted that the Applicant sought recovery of possession under ground 12 of Schedule 3 of the 2016 Act.
- 14 Ground 12 permits a landlord to seek repossession where the tenant has been in arrears for more than three consecutive months. The Tribunal must grant the order for repossession where:-
  - (i) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant is in arrears of rent by an amount equal to or greater one month's rent under the tenancy on that day, and 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
  - (ii) 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.
- 15 In the absence of any evidence to the contrary, the Tribunal accepted the Applicant's Agent submissions at the Case Management Discussion. The Tribunal found their position to be credible and had no reason to question the evidence put forward on the Applicant's behalf.

16 The Tribunal was satisfied based on its findings in fact that arrears of rent in the sum of £2741.23 were outstanding as at the date of the Case Management Discussion and that the rent payable under the terms of the tenancy was £300 per month. The Tribunal further accepted that the Respondent had paid nothing to the rent account since February 2019 , and therefore the rent account had been in arrears for more than three consecutive months. There was nothing before the Tribunal to evidence that the arrears were due to any delay or failure in payment of a relevant benefit. Whilst it was noted that housing benefit had previously been paid to the account, this had now ceased and no explanation was forthcoming from the Respondent as to why that had occurred. Accordingly the Tribunal could not make a finding that any housing benefit was due.

17 The Tribunal therefore found ground 12 to be met and determined to make an order for repossession of the property.

### 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.**

R O'Hare

\_\_\_\_\_  
Legal Member/Chair

2/10/19  
\_\_\_\_\_  
Date