



**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/18/3170**

**Re: Property at 25 Bell Place, Forfar, DD8 3AZ (“the Property”)**

**Parties:**

**Mrs Laura Hoggan, 21 Lochbank Gardens, Forfar, DD8 3HG (“the Applicant”)**

**Ms Billie Getty, 25 Bell Place, Forfar, DD8 3AZ (“the Respondent”)**

**Tribunal Members:**

**Petra Hennig-McFatridge (Legal Member)**

**Decision in absence of the Respondent**

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

**Background:**

**The Applicant filed an application for an eviction order on grounds 11 and 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act) with the Tribunal on 23 November 2018. This was accompanied by an application for a payment order and attachments of a copy of the tenancy agreement, S 11 Notice to the local authority, Notice to Leave and proof of service, letter of suspension of Housing Benefit.**

**Further information had been requested and received and a Case Management Discussion (CMD) took place on 3 May 2019.**

**The Respondent was served with the notification of the CMD by Sheriff Officers on 12 April 2019. With the notification was a letter advising her that any representations should be made by 29 April 2019 at the latest and that the Tribunal may make a decision at the CMD. No representations were received and the Respondent did not attend the CMD. In attendance was the**

representative of the Applicant, Ms Grieve from Bowmans Solicitors. The Applicant did not attend.

#### **The Case Management Discussion:**

Ms Grieve updated the Tribunal on the current arrears, which stand at £5,653.92. She submitted that an order should be granted as the requirements for an order in terms of Ground 12 of Schedule 3 of the Act were met as the Respondent had been in arrears of rent for three or more consecutive months, there had in fact not been any payments by the Respondent and the only payments ever received were the payments from Housing Benefit as per the rent statement submitted, and the Respondent is in arrears of an amount exceeding one month's rent at the date of the CMD. There is nothing to suggest that this is due to delay or failure of payment of relevant benefits as the Respondent had been found not to qualify for such payments.

The Applicant's representative further stated that the date on the Notice to Leave should not make the notice invalid as it was dated 28 May 2018 rather than 22 May 2018 to give the Respondent further time. Because of this the notice states the date of 28 June 2018 as the first date proceedings would be raised.

The pleadings included the statement that the Respondent in fact had more than even 84 days before the application was made.

As there were no representations from the Respondents and the Respondents did not attend, the facts of the case are undisputed and the application is not opposed.

#### **Findings in Fact:**

- 1. The parties entered into a Private Residential Tenancy Agreement for the property on 12 February 2018.**
- 2. The monthly rent in terms of the Tenancy Agreement is 500 payable in advance with a first payment on 12 February 2018 due for the period of 12 February 2018 to 12 March 2018 and monthly payments thereafter to be received on the 12<sup>th</sup> of the month as per item 7 of the Tenancy Agreement.**
- 3. Since the start of the tenancy only 4 Housing Benefit payments of £461.52 each received on 12 June 2018, 12 July 2018, 12 August 2018 and 12 September 2018 have been made.**
- 4. No rental payments were made by the Respondent.**
- 5. The Respondent has been in arrears of rent continuously since the start of the tenancy on 12 February 2018.**

6. The arrears as at 3 May 2019 are 5,653.92.
7. A Notice to Leave was sent recorded delivery to the Respondent on 22 May 2018 and receipt signed for on 23 May 2018.
8. The Notice to Leave stated as the grounds "you have breached the terms of your tenancy agreement" and "you are in rent arrears over there consecutive months".
9. The Notice to Leave stated as details and evidence of eviction grounds "you have paid no rent since occupying my property. You now owe £2000".
10. The Notice to Leave states as the earliest date when Tribunal proceedings can start 28 June 2018.
11. The application to the Tribunal is dated 21 November 2018 and was stamped received by the Tribunal on 23 November 2018.
12. The signature date on the Notice to Leave is 28 May 2018.

#### **Reasons for the Decision**

There were no representations by the Respondent and there was no opposition to the application.

I am satisfied that a valid Notice to Leave was issued to the Respondent on 22 May 2018 with a date of 28 June 2018 as the first date when proceedings with the Tribunal could be raised. I was satisfied that in terms of S 54 (3) (b) of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act) the required notice period in this case was 28 days as the only grounds stated on the Notice to Leave were the grounds stated in S 54 (3) (b) (ii) and (iii) and thus Section 54 (3) applied in this case. In terms of S 62 (5) of the Act this is deemed to have been served on 24 May 2018. Thus the notice period of 28 days required in S 54 (2) of the Act has been given in the Notice to Leave. Proceedings were raised on 23 November 2018 and thus within the time period of 6 months stated in S 55 of the Act. I was further satisfied that the signature date of 28 May 2018, although incorrect as clearly falling after the date the Notice to Leave was issued, was not a fatal flaw of the Notice to Leave as in fact it provided a longer notice period to the Respondent and no issue was taken with the date by the Respondent.

I considered that the explanation in the Notice to Leave with reference to no rental payments having been made and the arrears having been £2,000 at the relevant time provided clear and sufficient information to the Respondent to know why the Notice to Leave had been issued and why the Applicant intended to raise proceedings.

No payments were made after the Notice to Leave was issued. At the time the Notice to Leave was issued the Respondent was in arrears for 4 months. Since then further arrears have accrued.

I do not find that Ground 11 of Schedule 3 of the Act applies as the breach of a term of the tenancy does not include the term under which the tenant is required to pay rent. This is stated in Ground 11 (3) of Schedule 3 of the Act.

**Ground 12 in Schedule 3 of the Act states:**

**“Rent arrears**

**12(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.**

**(2) The First-tier Tribunal must find that the ground named by 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 payable as one month’s rent under the tenancy on that day, and**

**(ii) 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**

**(b) 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.**

**(3) The First-tier Tribunal may find that the ground named by sub-paragraph (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 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.”**

As the Respondent has been in rent arrears continuously since the start of the tenancy and is currently in arrears which are significantly greater than the amount of rent per month this constitutes a mandatory ground of eviction. I find that in terms of S 51 of the Act the order is to be issued.

**Decision:**

The Tribunal issues an order of eviction in terms of S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 and specifies as the date of termination of the tenancy the 10 June 2019.

**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.

Mrs Petra Hennig-McFatrige

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Legal Member/Chair

3.5.13  
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Date