



**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/19/0623**

**Re: Property at 14 Gairn Road, Aberdeen, AB10 6AP (“the Property”)**

**Parties:**

**Mr Ian McKenzie, 38 Balmoral Court, Aberdeen (“the Applicant”)**

**Mr Andy Carter, 14 Gairn Road, Aberdeen, AB10 6AP (“the Respondent”)**

**Tribunal Members:**

**Alastair Houston (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 be made in favour of the Applicant on the basis of Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.**

**1. Background**

1.1 This is an application under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), being an application for an eviction order in respect of a Private Residential Tenancy. The application was accompanied by copies of a notice to leave, rent statement and, following requests for further information, a notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 and confirmation of service of the notice to leave.

1.2 The notice to leave specified Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”), that being that the Respondent was in rent arrears over three consecutive months.

**2. The Case Management Discussion**

2.1 The Case Management Discussion took place on 14 May 2019 at The Credo Centre, Aberdeen. The Applicant was represented by Mr Graham

Ralston. The Respondent was neither present nor represented. No written representations had been received from the Respondent.

2.2 The Tribunal noted that the time and place of the Case Management Discussion had been intimated to the Respondent by Sheriff Officer on 14 April 2019. Mr Ralston confirmed that the Applicant wished to proceed with the Application. Accordingly, the Tribunal proceeded with the application in terms of Rule 29 of the Rules.

2.3 Mr Ralston confirmed that the Respondent had been in rent arrears since September 2018. The monthly rent due was £750.00. The Respondent had been offered the opportunity to enter into payment arrangements but had failed to comply. As of the date of the Case Management Discussion, the rent arrears had increased to £3400.00, being in excess of four and a half months rent. The Applicant insisted on the application.

### **3. Reasons for Decision**

3.1 The power of the Tribunal to issue an eviction order is contained within Section 51(1) of the 2016 Act. This states as follows:-

#### ***51 First-tier Tribunal's power to issue an eviction order***

*(1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.*

*(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may or must find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.*

*(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.*

*(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.*

3.2 The Applicant was seeking an order on the basis of Ground 12 of Schedule 3 of the 2016 Act. Ground 12 states as follows:-

#### ***12 Rent arrears***

*(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 subparagraph (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.*

*(5) For the purposes of this paragraph—*

*(a) references to a relevant benefit are to—*

*(i) a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971),*

*(ii) a payment on account awarded under regulation 91 of those Regulations,*

*(iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,*

*(iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,*

*(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.*

In the present case, the Respondent had been in arrears of rent since September 2018. As of the Case Management Discussion, the rent arrears exceeded the amount payable as one month's rent. The Case Management Discussion was the first consideration of the application on its merits. There was nothing before the Tribunal to suggest that the rent arrears were as a consequence of a delay or failure in payment of a relevant benefit. Accordingly, the Tribunal was required to make an eviction order under Ground 12.

## **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.**

A Houston

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**Legal Member/Chair**

14 MAY 2019  
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**Date**