

**Housing and Property Chamber**  
First-tier Tribunal for Scotland



**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/19/3334**

**Re: Property at 3 Monkland Terrace, Glenboig, ML5 2RL (“the Property”)**

**Parties:**

**Mr Perwaiz Akhtar, 10 Avonhead Road, Condorrat, Glasgow, G67 4RA (“the Applicant”)**

**Mr John James McIntyre, Ms Kimberley Bain, 3 Monkland Terrace, Glenboig, ML5 2RL (“the Respondents”)**

**Tribunal Members:**

**Sarah O'Neill (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession should be granted in favour of the applicant.**

**Background**

1. An application was received on 16 October 2019 under rule 109 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (‘the 2017 rules’) seeking recovery of the property under Ground 12 as set out in Schedule 3 of the 2016 Act.
2. The application included: the tenancy agreement between the parties; copies of the Notice to Leave as required under section 50(1) (a) of the 2016 Act dated 13 September 2019, citing ground 12, together with certificate of posting by recorded delivery and proof of delivery dated 13 and 14 September 2019 respectively; and rent statement showing the rent arrears due at the time the Notice to Leave was served.

3. Notice of the case management discussion (CMD) scheduled for 17 December 2019, together with the application papers and guidance notes, was served on the respondents by sheriff officers on behalf of the tribunal on 18 November 2019.
4. No written representations were received from the respondents prior to the CMD.

### **The Case Management Discussion**

5. A CMD was held on 17 December 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. The applicant was represented by Mr Paul Clark of Aquila Management Services Ltd, Glasgow. The respondents were not present and were not represented.
6. The tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a CMD had been duly complied with. The tribunal delayed the start of the CMD by 10 minutes, in case the respondents had been detained. They did not appear, however, and no telephone calls, messages or emails had been received from them. The tribunal therefore proceeded with the CMD in the absence of the respondents.
7. Mr Clark asked the tribunal to grant an order in favour of the applicant against the respondents for recovery of possession of the property. He said that he had been trying to contact the respondents for some time, in order to try to reach an agreement about a payment plan, but had been unable to speak to them. He told the tribunal that he understood that the respondents were still occupying the property as at the date of the CMD.
8. He asked the tribunal to grant an order against the respondents for recovery of possession of the property in terms of ground 12 of Schedule 3 of the Act. He confirmed that no further payments of rent had been made since the most recent rent statement had been sent to the tribunal on 6 December 2019. This showed that, although some payments had been made, the respondents had been continuously in rent arrears since 25 June 2019, and that they owed £950 as at 25 November 2019.

### **Findings in Fact**

9. The tribunal made the following findings in fact:
  - The applicant was one of the joint landlords in terms of the private residential tenancy agreement between the parties which commenced on 25 January 2019. The title deed for the property showed that he owned the property jointly with Mr Abdul Hallem, who was the other joint landlord. The tribunal had received written confirmation from the applicant's representative that he was content with the application proceeding in the applicant's sole name.

- There was a private residential tenancy in place between the applicant and Mr Hallem and the respondents. The tenancy commenced on 25 January 2019.
- The monthly rent payable in terms of the tenancy agreement was £450 per month, payable on the 25<sup>th</sup> of each month.
- As the only eviction ground stated in the notice to leave was ground 12, the relevant period in terms of section 54(2) (b) of the 2016 Act was 28 days. The notice to leave was dated 13 September 2019, and stated that an application for an eviction order would not be submitted to the tribunal before 15 October 2019.
- The respondents owed rent arrears of £950 as at the date of the CMD, and had been in rent arrears continuously since 25 June 2019.

### **Reasons for Decision**

10. The tribunal was satisfied that the notice to leave had been validly served on the respondents in terms of the 2016 Act.

11. Ground 12 as set out in Schedule 3 of the 2016 Act states:

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.

12. The tribunal was satisfied on the evidence before it that the requirements for ground 12 were established. It was clear from the rent statements before the tribunal that the respondents were at the date of the CMD in arrears of more than one month's rent, and that they had been in arrears of rent for a continuous period of three or more consecutive months.

13. The tribunal then considered whether the respondent's arrears of rent were wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, in terms of ground 12 (2) (b). Mr Clark told the tribunal that he had at one stage completed a form relating to universal credit, and so far as he was aware there had been no issues with this. He said that he understood both respondents were working, and said that he was not aware of any delay or failure in the payment of a relevant benefit.
14. On the basis of the evidence before it, the tribunal was satisfied that the arrears were not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
15. The tribunal is therefore required to grant an order for possession under section 51 and ground 12 in Schedule 3 of the 2016 Act.

### **Decision**

The tribunal grants an order in favour of the applicant against the respondents for recovery of possession 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.**

**S O'Neil**

Legal Member/Chair

17/12/14

Date