



**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/22/2085**

**Property : 8 Lamlash Gardens, Kilmarnock KA3 1AB("Property")**

**Parties:**

**Denbrae Limited, Mulberry Homes Limited, 45 Preston New Road, Blackburn BB2 6AE("Applicant")**

**TC Young, Solicitors, 7 West George Street, Glasgow G2 1BA ("Applicant's Representative")**

**Mr David Devlin, 32 Meiklewood Road, Kilmarnock KA3 2BU and Mrs Moleen Devlin, 8 Lamlash Gardens, Kilmarnock KA3 1AB ("Respondent")**

**Tribunal Members:**

**Joan Devine (Legal Member)  
Ahsan Khan (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("Tribunal") determined that an order for possession of the Property should be made.**

**Background**

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were:

- a Tenancy Agreement dated 6 November 2019;
- two copies of a Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 ("Act") dated 16 May 2022 ("NTL") which included a schedule of rent arrears, one addressed to each Respondent;

- copy of an email to the Second Respondent dated 16 May 2022 attaching a copy of the NTL addressed to the First Respondent and a copy of the Notice to Leave addressed to the Second Respondent;
- notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 22 June 2022 and
- sheriff officer's execution of service certifying service of the Application on 16 August 2022.

### **Case Management Discussion**

A case management discussion took place before the Tribunal on 5 October 2022 by teleconference. Kirsty Donnelly of the Applicant's Representative was in attendance. There was no appearance by the Respondent. The Tribunal noted that Part 3 of the NTL stated that the rent arrears were £875 and the monthly rent was £9750. This was clearly an error. The Tribunal asked Ms Donnelly to make a submission regarding the validity of the NTL. She referred the Tribunal to section 73 of the Private Housing (Tenancies) (Scotland) Act 2016 ("2016 Act") which provides that an error in the completion of a document does not make the document invalid unless the error materially affects the effect of the document. She noted that the NTL was issued long with a statement of the rent arrears.

The Tribunal further noted that both NTLs were email to Mrs Devlin. The Tribunal asked Ms Donnelly whether service had been properly made. Ms Donnelly noted that in terms of the 2016 Act the NTL requires to be "given". She noted that the 2016 Act did not specify what was meant by "given". No method of service was specified. She then referred to section 26(3) of the Interpretation and Legislative Reform (Scotland) Act 2010 which deals with the situation where parties have agreed in writing that a document may be sent by electronic means. She then referred to section 3 of the tenancy agreement which provided that notices may be sent by electronic means. She noted that in this case an email address had been provided only for Mrs Devlin. She submitted that sending the NTL for both Respondents to the email address for Mrs Devlin was competent service.

The Tribunal asked when Mr Devlin had vacated the Property. Ms Donnelly did not have that information.

The Tribunal asked about compliance with pre action requirements noting that the letters and emails in this regard were all sent to Mrs Devlin and none were sent to Mr Devlin. The Tribunal noted the lack of signposting in the communications. The Tribunal asked how it could be satisfied that Mr Devlin knew anything about this correspondence. Ms Donnelly said that he had contacted her after service of the Application which included the productions. She submitted that the pre-action

requirements are not prescriptive. She noted that the arrears were substantial. She said that a number of opportunities were given for a repayment arrangement to be entered into.

As regards the question of reasonableness, Ms Donnelly submitted that the Applicant owned a number of properties including 6 on Lamblash Gardens. She noted the high level of arrears and that payment had been sporadic for some time. She said the Applicant was concerned about the condition of the Property. She said she understood Mrs Devlin lived in the Property alone. She said that Mrs Devlin had contacted the Applicant to advise she would return the keys to the Property by 7 October 2022. She understood that when Mrs Devlin took the tenancy she was running a shop.

### **Findings in Fact**

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a Tenancy Agreement which commenced on 6 November 2019 ("Tenancy Agreement").
2. The Notice to Leave was served by email on 16 May 2022.
3. The Notice to Leave stated that an application for an eviction order would not be submitted to the Tribunal before 16 June 2022.
4. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 22 June 2022.
5. Notice of the date of the case management discussion had been given to the Respondent on 16 August 2022.
6. At the date of service of the Notice to Leave, the Respondent had failed to pay the rent in full for the period 6 February 2020 to 6 June 2022.

### **Reasons for the Decision**

The Tribunal determined that the NTL was valid. The error in the NTL did not materially affect the effect of the document as the error was obvious and the level of arrears was apparent from the accompanying statement of arrears.

The Tribunal determined that the NTL had been served in accordance with the provisions of the tenancy agreement between the Parties. Service of the NTL was effective.

The Tribunal determined to make an Order for possession of the Property in terms of Section 51 of the Act.

In terms of section 51 of the Act, the First-tier Tribunal may 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.

In the Application the Applicant stated that they sought recovery of possession of the Property on the basis set out in Ground 12 which states :

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

The Tribunal considered the statement of rent arrears and determined that the ground for eviction had been established. In the absence of any submission by the Respondent that it would not be reasonable to grant an order for eviction, and in light of the submission made by the Applicant's Representative, the Tribunal determined that it was reasonable to issue an eviction order.

### **Decision**

The Tribunal grants an order for 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.**

**Joan Devine  
Legal Member**

**Date : 5 October 2022**