



**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/19/0035**

**Re: Property at 37 Kirkoswald, East Kilbride, G74 3SH (“the Property”)**

**Parties:**

**Mr Jim Lambert, CO JAK G Limited, 33 Kittoch Street, East Kilbride (“the Applicant”)**

**Mr Colin McGonnigle, 37 Kirkoswald, East Kilbride, G74 3SH (“the Respondent”)**

**Tribunal Members:**

**Neil Kinnear (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

**Background**

This is an application for an eviction order dated 7<sup>th</sup> January 2019 and brought in terms of Rule 109 (Application for an eviction order) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant seeks an eviction order in relation to the Property from the Respondent, and provided with his application copies of the private residential tenancy agreement, notice to leave, section 11 notice, rent arrears statement, and confirmation that service of the notice to leave was effected by personal delivery to the Respondent by the Applicant (who had signed the notice to leave on the final page to confirm receipt).

All of these documents and forms had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016*, and the procedures set out in that Act appeared to have been correctly followed and applied. The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 1<sup>st</sup> March 2019, and I was provided with the execution of service.

### **Case Management Discussion**

A Case Management Discussion was held on 21<sup>st</sup> March 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant appeared, but was not represented. The Respondent did not appear, nor was he represented. The Respondent had not responded to this application at any stage either in writing or by any other form of communication until an e-mail communication was received by the Tribunal on 20<sup>th</sup> March 2019 from Hamilton Citizen's Advice Bureau.

That e-mail advised that the writer had been contacted via telephone call by the Respondent asking for assistance in relation to this application. It advised that the Respondent had told the writer that he suffered a number of issues with his health, and did not consider himself fit to attend today's Case Management Discussion. The Respondent had not provided any details of the nature of these health issues, nor had he provided any verification by way of confirmation from his GP or any other health professional.

The writer advised that he did not have full details in relation to this matter, and requested a postponement of the Case Management Discussion on behalf of the Respondent. The writer indicated that he had advised the Respondent that the granting of a postponement was discretionary, and that the Tribunal might still proceed with the Case Management Discussion and make a decision on the application.

The Applicant was contacted and asked whether he objected to a postponement. He confirmed that he did upon the basis that the Respondent has known about this application for several months, has apparently taken no steps in that time to obtain advice or respond to it, and has accumulated rent arrears of £6,087.99 over a period of about 18 months (the monthly rental for the Property being £395.00).

The overriding objective of the Tribunal is to deal with proceedings justly. This includes *inter alia* dealing with the proceedings in a manner which is proportionate to the complexity of the issues and the resources of the parties; ensuring, so far as practicable, that the parties are on equal footing procedurally and are able to participate fully in the proceedings; and avoiding delay, so far as compatible with the proper consideration of the issues in terms of Rule 2 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

Rule 28 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended allows the Tribunal discretion on an application by a party to postpone a hearing on cause shown.

The Tribunal refused the Respondent's request to postpone for the following reasons:

- 1) The request came very late, being the day before the Case Management Discussion.
- 2) The Respondent's request failed to provide any detail of the nature of his medical issues, and no independent confirmation of any such issues.
- 3) The Respondent failed to set out any defence to the application, nor his position on its merits.
- 4) The Respondent has had ample time to make representations or to seek advice and representation in relation to the application, and has apparently failed to do so until the day before the Case Management Discussion.
- 5) The arrears of rental are very substantial, amounting to over £6,000 in relation to the Property accumulated under the private residential tenancy agreement, and a preceding short assured tenancy between the parties in relation to the same Property.

The Tribunal accordingly proceeded with the Case Management Discussion in the absence of the Respondent in terms of Rule 29 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, being satisfied that the requirements of Rule 24(1) have been duly complied with.

I was invited by the Applicant with reference to the application and papers to grant the order sought on ground 12 of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*.

The notice to leave dated 3<sup>rd</sup> December 2018 narrated that rent arrears at that time amounted to £6,087.99, accumulated over many months under the private residential tenancy agreement and a preceding short assured tenancy between the parties in relation to the same Property.

The Applicant had produced a rent arrears statement to the Tribunal. Rental of £395 per month was payable in advance on the 1<sup>st</sup> day of each month in terms of clause 7 of the private residential tenancy agreement.

Prior to the notice to leave of 3<sup>rd</sup> December 2018, the rent arrears statement disclosed that on the 1<sup>st</sup> of September, 1<sup>st</sup> October, 1<sup>st</sup> November and 1<sup>st</sup> December, no rental payment was made. One payment to account was made by the Respondent of £500.00 on 11<sup>th</sup> October 2018, which at the time it was made was self-evidently insufficient to pay the outstanding two months' preceding rental payments, far less the rental arrears previously accrued.

### **Statement of Reasons**

In terms of Section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* ("the Act"), the 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.

Para 12 of Schedule 3 to the Act provides that it is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. The Tribunal must find that this ground applies if (1) 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 than the amount which would be payable as one month's rent under the tenancy on that day, and (2) 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 (3) 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.

The Tribunal is satisfied that ground 12 has been established. The tenant is in substantial arrears of rent which currently exceed one month's rent, and has been in arrears for a continuous period substantially in excess of 3 months. The Tribunal is further satisfied that the tenant being in arrears is not wholly or partly due to any delay or failure in the payment of a relevant benefit. There has been no evidence to establish any such reason for rent arrears.

For the above reasons, the Tribunal will make an order for possession.

### **Decision**

In these circumstances, the Tribunal will make an order for possession of the house let on the tenancy as sought in this application.

### **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.**

N Kinnear

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

21/03/19  
\_\_\_\_\_  
**Date**