



**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 (“the 2016 Act”)**

**Chamber Ref: FTS/HPC/EV/19/0685**

**Re: Property at 10 Lochend Road South, Musselburgh, EH21 6BD (“the Property”)**

**Parties:**

**Joanne McKellar, 48 California Road, Maddiston, FK2 0NP (“the Applicant”)**

**Chantelle Kennedy, 10 Lochend Road South, Musselburgh, EH21 6BD (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for repossession of the Property against the Respondent**

**Background**

- 1 By application dated 4 March 2019 the Applicant applied to the Tribunal under Rule 109 of the First-tier Tribunal (Housing and Property Chamber) Procedure Regulations 2017 for an order for repossession of the Property against the Respondent together with the following supporting documentation:-
  - a. Rent Statement dated 18 March 2019;
  - b. Notice to Leave dated 22 January 2019 citing grounds 11 and 12;
  - c. Copy Private Residential Tenancy Agreement between the parties which commenced on 1<sup>st</sup> October 2018;
  - d. Notice under section 11 of the Homelessness etc (Scotland) Act 2003 served upon Edinburgh City Council.

The Applicant sought recovery of possession of the property under ground 11 of schedule 3 of the Private Tenancies (Scotland) Act 2016 on the basis that the Respondent has breached obligations of the tenancy agreement and had persistently failed to pay rent.

- 2 By Notice of Acceptance of Application dated 21<sup>st</sup> March 2019, the Convener with delegated powers of the Chamber President intimated that there were no grounds to reject the application. The Case Management Discussion was thereafter assigned for 10<sup>th</sup> May 2019.
- 3 A copy of the application together with supporting documentation and notification of the Case Management Discussion was served on the Respondent by Sheriff Officers on 16<sup>th</sup> April 2019. No written representations were received from the Respondent in response.

### **Case Management Discussion**

- 4 The Case Management Discussion took place at George House, Edinburgh on 10<sup>th</sup> May 2019. The Applicant was represented by Mark Rennie from Purple Bricks.
- 5 The Tribunal queried the ground specified in the application. The Notice to Leave had intimated grounds 11 and 12 as the basis for eviction and had given details of the rent arrears outstanding. However the application referred only to ground 11. Mr Rennie advised that he wished to amend the application to include ground 12. The Tribunal further queried the reliance upon ground 11, as it appeared that the only breach intimated to the tenant was the non-payment of rent. Ground 11 is explicit in excluding any failure to comply with the obligation to pay rent therefore it did not appear to the Tribunal that the Applicant could seek to rely upon this ground. Mr Rennie conceded that she was relying upon ground 12 along as the only issue was the non-payment of rent.
- 6 The Tribunal then queried the rent account lodged by the Applicant. Mr Rennie gave an update and explained that the total balance outstanding was £1,112. The Respondent had been consistently in arrears since 1<sup>st</sup> November 2018. She had paid rent and deposit prior to moving into the property. However she then paid nothing until 24<sup>th</sup> January 2019 when a payment of £534 was received. Nothing was then paid in February and March. A further payment of £1650 was made on 12<sup>th</sup> April and a payment of £554 on 8<sup>th</sup> May however the account remained in arrears. The Applicant could not continue with the pattern of non-payment. Mr Rennie advised that the Respondent had previously made offers to pay that had not been adhered to.

### **Findings in Fact and Law**

- 7 The parties entered into a Tenancy Agreement in respect of the Property which commenced on 1<sup>st</sup> October 2018.

- 8 The tenancy is a private residential tenancy as defined by section 1 of the Private Housing (Tenancies) (Scotland) Act 2016.
- 9 In terms of Clause 8 of the said Tenancy Agreement the Respondent agreed to make payment of rent at the rate of £550 per month, due on the 1<sup>st</sup> of the month in advance.
- 10 On 22<sup>nd</sup> January 2019 the Applicant's Representative, Purple Bricks, served a Notice to Leave on the Respondent. In terms of the said Notice, the Applicant sought an eviction order on grounds 11 and 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016. The Notice confirmed that proceedings would be raised no earlier than 21<sup>st</sup> February 2019.
- 11 The Respondent has consistently been in arrears since 1<sup>st</sup> November 2018 which is more than three consecutive months. The arrears as at the date of the Case Management Discussion are £1112 which is more than one months rent.
- 12 The arrears of rent are not wholly nor partly a consequence of a delay or failure in the payment of a relevant benefit

### **Reasons for Decision**

- 13 Having considered the verbal and written representations from the Applicant the Tribunal was satisfied that it was able to make sufficient findings to determine the case without a hearing and that to do so would not be prejudicial to the interests of the parties. The Tribunal was satisfied that the Respondent had received notice of the application and Case Management Discussion. She had therefore been given the opportunity to make both verbal and written representations in response but had failed to do so.
- 14 The Tribunal accepted that the Respondent had been served with a valid Notice to Leave under section 52(3) of the 2016 Act specifying grounds 11 and 12 of Schedule 3 of the Act as the relevant ground for eviction. Ground 11 entitles a landlord to seek repossession on the basis that an obligation of the tenancy has been broken. However the Tribunal noted the obligation relied upon by the Applicant was the Respondent's failure to pay rent, which is specifically excluded from the provisions of ground 11. Accordingly, the Tribunal concluded that the Applicant could only rely upon ground 12.
- 15 The Tribunal was aware that the Applicant had not specifically stated ground 12 in her application. However it had been specified on the Notice to Leave which had been served upon the Respondent. It was also clear in the application that the Applicant was seeking an order on the grounds of rent arrears. The Tribunal did not therefore consider this to be a new issue and duly allowed amendment of the application under Rule 13(1) of the First-tier Tribunal Housing and Property Chamber Rules of Procedure 2017 to include ground 12. The Tribunal considered that the Respondent had received

sufficient notice of the Applicant's intention to seek recovery on this ground and there was therefore no prejudice to her in allowing the amendment.

- 16 The Tribunal therefore had to consider whether the provisions of ground 12 had been satisfied. Ground 12 provides as follows:-
- 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..."*
- 17 The Tribunal accepted the Applicant's submission regarding the Respondent's failure to pay rent. It noted the outstanding arrears as £1,112 and that the account had been in arrears since 1<sup>st</sup> November 2018. The Respondent had

not disputed the arrears were due nor was there any suggestion that the failure to make payment was a result of issues with housing benefit or its equivalent. She had not taken the opportunity to make any submissions to the Tribunal in this regard and the Tribunal therefore accepted the verbal submissions put forward by the Applicant's Representative.

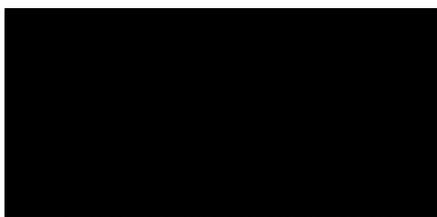
- 18 The Tribunal was therefore satisfied that as at the date of the Case Management Discussion at least one months rent was due and also that the Respondent had been in arrears for more than three consecutive months. The Tribunal therefore considered that the provisions of paragraph (2) of ground 12 had been met and determined to grant the order for repossession sought by the Applicant.

### **Decision**

- 19 The Tribunal determined to make an order for repossession of the Property against the Respondent.

### **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.**



Legal member/Chair

10/5/19

Date