



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 (1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“The Act”)**

**Chamber Ref: FTS/HPC/EV/22/1540**

**Re: Property at 11 2L Park Avenue, Dundee, DD4 6PN (“the Property”)**

**Parties:**

**Mr James Murray Calder, 28 Mercer Court, Innerleithen, EH44 6QB (“the Applicant”)**

**Mr Darren Gordon, 11 2L Park Avenue, Dundee, DD4 6PN (“the Respondent”)**

**Tribunal Members:**

**Andrew McLaughlin (Legal Member) and Jane Heppenstall (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) decided to grant the Application and made an Eviction Order.**

**Background**

The Applicant seeks an Eviction Order under Grounds 12 of Schedule 3 of the Act in that it is said that the Respondent has been in arrears of rent of at least one month’s worth of rent and has been so in arrears for three consecutive months.

The Application is accompanied by a copy of the tenancy agreement, the relevant notice to leave and proof of service, a notice under s11 of the Homelessness (Etc) (Scotland) Act 2003 and email correspondence between the parties regarding the subject matter of the dispute. Prior to the Case Management Discussion, Dundee Law Centre had assumed agency for the Respondent and confirmed that they were not opposing the Application

for the Eviction Order and were only seeking clarification of the precise amount of the rent arrears.

### **The Case Management Discussion**

The Application called for a Case Management Discussion (CMD) by conference call at 10 am on 25 January 2023. The Application called alongside a related Application in respect of a Payment Order between the parties. The Applicant was represented by Ms Hazel Young of Rockford Properties. Ms Falconer of Dundee Law Centre confirmed that she was instructed on behalf of the Respondent and that her instructions were not to oppose the granting of the Eviction Order.

The Respondent accepted that the rent arrears were now in the sum of £4,435.00. There was some discussion about whether the Respondent lived in the Property on his own. The Tenancy Agreement was in the name of the Respondent and also another individual by the name of Robert Gordon.

The Applicant had confirmed previously in correspondence that Robert Gordon never actually moved into the Property and they were comfortable only seeking an order against the Respondent. Ms Falconer mentioned that the Respondent had told her that he lived “*with his brother*”. Ms Young confirmed that she was confident that the Respondent lived in the Property alone. The emails exchanged between Ms Young and the Respondent certainly suggested this and Ms Young indicated that this was a risk she was willing to take.

Having heard parties and considered the Application, the Tribunal made the following findings in fact.

- I. *The parties entered into a tenancy agreement whereby the Applicant let the Property to the Respondent on a Private Residential Tenancy that commenced on 1 January 2020;*
- II. *The tenancy agreement was in the name of the Respondent and his brother, Robert Gordon. The Applicant is of the view that the brother never moved in and the Respondent resides in the Property alone;*
- III. *The contractual monthly rent was £375.00 per month;*
- IV. *The Respondent fell into rent arrears and the Applicant competently served a Notice to Leave under ground 12 of Schedule 3 of the Act on the Respondent by email dated 18 November 2021. The Notice to Leave confirmed that the notice period would end on 21 May 2022;*

- V. *The said ground was established at that date of service of the Notice to Leave as the Respondent was in arrears of rent of at least one month's worth of rent and had been so in arrears of rent for at least three months. The ground remains established as at today's date and the arrears of rent have increased to the sum of £4,435.00;*
- VI. *The Applicant has complied with s 11 of the Homelessness (Etc) (Scotland) Act 2003;*
- VII. *The Tribunal are satisfied that, whilst no explicit evidence of compliance with The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 has been presented, there is ample evidence in the email communications between the parties to show that the Respondent has attempted to organise a review of his state benefit entitlements and the Applicant has attempted to negotiate with the Respondent;*
- VIII. *It is reasonable that an Eviction Order is made.*

### **Reasons for Decision**

Having made the above findings in fact, the Tribunal decided to grant the Application and made an Eviction Order.

### **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.**

**Andrew McLaughlin**

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**Legal Member/Chair**

**25 January 2023**

**Date**