



**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/22/1929**

**Re: Property at 46 Torwood Avenue, Grangemouth, FK3 0DN (“the Property”)**

**Parties:**

**Mr Thomas Chalmers, 12527 Wandering Brook Drive, Charlotte, North Carolina, 28273, United States (“the Applicant”)**

**Mr William Gillespie, 46 Torwood Avenue, Grangemouth, FK3 0DN (“the Respondent”)**

**Tribunal Members:**

**Melanie Barbour (Legal Member) and Helen Barclay (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it should grant an order in favour of the Applicant against the Respondents for recovery of possession of the private residential tenancy under ground 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.**

**Background**

1. An application had been received under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession under a private residential tenancy by the Applicant against the Respondent for the Property.
2. The application contained:-

- a copy of the tenancy agreement,
  - a copy of the notice to leave with evidence of service
  - a copy section 11 Notice with evidence of service
  - a copy of the rent statement
  - letter to tenant regarding pre-action requirements
3. The Applicant and his representative, Ms Donnelly from TC Young, appeared on behalf of the Applicant. Ms Prochaska from Shelter appeared on behalf of the Respondent.
  4. Notice of the Hearing and the application had been served on the Respondent by sheriff officers. The respondent had submitted written representations prior to the hearing.

#### Discussion

5. The applicant's agent asked the tribunal to grant the order for eviction under rule 109. The parties had discussed the matter and the respondent was not opposed to the application being granted subject to the landlord giving an undertaking that he would not enforce the order for eviction prior to 16 January 2023, which was agreed providing that the tenant would start making payments towards the rent arrears of £500 commencing on 25 September 2022 and allow the landlord access for inspections.
6. Ms Donnelly submitted that the papers provided established the ground of eviction. In terms of why it was reasonable to grant the order, she submitted that the current arrears are £11,725. The landlord only has one property which he rents out. This was his Scottish home, when he moved to the USA he had kept this property as his Scottish home. It is not a business. He may come back to Scotland and would need the property. There is a mortgage over the property, and he has monthly payments to meet of £395.
7. The respondent's agent confirmed that matters had been agreed and the respondent was not opposed to the order being granted subject to the undertaking as agreed between the parties.

### Findings in Fact

8. The Tribunal found the following facts established:-
9. There existed a private residential tenancy between the Applicant and the Respondent. It had commenced on 26 April 2019.
10. The tenancy was for the property 46 Torwood Avenue, Grangemouth.
11. The tenant is William Gillespie.
12. The landlord is Thomas Chalmers.
13. Clause 8 of the Tenancy Agreement provides that the rent for the property is £425 per calendar month. It is payable in advance and due on the 26<sup>th</sup> of each month.
14. There was a notice to leave addressed to the Respondent. It contained information for the Respondent as to why an eviction order was sought. It was dated 20 September 2021. It confirmed that proceedings would not be brought until 23 March 2022. It had been served by email on 20 September 2021.
15. The ground in the notice to leave was ground 12 “you are in rent arrears over three consecutive months”.
16. That rent arrears had been outstanding since at 26 December 2019.
17. There were rent arrears outstanding at the date of the service of the notice to leave of £6625 which totalled at least one month’s rental due under the tenancy.
18. Rent arrears had been outstanding for at least three months when the notice to leave was served.
19. There were rent arrears outstanding at the date of the application, namely £10,450 which totalled at least one month’s rental due under the tenancy.
20. There appeared to be rent arrears outstanding at today’s date totalling £11,725 at least one month’s rental due under the tenancy.

21. That the arrears did not appear to have been caused by any delay or failure in the payment of a relevant benefit.
22. There were a number of pieces of correspondence during 2021 which provided information and advice about rent arrears and support available during the covid pandemic.
23. The section 11 notice had been sent to the local authority providing them with notice of the intention to raise recovery proceedings.

#### Reasons for Decision

24. Section 51 of the 2016 Act provides the Tribunal with a power to grant an order for eviction for a private residential tenancy, if it finds that one of the grounds in schedule 3 of the Act applies.
25. The ground which the Applicant seeks eviction under is ground 12 rent arrears. Sub paragraph 1 states that it is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. Sub paragraph 2 provides that the Tribunal must find that the ground named in 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 payment as one month's rent under the tenancy on that day; and (ii) has been in arrears of rent ... 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 is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
26. The tribunal finds that there are rent arrears on the account which were in existence for more than three months when the notice to leave was served. There are still rent arrears due. We do not believe that there has been a delay or failure of the payment of relevant benefits which has caused the arrears. We find the ground established.
27. We must now consider whether it would be reasonable to grant the order. The arrears have been increasing since December 2019 and are now in excess of £11,000. There

appears to have been a considerable amount of correspondence to the respondent about the rent arrears including letters which meet the requirements of pre-action paperwork, however it appears that there was only one rental payment made since 2019. We also note that the landlord only has this one property, and while he currently resides in the USA, we note that he has mortgage commitments for the property. Importantly we note that the respondent is not opposing the order being granted.

28. Given the high level of arrears, the very minimal efforts to pay the rent over the last three years by the respondent, the ongoing financial obligation that the applicant has to pay the mortgage and the fact that the respondent does not oppose the order, we consider it would be reasonable to grant the order.

29. Accordingly, having regard to the papers before us and the oral submission of the both parties' agents we consider that the terms of ground 12 met, and that it would be reasonable to grant an order for possession under Schedule 3 Ground 12 - rent arrears.

#### Decision

30. The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

#### **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.**

**Melanie Barbour**

21/09/22

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**Legal Member/Chair**

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**Date**

