



**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/22/2055**

**Re: Property at 2 Queen Street, Rosehearty, AB43 7JH (“the Property”)**

**Parties:**

**Mrs Jane Kathleen Taylor, Keepers Cottage, Barronsgate, Lessendrum, Huntly, AB54 4SH (“the Applicant”)**

**Mr Adam Luczak, Ms Katarzyna Skowronek, 2 Queen Street, Rosehearty, AB43 7JH (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Helen Barclay (Ordinary Member)**

**Decision**

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

**Background**

- 1 By application to the Tribunal the Applicant sought an eviction order against the Respondent in respect of the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). In support of the application the Applicant provided the following documentation:-
  - (i) Private Residential Tenancy Agreement between the parties dated 28 June 2018;
  - (ii) Notice to Leave dated 24 November 2021 stating that proceedings for possession will commence no earlier than 30th June 2022 and citing ground 12, together with proof of service on the Respondents by Sheriff Officers on 30 November 2022;

- (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Aberdeenshire Council;
  - (iv) Rent Statement; and
  - (v) Copy letters from the Applicant to the Respondent regarding the pre-action requirements.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for the 27 September 2022 to take place by teleconference. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondent by Sheriff Officers.

### **Case Management Discussions**

- 3 The Case Management Discussion took place by teleconference on 27 September 2022. Mr Alan Duffill represented the Applicant who was also present. The second named Respondent, Ms Skowronek, joined the conference call shortly after it started, and after Mr Duffill had made his submissions, therefore these were repeated for the benefit of Ms Skowronek.
- 4 Mr Duffill addressed the Tribunal on behalf of the Applicant. He advised that the rent was £400 per month. At the time of raising the application the arrears were £6260. They now stood at £7460, with a further payment due on 30<sup>th</sup> September. Previously the Applicant had obtained an order from the Tribunal in respect of arrears of rent and had written to the Respondents setting out details of assistance that may be available to them. Mr Duffill had spoken to Ms Skowronek when the application for arrears had been made which was around May/June 2022 but nothing had been forthcoming. They had also spoken about the Notice to Leave, as Ms Skowronek seemed confused about the process. She had however given no indication as to why the rent had not been paid. The last payment made was in September 2021. Prior to that it was £240 in June 2021. There had been intermittent payments since October 2020, which had mostly fallen below the monthly rental figure.
- 5 Mr Duffill advised that he understood Ms Skowronek to be in full time employment. The first named Respondent was unemployed, but Mr Duffill understood this to be the case throughout the tenancy. No effort was being made by the Respondents towards payment of the rent so on that basis the Applicant sought an eviction order. There was one child in the property who was just over a year old (Ms Skowronek later clarified that the child had just turned 2). In response to questions from the Tribunal Mr Duffill advised that the Applicant relies on her rental income and there were no payments or offers of payment forthcoming. The Applicant was in full time employment.

- 6 Ms Skorownek advised that she had been paying rent when she could. She had been in the country for 17 years and had always worked hard. It had gotten very difficult for her and for her family. She had been ill and had got into debt as a result. She was unable to keep her head above water. Ms Skowronek advised that she had spoken with the Council and they would be able to offer her alternative accommodation in the event that an order was granted. She advised that her husband was unemployed and waiting for two operations. He was quite unwell. She was unable to remain in the property due to the ongoing rent. Ms Skowronek stated that she had taken advice from the Citizens Advice Bureau as she had been confused about the dates on the Notice to Leave. She didn't think they were right and she had received multiple versions. She confirmed that her daughter had just turned two. In response to questions from the Tribunal, Ms Skowronek advised that applications had been made around three to four months ago but had not yet been determined. Her husband was trying to apply for personal independent payments. They were in receipt of joint universal credit, but they were awaiting on reports from institutions and documents from the hospital to finalise their entitlement. It was taking quite a lot of time. Ms Skorownek confirming her employment with a fish factory, where her wages varied. Some weeks they amounted to £300, other weeks it would amount to £100.
- 7 In response to questions from the Tribunal Mr Duffill confirmed his position was that a valid Notice to Leave had been issued. There may have been an earlier attempt by another office within his firm but the current one could be relied upon as competent.

### **Relevant Legislation**

- 8 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Private Housing Tenancies (Scotland) Act 2016, as amended by the Coronavirus (Scotland) Act 2020, the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020 and the Coronavirus (Extension and Expiry) (Scotland) Act 2021:-

#### **1 - Meaning of private residential tenancy**

1) A tenancy is a private residential tenancy where—

(a) the tenancy is one under which a property is let to an individual (“the tenant”) as a separate dwelling,

(b) the tenant occupies the property (or any part of it) as the tenant’s only or principal home, and

(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

(2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

### **51 First-tier Tribunal's power to issue an eviction order**

(1) *The First-tier 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.*

(2) *The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.*

(3) *The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.*

(4) *An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.*

### **52 Applications for eviction orders and consideration of them**

(1) *In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.*

(2) *The Tribunal is not to entertain an application for an eviction order if it is made in breach of—*

(a) *subsection (3), or*

(b) *any of sections 54 to 56 (but see subsection (4)).*

(3) *An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.*

(4) *Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.*

(5) *The Tribunal may not consider whether an eviction ground applies unless it is a ground which—*

(a) *is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or*

(b) *has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.*

### **54 Restriction on applying during the notice period**

(1) *A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.*

(2) *The relevant period in relation to a notice to leave—*

(a) *begins on the day the tenant receives the notice to leave from the landlord, and*

(b) *in the case of a notice served before 3 October 2020 expires on the day falling—*

(i) *28 days after it begins if subsection (3) applies,*

(ii) *three months after it begins if subsection (3A) applies,*

(iii) six months after it begins if neither subsection (3) nor (3A) applies.  
(c) in the case of a notice served on or after 3 October 2020, expires on the day falling—

(i) 28 days after it begins if subsection (3B) applies,

(ii) three months after it begins if subsection (3C) applies,

(iii) six months after it begins if neither subsection (3B) nor (3C) applies

(3) This subsection applies if the only eviction ground stated in the notice to leave is that the tenant is not occupying the let property as the tenant's home. [ground 10]

(3A) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the tenant has a relevant conviction, [ground 13]

(iv) that the tenant has engaged in relevant anti-social behaviour, [ground 14]

(v) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour, [ground 15]

(vi) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(vii) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, [ground 17] or

(b) the only eviction grounds stated in the notice to leave are—

(i) the eviction ground mentioned in subsection (3), and

(ii) an eviction ground, or grounds, mentioned in paragraph (a)

(3B) This subsection applies if the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(a) that the tenant is not occupying the let property as the tenant's home, [ground 10]

(b) that the tenant has a relevant conviction, [ground 13]

(c) that the tenant has engaged in relevant anti-social behaviour, or [ground 14]

(d) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour. [ground 15]

(3C) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

- (i) that the landlord intends to live in the let property, [ground 4]*
  - (ii) that a member of the landlord's family intends to live in the let property, [ground 5]*
  - (iii) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]*
  - (iv) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or [ground 17]*
- (b) the only eviction grounds stated in the notice to leave are—*
- (i) an eviction ground, or grounds, mentioned in subsection (3B), and*
  - (ii) an eviction ground, or grounds, mentioned in paragraph (a).*

## **62 Meaning of notice to leave and stated eviction ground**

- (1) References in this Part to a notice to leave are to a notice which—*
- (a) is in writing,*
  - (b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,*
  - (c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and*
  - (d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.*
- (2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.*
- (3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).*
- (4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.*
- (5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.*

## **Schedule 3, Part 12**

- (1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. ...*
- (3) The First-tier Tribunal may find that the ground named by subparagraph (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.*

- 9 The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 are also relevant to this application.

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

- 10 The parties entered into a Private Residential Tenancy Agreement which commenced on 30 June 2018.
- 11 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
- 12 On 30<sup>th</sup> November 2022 the Applicant delivered a Notice to Leave to the Respondents by Sheriff Officers. The Notice to Leave cited ground 12 of Schedule 3 of the 2016 Act and confirmed that proceedings would not be raised any earlier than 30<sup>th</sup> June 2022.
- 13 The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 14 In terms of Clause 8 of the said Tenancy Agreement the Respondent undertook to make payment of rent at the rate of £400 per calendar month.
- 15 As at the date of service of the Notice to Leave arrears in the sum of £3860 were outstanding.
- 16 As at the date of the Case Management Discussion arrears in the sum of £7460 were outstanding.
- 17 The Respondents have paid no rent since 21 September 2021.
- 18 The Respondents reside in the property with a two year old child.
- 19 The Respondents both suffer from health difficulties.
- 20 The second named Respondent is in employment.
- 21 The Respondents are unable to afford the rental payments for the property.

- 22 The Respondents will be assisted in obtaining alternative accommodation with the local authority in the event of an eviction order being granted by the Tribunal.
- 23 The Applicant has complied with the pre-action requirements by advising the Respondents of their rental obligations and arrears outstanding, offering to enter into payment arrangements and directing them to advice agencies for support.
- 24 It is reasonable to make the order sought by the Applicant.
- 25 The provisions of ground 12 of Schedule 3 of the 2016 Act have been met.

### **Reasons for Decision**

- 26 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. There were no substantive facts in dispute therefore the Tribunal did not consider there to be any requirement to fix a hearing in the matter as there were no issues to be resolved that required the hearing of evidence.
- 27 The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicant's intention to rely upon ground 12 of Schedule 3 of the 2016 Act. The Tribunal was satisfied that the required notice had been given to the Respondents and therefore that application could be entertained.
- 28 The Tribunal accepted that there were rent arrears outstanding in the sum of £7460 and the rent statement reflected that no rent had been paid since September 2021, a year prior to the Case Management Discussion. The lack of payments to the rent account had resulted in a significant balance of arrears. On that basis the Tribunal was satisfied that ground 12 had been met, in that rent had went unpaid for three or more months and there was at least one months rent arrears outstanding as at the date of the Case Management Discussion.
- 29 The Tribunal then considered the question of reasonableness. The Tribunal accepted the submissions from Ms Skoronek at the Case Management Discussion and had great sympathy for the position she and her family had found themselves in. The Tribunal had cognisance of the fact there was a young child in the property and that the Respondents both suffered from health difficulties. However the Tribunal balanced that with the fact that Ms Skowronek had stated that she was unable to pay the rent for the property, and had sought advice from both the Citizens Advice Bureau and the Council. The Council had indicated that assistance in obtaining alternative accommodation would be provided in the event of the Tribunal making an eviction order. The Tribunal



considered that the tenancy had ultimately become unsustainable for the Respondents and were they to remain in the property it was likely that the arrears would continue to accrue, to the severe detriment of the Applicant. Having regard to the significant level of arrears, the length of time since any payments had been made, and balancing that with the Respondents circumstances, the Tribunal ultimately concluded that it would be reasonable in all the circumstances of the case

- 30 The Tribunal therefore determined to make an order for eviction against the Respondents. The decision of the Tribunal was unanimous.

### **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.**

# Ruth O'Hare

28/09/22

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**Legal Member/Chair**

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**Date**