



**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/20/1851**

**Re: Property at 106 Arran Drive, Auchinleck, KA18 2BS (“the Property”)**

**Parties:**

**Mrs Janice Elizabeth Andrews, 8 The Grove, Mussellburgh, EH21 7HD (“the Applicant”)**

**Mr Shaun Samson, 106 Arran Drive, Auchinleck, KA18 2BS (“the Respondent”)**

**Tribunal Members:**

**Petra Hennig-McFatridge (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted.**

**A: Background**

1. The application for an order for eviction under S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act) was made by the Applicant's representatives D W Shaw on 1 September 2020
2. The following documents were lodged to support the application prior to the Case Management Discussion:
  - a. Copy tenancy agreement
  - b. Notice to Quit undated for a date of removal of 1 May 2020
  - c. Notice to Leave dated 4 February 2020
  - d. Execution of service for both notices by Sheriff Officers on 7 February 2020
  - e. Extract of Marriage Certificate and Decree of Divorce for the Applicant
3. A first Case Management Discussion (CMD) was scheduled for 20 November 2020. Case papers and notification of the CMD were served on the Respondent by Sheriff Officers on 20 October 2020. As per the CMD notes and direction dated 20 November 2020 the Tribunal requested further documents and

clarification of the calculation of the rent arrears. A further CMD was scheduled for 18 January 2021. The Respondent was served with notification of the further CMD by letter dated 2 December 2020. The related case for a payment order for rent arrears for the same property CV/20/2421 involving the same parties called on the same date at the same time for a CMD and papers and notification for the CV/20/2421 case were served on the Respondent by Sheriff Officers on 7 December 2020. The Tribunal was satisfied that the Respondent had the required notice of the CMD as set out in Rules 17 (2) and 24 (2) of the Procedural Rules.

4. No representations from the Respondent were received by the Tribunal.
5. By correspondence of 16 December 2020 the Applicant's representatives submitted an up to date rent statement for the period up to and including 1 December 2020, which had also been sent to the Respondent by letter dated 16 December 2020.
6. The case documents and the direction and CMD note of 20 November 2020 are referred to for their terms and held to be incorporated herein.

**B: The Case Management Discussion:**

1. The CMD took place on 18 January 2021 by telephone conference call.
2. The Applicant participated together with her solicitor Ms Jeffrey, the Respondent did not participate.
3. Ms Jeffrey confirmed that neither the Applicant nor the representatives had had any contact from the Respondent.
4. The Applicant clarified that the statement submitted showing the arrears up to 1 December 2020 was slightly inaccurate because the due date for the weekly rent was always on a Friday. Unfortunately she had now identified that the dates shown on the statement after 29 May 2020 were not the Fridays but the following Tuesdays of the weeks and thus each date shown on the statement after 29 May 2020 should be 4 days earlier to show the correct Friday due date. However, as of 1 December 2020 the sum shown on the statement was correct. The next payment was then due on 4 December 2020 and neither that payment nor any subsequent payments had been made. The outstanding sum as of the date of the CMD was now 7 weeks at £ 53.25 more. The amount of arrears of £2,475.25 would thus cover the arrears from 1 November 2019 up to and including the rent payment due on 27 November 2020 and then there were another 7 weeks without payment after that.
5. Ms Jeffrey confirmed that the arrears had been accruing continuously since 1 November 2019 as shown on the rent statement and moved for an eviction order under Ground 12 (2) of schedule 3 of the 2016 Act. The arrears at the CMD are £2,988.00 and are thus well in excess of one month's rent.
1. Ms Jeffrey clarified that the reason for giving to 1 May 2020 in the Notice to Leave was that at the time the legal representatives had thought that a Notice to Quit may still be required together with a Notice to Leave and thus took into account the period required for a Notice to Quit. However, as the tenancy is a Private Residential Tenancy the Notice to Quit had actually not been required. At the time the Notice to Leave was served the arrears had been accruing since 1 November 2019 for a consecutive period of over 3 months. She moved for the application to be granted.

### **C: Findings in Fact**

1. The property was let on a Private Residential Tenancy Agreement commencing on 8 February 2019.
2. The parties are the landlord and tenant of said Tenancy Agreement.
3. The tenancy is ongoing and the Respondent still occupies the property.
4. The weekly rent is payable on a Friday for the week in advance at a rate of £73.25 per week.
5. Rent arrears accrued as per the Rent Statement sent on 16 December 2020 and since then no payments have been made.
6. On 7 February 2020 the Applicant served a Notice to Leave on the basis of ground 12 of schedule 3 of the 2016 Act on the Respondent by Sheriff Officers.
7. The Notice to Leave states as the date when proceedings can be raised the date of 1 May 2020 and gives information about arrears accrued and states the Respondent was in rent arrears over three consecutive months.
8. As at the date of service of the Notice to Leave on 7 February 2020 the Respondent had been in arrears of rent for a consecutive period of 3 months.
9. The arrears of rent due as at the CMD were £2,475.25 plus 7 further weeks at £73.25 and thus £2,988.00
10. The monthly rent for the property is £317.42.
11. The Respondent has been in arrears of rent continuously since 1 November 2019 and thus for three or more consecutive months at the time the Notice to Leave was issued, at the time the application was made and at the time of the CMD, when the merits of the case were considered.
12. The arrears of rent are not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
13. The notice required under S 56 of the Act was issued to the local authority on 14 February 2020.

### **D: Reasons for decision**

#### 1. Relevant legislation:

In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

(a) in any place where a hearing may be held;

(b) by videoconference; or

(c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

(a) identifying the issues to be resolved;

(b) identifying what facts are agreed between the parties;

(c) raising with parties any issues it requires to be addressed;

(d) discussing what witnesses, documents and other evidence will be required;

(e) discussing whether or not a hearing is required; and

(f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

Power to determine the proceedings without a hearing

However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties

2016 Act

### **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 or must 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.

### *Grounds under Schedule 3 of the 2016 Act*

#### **Rent arrears**

12(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.

2. The Respondent has not made any representations and did not attend the CMD. The facts of the case are not disputed. The Respondent had fair notice of the representations of the Applicant forming the reasons for the application and has not challenged these. As no representations were received from the Respondent by the Tribunal, the facts of the case are not in dispute. This includes the rental statement up to 1 December 2020. There was no opposition to the order being granted. The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case. The Respondent was made aware that the Tribunal could consider the case on its merits and make a decision at the CMD. No defence was lodged to the application.

3. As the Notice to Leave was served before 7 April 2020 the case is not subject to the provisions of the Coronavirus (Scotland) Act 2020. The documents lodged and the Direction and CMD note of 20 November 2020 are referred to for their terms and held to be incorporated herein. The Tribunal makes the decision on the basis of the documents lodged by the Applicant and her solicitor and the information given at both CMDs.

4. In terms of S 54 (2) (b) (i) of the Act a 28 notice period applied. The Notice to Leave was served by Sheriff Officers on 7 February 2020. The date which would have been the first date when an application could be made in terms of S 62 (1) (b) of the 2016 Act calculated on the 28 days notice period applicable would have been 6 March 2020. However, the Tribunal does not consider that the date given as 1 May 2020 and thus reflecting a longer notice period would invalidate the Notice to Leave. The entry of 1 May 2020 as the first date on which an application could be raised would lead to a personal bar for the Applicant raising the application any earlier and thus with the date entered as 1 May 2020, that date actually then does represent the first day on which the application could be made. There was no detriment to the Respondent in allowing for a longer notice period. The action was raised after the expiry of the correct notice period and the Respondent given adequate notice of the reasons for the Notice. The Applicant had served the notice required in terms of S 56 of the Act on the local authority on 14 February 2020.

5. The Tribunal found that Ground 12 (2) of Schedule 3 of the 2016 Act applies in this case. This is a mandatory ground of eviction. There is clear evidence of the rent arrears accruing from 1 November 2019 onwards to the date of the CMD. No payments apart from the payments listed in the rent statement submitted on 16 December 2020 had been received. The Respondent has missed 7 rental payments since 1 December 2020. The arrears as of the date of the CMD are £2,988 and this is in excess of the monthly rent for the property of £317.42. There is no suggestion that the arrears would be " wholly or partly a consequence of a delay or failure in the payment of a relevant benefit." The evidence from the Applicant at the first CMD was that the Respondent received benefits fraudulently and the Applicant had been asked to return these payments. After some negotiation she was advised that she would not have to make the repayment. However, there is no indication that since then the Respondent would have become entitled to any benefits. The Respondent has been in arrears of rent continuously since 1 November 2019 and the current arrears exceed the equivalent amount of one month's rent. The Tribunal thus must grant the eviction order in terms of Ground 12 (2) of schedule 3 of the 2016 Act. .

6. In terms of S 51(1) of the 2016 Act the Tribunal thus grants the application for an eviction order as it is satisfied that one of the eviction grounds in schedule 3 of the Act applies. The Tribunal, having regard to the appeal period, determines that in terms of S 54(4) of the Act the tenancy ends on 18 February 2021.

## **Decision**

**The Tribunal grants an order for eviction in terms of S 51 of the Act on Ground 12 of Schedule 3 of the Act**

## 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.



**Petra Hennig McFatridge**

---

**Legal Member**

**18 January 2021**

---

**Date**