



**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/22/1359**

**Re: Property at 39 Elm Road, Kirriemuir, DD8 4DG (“the Property”)**

**Parties:**

**Mr Martin Kimmond, 25 Mary Countess Way, Glamis, DD8 1RF (“the Applicant”)**

**Mr John Paul McDowall, Miss Jude Alix Byres, 39 Elm Road, Kirriemuir, DD8 4DG; 12 Golden Acre, Johnshaven, Montrose, DD10 0EX (“the Respondent”)**

**Tribunal Members:**

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

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that 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,
  - copies of two notices 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 Applicants' representative, Mr Beattie from Thorntons LLP, appeared on behalf of the Applicant. There was no appearance by either Respondents.
4. Notice of the Hearing and the application had been served on the Respondents by sheriff officers on 20 July 2022. Service on the papers in relation to the first respondent, John Paul McDowall, had been at 12 Golden Acre, Johnshaven, Montrose. This was because the sheriff officers after due inquiry found out that the first respondent had left the property and now appeared to be residing at this address. As it appeared to us that the Respondents had been served with notice of today's hearing we were therefore prepared to proceed with today's hearing in their absence.

#### Discussion

5. Mr Beattie first moved to amend the surname of the second respondent to from McDowall to Byres. The tribunal granted this motion.
6. The tribunal considered the papers which had been lodged in support of the application, including the tenancy agreement, the notice to leave, and rent account statement. We noted that the notices to leave had been served by recorded delivery on 5 November 2021 and they sought eviction under ground 12, rent arrears for a period of more than 3 months.
7. Mr Beattie advised that he was seeking an order for eviction today. He advised that the "covid" provisions applied in this case and noted that the notices to leave had been served almost a year ago now given the extended notice periods which applied. He advised that today the rent arrears stood at £7,027.53. This was a slight reduction in the sum owing when the application was made, however it was minimal. He advised that the rent payments were variable: some payments were a few pounds only and

some more substantial, and others left a shortfall. He did not consider that the payments would make any inroads into the repayment of arrears.

8. He advised that there had been a suggestion that the second respondent, Ms Byres was looking for a local authority property, but he could not confirm that this was definitely the case.
9. He advised that the pre-action requirements had been complied with. There had been no contact from the respondents to that letter. He advised that the land agent had made attempts to contact the respondents before his involvement, those attempts had not been successful. He referred to email correspondence from the second respondent to the land agents on 19 February 2021, and he advised that it said that the respondents had been in touch with Shelter Scotland, and they had been told to stay where they were, and the second respondent had advised the land agents that they would not be leaving the property. She had advised that her partner had recently been discharged from hospital and the land agents were not to phone him about the rent and arrears.
10. Mr Beattie advised that it was just the respondents residing in the property, and probably only now the second respondent, although the first respondent had not confirmed that he had left the property. There were no dependants residing in the property. He did not consider that there was any failure or delay in the payment of benefits, the second respondent is in receipt of universal credit.

#### Findings in Fact

11. The Tribunal found the following facts established:-
12. There existed a private residential tenancy between the Applicant and the Respondent. It had commenced on 1 April 2019.
13. The tenancy was for the property 39 Elm Road, Kirriemuir.
14. The tenants are John Paul McDowall and Jude Alix Byres.
15. The landlords are Lee Hutcheon and Martin Kimmond.

16. Clause 7 of the Tenancy Agreement provides that the rent for the property is £650 per calendar month. It is payable in advance and due on the 1st of each month.
17. There was a notice to leave addressed to each Respondent. It contained information from the Respondents as to why an eviction order was sought. It was dated 4 November 2021. It confirmed that proceedings would not be brought until 7 May 2022. It had been served by recorded delivery and delivered on 5 November 2022.
18. The ground in the notice to leave was ground 12 “you are in rent arrears over three consecutive months”.
19. That rent arrears had been outstanding since at least April 2020.
20. There were rent arrears outstanding at the date of the service of the notice to leave of £6940 which totalled at least one month’s rental due under the tenancy.
21. Rent arrears had been outstanding for at least three months when the notice to leave was served.
22. There were rent arrears outstanding at the date of the application, namely £7098.43 which totalled at least one month’s rental due under the tenancy.
23. There appeared to be rent arrears outstanding at today’s date totalling £7,027.53, at least one month’s rental due under the tenancy.
24. That the arrears did not appear to have been caused by any delay or failure in the payment of a relevant benefit.
25. There was correspondence dated 2 March 2022 providing information and advice about rent arrears and support available during the covid pandemic. This letter had been sent recorded delivery and had been signed for.
26. 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

27. 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.
28. 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.
29. 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.
30. We must now consider whether it would be reasonable to grant the order. The arrears have been increasing since April 2020 and are now in excess of £7000. While the tenants has been making some payments to rent, those payments have not made any more than a minimal reduction to the arrears since the action has been raised. The tenants have failed to engage with the land agent and the applicant in relation to dealing with the rent arrears. It appears that the first respondent may have now left the property. There is no evidence of any explanation by the tenants to explain why the arrears have arisen. There appears to have been no offer to repay any of the arrears. There are no dependents in the property. Neither tenant appeared at the tribunal today and we are aware of no mitigation for the tenant in this matter. We consider that it is reasonable to grant the order for eviction.
31. Accordingly, having regard to the papers before us and the oral submission of the Applicant's agent 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

**32.** 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

Legal Member/Chair

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Date: 22 August 2022