



**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/22/2861**

**Re: Property at 24 Argyll Place, Alloa, FK10 3RJ (“the Property”)**

**Parties:**

**Mr Alistair Turner, 51 Mariner Road, Camelon, Falkirk, FK1 4LE (“the Applicant”)**

**Mr Rylee Binns or Thomson, 24 Argyll Place, Alloa, FK10 3RJ (“the Respondent”)**

**Tribunal Members:**

**Alison Kelly (Legal Member) and Sandra Brydon (Ordinary Member)**

**Decision**

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

On 12<sup>th</sup> August 2022 the Applicant lodged an Application with the Tribunal under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondent from the property in terms of Ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.

Lodged with the application were: -

1. Copy Tenancy Agreement with commencement date of 7<sup>th</sup> September 2020 and rent of £375 per calendar month;
2. Copy Rent Statement;
3. Copy Notice to Leave dated 23<sup>rd</sup> May 2022;
4. Proof of delivery of the Notice to Leave
5. Letters to the Respondents dated 10<sup>th</sup>, 22<sup>nd</sup> and 29<sup>th</sup> June 2022 in relation to the pre action requirements;

## 6. Section 11 Notice.

The Application was served on the Respondent by Sheriff Officers on 3<sup>rd</sup> November 2022.

### **Case Management Discussion**

The Case Management Discussion (“CMD”) took place by teleconference. The Applicant was represented by Miss MacDonough of Jardine, Donaldson, Solicitors. The Respondent represented himself.

The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. The Chairperson explained that the Applicant needed to provide sufficient evidence to establish the ground of eviction, and that it was reasonable for the Tribunal to grant the order.

The Respondent explained that he had changed his name in November 2021 from Binns to Thomson. He had done this by Deed Poll, and his identification and bank account had all been changed to his new name.

Miss MacDonough moved for the eviction order to be granted. She said that the application had been raised in August 2022, at which point the arrears stood at £2400. The rent was £375 per month. The Respondent had paid nothing in the meantime and the arrears now stood at £3525. She said that the Respondent had been given ample opportunity to respond given the letters sent to satisfy the Pre Action Requirements. He had not engaged in the process and the arrears had continued to accrue. She said that the Applicant was of the view that the arrears were now unmanageable, and no payment plan had ever been proposed by the Respondent.

The Respondent said that he agreed the level of rent arrears. He appreciated that he should have made payment. He explained that he has had mental health issues since 2015 and had a borderline personality disorder. It affected his day to day life. When he was really not well his behaviour regarding spending could be reckless. He said he had a GP letter, but he had not produced it to the Tribunal or the Applicant. He said that he had buried his head in the sand regarding the arrears, but he could probably afford to pay £250 per month plus the rent. He said that he is employed as a family support worker with the NHS earning about £1600 per month. He lives with his girlfriend, who is a student. They have no children. He does have other debts.

The ordinary member asked the respondent some questions. He confirmed that he had contacted the local authority for assistance, but they considered him to be intentionally homeless because of the situation. He has been trying to find other accommodation without success. He has not advised the local authority of his mental health issues. He confirmed that he has a lot of other debts and is not paying anything towards those.

## Findings in Fact

1. The parties entered into a Tenancy Agreement in respect of the property;
2. The Tenancy Agreement commenced on 7<sup>th</sup> September 2020;
3. A Notice To Leave was served timeously and correctly;
4. The Notice was served on 24<sup>th</sup> May 2022 and the action therefore does not fall within the scope of the Cost of Living (Tenant Protection)(Scotland) Act 2022;
5. At the time of service of the Notice to Leave the arrears were £1275, equating to three months' rent;
6. At the time of lodging the application the arrears were £2400 equating to six months' rent;
7. At the date of the CMD the arrears are £3525 equating to nine months' rent.
8. The Respondent is in employment earning £1600 per month;
9. The Respondent occupies the property with his girlfriend;
10. The respondent has made no attempt to contact the Applicant to arrange a payment plan or explain his circumstances.

## Reasons for Decision

It is usually mandatory to grant an application under Ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 provided that notices have been served correctly. However, Section 2 and Schedule 1 of the Coronavirus (Scotland) Act 2020 amended the legislation as follows:

*1(1)The Private Housing (Tenancies) (Scotland) Act 2016 applies, in relation to a notice to leave within the meaning of section 62 of that Act served on a tenant while this paragraph is in force, in accordance with the modifications in this paragraph.*

*(2)Section 51(2) (First-tier Tribunal's power to issue an eviction order) has effect as if the words "or must" were repealed.*

*(3)Schedule 3 (eviction grounds) has effect as if—*

*(a)in paragraph 1(2) (landlord intends to sell)—*

*(i)in the opening words, for the word "must" there were substituted " may ",*

*(ii)after paragraph (a), the word "and" were repealed,*

*(iii)after paragraph (b) there were inserted " , and*

*(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts."*

*(b)in paragraph 2(2) (property to be sold by lender)—*

*(i)in the opening words, for the word "must" there were substituted " may ",*

*(ii)after paragraph (b), the word "and" were repealed,*

*(iii)after paragraph (c) there were inserted “, and  
(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*

*(c)in paragraph 3(2) (landlord intends to refurbish)—  
(i)in the opening words, for the word “must” there were substituted “ may ”,  
(ii)after paragraph (b), the word “and” were repealed,  
(iii)after paragraph (c) there were inserted “, and  
(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*

*(d)in paragraph 4(2) (landlord intends to live in property)—  
(i)for the word “must” there were substituted “ may ”,  
(ii)the words from “the landlord” to “3 months” were paragraph (a),  
(iii)after paragraph (a) there were inserted “, and  
(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,*

*(e)in paragraph 6(2) (landlord intends to use for non-residential purpose)—  
(i)for the word “must” there were substituted “ may ”,  
(ii)the words from “the landlord” to “home” were paragraph (a),  
(iii)after paragraph (a) there were inserted “, and  
(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,*

*(f)in paragraph 7(2) (property required for religious purpose)—  
(i)in the opening words, for the word “must” there were substituted “ may ”,  
(ii)after paragraph (b) the word “and” were repealed,  
(iii)after paragraph (c) there were inserted “, and  
(d)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*

*(g)in paragraph 8 (not an employee)—  
(i)in the opening words of sub-paragraph (2), for the word “must” there were substituted “ may ”,*

*(ii)for paragraph (c) there were substituted—*

*“(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*

*(iii)sub-paragraph (3) were repealed,*

*(iv)in sub-paragraph (4), for the words “sub-paragraphs (2) and (3)” there were substituted “ sub-paragraph (2) ”,*

*(h)in paragraph 10(2) (not occupying let property)—*

*(i)in the opening words, for the word “must” there were substituted “ may ”,*

*(ii)after paragraph (a), the word “and” were repealed,*

*(iii)after paragraph (b) there were inserted “, and*

*(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*

*(i)in paragraph 12 (rent arrears), sub-paragraph (2) were repealed,*

*(j)in paragraph 13(2) (criminal behaviour)—*

*(i)in the opening words, for the word “must” there were substituted “ may ”,*

*(ii)after paragraph (a), the word “and” were repealed,*

*(iii)after paragraph (b) there were inserted “, and*

*(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”.*

The Tribunal now has to decide if it is reasonable to grant the eviction order.

The Tribunal were of the view in this case that the Applicant had established Ground 12 and that it was competent to grant an order for eviction.

The Tribunal thereafter had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order.

The level of arrears in this case is high, it equates to almost ten months' rent. The tribunal took in to consideration the Respondent's comments regarding his borderline personality disorder. Unfortunately he had not advised the Applicant of this, nor had he sought any advice regarding the arrears from any advice agency. He had made no effort to offer a payment plan. He had other debts that he was not paying. It was very unlikely that the Respondent would be able to bring the arrears down within a

reasonable period of time. In all the circumstances The Tribunal considered it reasonable to grant the 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.**



01/12/2022

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**Legal Member/Chair**

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**Date**