



**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/22/3524**

**Re: Property at 7 Greenoakhill Road, Uddingston, Glasgow, G71 7PS (“the Property”)**

**Parties:**

**Fraser Law, Sarah Al-Shamma, 7/2 100 Lancefield Quay, Glasgow, G3 8HF (“the Applicants”)**

**Tamara Diaz, 7 Greenoakhill Road, Uddingston, Glasgow, G71 7PS (“the Respondent”)**

**Tribunal Members:**

**Joel Conn (Legal Member) and Gordon Laurie (Ordinary Member)**

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

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

**Background**

1. This is an application by the Applicants for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”). The PRT in question was by the Applicants to the Respondent commencing on 3 September 2021.
2. The application was dated 27 September 2022 and lodged with the Tribunal on 28 September 2022. The application relied upon a Notice to Leave dated 18 May 2022 in terms of section 50 of the *Private Housing (Tenancies) (Scotland) Act 2016*, intimated upon the Respondent by email on that date (to the email address within the Tenancy Agreement, and further to clause 3 of the Tenancy Agreement). The Notice relied upon Grounds 10, 11 and 12 of Schedule 3 Part

1 of the 2016 Act, but the application was directed only against the rent arrears (though referred to Ground 11 in that regard as well). Further the details of the Notice focused on Ground 12 (that “the tenant has been in rent arrears for three or more consecutive months”) as the body of the Notice referred to arrears of £8,975 at that time and referred to a rent schedule which was provided to us shortly before the case management discussion. The schedule showed a last payment on 12 November 2021 with unpaid rent from 3 December 2021. The rent due under the Tenancy Agreement lodged was £1,795 per month due in advance on the 3<sup>rd</sup> day of each month (meaning £10,770 was due to be paid by 3 May 2022 and thus the Notice understated the arrears). The Notice intimated that an application to the Tribunal would not be made before 17 June 2022.

3. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon Glasgow City Council was provided with the application. There was no evidence of the Applicants’ solicitor providing pre-action protocol information to the Respondent in any standard form.

### **The Hearing**

4. The matter called for a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 16 March 2023 at 14:00. We were addressed by the Applicants’ agent Tanya Murray, solicitor, of Lyons Davidson Scotland LLP. There was no appearance from the Respondent.
5. We were informed by the clerk that no contact had been received from the Respondent (or on her behalf) with the Tribunal. The Applicants’ agent said that the Respondent was believed not to have been at the Property since at least 25 January 2022 (which issue we review further below). The last contact by the Respondent with the Applicants was an email by her to the first named Applicant on 17 January 2022 when she said payment of the then arrears of December 2021 and January 2022 would be cleared. Further emails by the first named Applicant to the Respondent later in January 2022 went unanswered. The Respondent thereafter contacted the Applicants’ agent on 20 May 2022 following service of the Notice to Leave, when she stated a number of complaints about the Tenancy and the Applicants’ behaviour, and suggested she may take her own legal action (which she did not).
6. The Tribunal’s Sheriff Officer had intimated the CMD at the Property and been satisfied that the Respondent remained there (though the basis for his assessment was not clear from his Certificate of Intimation). As this application related to eviction from the Property, service upon the Respondent at that address is to be expected. Having not commenced the CMD until around 14:05, we were satisfied to consider the application in the Respondent’s absence. In any case, no attempt was made by the Respondent to dial in late to the CMD.
7. At the CMD, the Applicants’ agent confirmed that the application for eviction was still insisted upon. An updated rent ledger to 3 March 2023 was lodged prior to the CMD showing arrears were now £28,720 (16 months of arrears).

8. The Applicants' agent was not aware of any issues with benefits. The Applicants believed children had resided at the Property previously. They were not aware of any adaptation of the Property for accessibility. They knew of no reason that the Respondent required the Property due to its specific location or convenience to any support service.
9. We had a number of questions further to the application papers. The Applicants' agent candidly accepted that the application was not as she would have liked, and explained that she had been the principal agent, then suffered a period of ill-health absence, and during that time she accepted certain steps that she would have taken had not been taken, and some of the application was not phrased as she would have wished. In particular:
  - a. She would have wished the application to have been on Grounds 10, 11 and 12, but no mention was made of Ground 10. The Applicant's agent made a motion to amend the application to include consideration of Ground 10, given that the Notice to Leave referred to it, and the Property was still believed to be unoccupied.
  - b. There was no evidence of the service of the section 11 notice on Glasgow City Council (such as a covering letter or email), but she was satisfied that it was sent to them even though the date of this was not clear in the papers.
  - c. There was no pre-action protocol letter in normal form. This had been omitted and only noted by her subsequent to our email prior to the CMD asking for a copy. On this, she submitted that the prejudice to the Respondent is far less than that to the Applicants of any further delay, and she asked us to dispense with the need for such a letter.
10. It became clear to us that, even with further correspondence being lodged just prior to the CMC, there was not a full picture as to the correspondence and contact between the parties in regard to arrears or occupation. We heard the contents of one email read to us over the call, and allowed an adjournment after which the Applicants' agent was able to provide further information from the Applicants. The full chronology was thus as follows:
  - a. The rent for December 2021 was missed and the first named Applicant wrote to the Respondent by email on 30 December 2021 complaining about a lack of communication and payment.
  - b. The Respondent responded on 30 December 2021 by email referring to being ill with Covid and "having issues with my work". In regard to the arrears, she said she had "asked family for some help".
  - c. On 10 January 2022 (by which time a second month of rent had been missed), the first named Applicant emailed back asking if the Respondent had any update regarding family assistance.
  - d. On 15 January 2022, the first named Applicant emailed the Respondent regarding coming to fit new fire alarms on 17 January 2022.
  - e. The same day, the Respondent replied that she was isolating at home due to Covid and putting off the visit.
  - f. Later the same day, the first named Applicant responded asking for a call to discuss options and questioning whether the Respondent was still within the official isolation period.

- g. On 17 January 2022, the Respondent emailed to say “I have the situation sorted with my family helping out and I will clear the balance of December and January by the end of the week”. (No mention was made of rearranging the visit to fit the alarms, or whether she was still isolating.) No payment was made of the arrears.
  - h. On 24 January 2022, the first named Applicant attended at the Property to fit the alarms and found the Property unoccupied with:
    - i. The key to the back door in the back door’s outside lock.
    - ii. A set of keys on an internal window sill, but with the window open so the keys could be reached.
    - iii. The front door mat, under which he believed a spare key was kept, moved aside as if the key had been removed by someone.  
(This information was provided by the Applicants’ agent after the adjournment, further to her call with the Applicants.)
  - i. On 25 January 2022, the first named Applicant emailed the Respondent regarding the previous day’s visit and that the “house looked very empty with no belongings or furniture” and saying that a “neighbour said she saw what she thought was you moving out yesterday”. He asked for confirmation whether the Respondent was seeking to terminate the Tenancy. He added that he had found her telephone number to be disconnected.
  - j. Shortly afterwards, the Applicants changed the locks. They emailed the Respondent to say that the locks were changed for security reasons, but that the Respondent was not being evicted and should make contact for the keys. (This information was provided by the Applicants’ agent after the adjournment, and the email was not read to us, but paraphrased by the agent.)
  - k. At some point the Applicants were told by neighbours that the Respondent was residing abroad, but they have not verified this.
  - l. Subsequent to the Applicants’ agent emailing the Respondent the Notice to Leave on 19 May 2022, the Respondent emailed the agent on 20 May 2022 back with a number of complaints, such as about the locks being changed without her authority, about an uncontrolled rodent infestation at the Property, and about the Applicants making defamatory comments. The Respondent made a threat to take matters further unless everything was dropped. (This email was read to us by the agent during the CMD, but had not been lodged.) The Applicants disputed the contents of the email, and continued with the eviction process.
  - m. The Applicants had received no indication that the Respondent was seeking benefits nor that there was any reason for non-payment arising from a benefit application.
11. The Applicants were in receipt of a “rent guard” insurance, which paid them out equivalent to the unpaid rent through to the rent due on 3 February 2023. The insurance was now exhausted, and the insurers had an entitlement to recover any rent recovered from the Respondent during this period. The Applicants’ agent held that a contractual liability under the Tenancy by the Respondent was thus unsatisfied and the insurance policy did not have effect the Applicants’ entitlement to seek eviction. The Applicants wished to sell the Property but

could not do so as the Respondent's email of 20 May 2022 implied that she wished to reoccupy the Property.

12. No motion was made for expenses.

### **Findings in Fact**

13. On 2 September 2021, the Applicants let the Property to the Respondent under a Private Residential Tenancy with commencement on 3 September 2021 ("the Tenancy").
14. In terms of clause 7 of the Tenancy Agreement, the Respondent requires to pay rent of £1,795 a month in advance on the 3<sup>rd</sup> day of each month.
15. On 18 May 2022, the Applicants' agent drafted a Notice to Leave in correct form addressed to the Respondent, providing the Respondent with notice, amongst other matters, that she was in rent arrears for a period in excess of three consecutive months and detailing arrears at that date of £8,975.
16. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior to 17 June 2022.
17. The Applicants' agent served a copy of the Notice to Leave on the Respondent by email in terms of clause 3 of the Tenancy Agreement on 18 May 2022.
18. The Applicants raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying in part on Ground 12 of Schedule 3 Part 1 of the 2016 Act.
19. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon Glasgow City Council on the Applicants' behalf.
20. The terms of the Notice to Leave provided the Respondent with some of the information required under the pre-action protocol but not all matters within the protocol.
21. As of 16 March 2023, the Respondent remained in arrears of rent in the amount of £28,720 which is the equivalent of 16 months of rent.
22. The Respondent does not claim to have paid any amount of the arrears of £28,720 remaining as at 16 March 2023.
23. The sum of arrears remaining as of 16 March 2023 is neither wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, other than any referable to an act or omission of the Respondent.
24. On 13 February 2023, the Tribunal intimated to the Respondent the date and time of the CMD of 16 March 2023 by Sheriff Officer.



## Reasons for Decision

25. The application was in terms of rule 109, being an order for eviction of a PRT. Though the Tenancy Agreement lacks a notice provision, due to being in a non-standard style, we were satisfied on the basis of the application and supporting papers that the Notice to Leave had been correctly drafted and served upon the Respondent.
26. Ground 12 of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:
  - (1) *...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 sub-paragraph (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*
    - (a) *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, and*
    - (b) *the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations.*
27. The arrears information provided at the CMD clearly showed that Ground 12 was satisfied in regard to the length of arrears and amount outstanding. There is nothing to suggest that Respondent's failure to pay is related to an issue with benefits.
28. We were read the contents of the Respondent's last communication (the email of 20 May 2022) which made various comments that could have been interpreted as defences: the rodent infestation, and being locked out of the Property. The former was not mentioned in the December 2021 and January 2022 correspondence when the Respondent offered full payment of the arrears then due. The Respondent took no steps to vindicate her position on the latter, such as retaking possession; instructing solicitors; or simply asking for a set of keys. We were satisfied to accept the *ex parte* statements that the Property had been left insecure by the Respondent and that the Applicants had offered a set of keys to the Respondent after making it secure. In the circumstances, we were satisfied to hold that the rent was due and was not being validly retained or withheld for any other reason.
29. In regard to the pre-action protocol, we need consider the compliance only as part of our decision. It had not been complied with, but after 15 months of non-payment, and sign-posting in the Notice to Leave to sources of advice, we were

satisfied that there was no material prejudice to the Respondent by the lack of such correspondence. The Respondent's position was clearly understood by her (both from her positive offers to engage in January 2022, and her position in the 20 May 2022 email) yet she had not taken any action to advance any dispute or make any proposal. We were satisfied to proceed to consider Ground 12 in the absence of such compliance, though it was not ideal.

30. We require, in terms of the Act as currently amended, to consider the reasonableness of the application even in regard to such substantial arrears. We were satisfied that the Applicants' reasons for seeking eviction were reasonable given the amount and duration of the arrears and the absence of any engagement by the Respondent. This was the case even where, on paper, they had not yet suffered a direct loss due to the insurance cover.
31. In all the circumstances before us, we were satisfied that Ground 12 was well founded by the Applicants and reasonable to grant. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we were thus satisfied to grant an order for eviction at this time.
32. We declined to allow an amendment of the application to include Ground 10. To have allowed same, we would have wished greater detail as to the investigations as to occupation, and copies of the emails that had not been lodged. Given that we were satisfied to grant the order sought on the application as drafted, we see no prejudice to the Applicants in our refusal.

## **Decision**

33. In all the circumstances, we grant an order against the Respondent for eviction from the Property under section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* in normal terms further to ground 12 of Schedule 3 of that 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.**

# Joel Conn

16 March 2023

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**Legal Member/Chair**

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**Date**