



**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/22/3165**

**Re: Property at 15 Craigie Avenue, Kilmarnock, KA1 4ED (“the Property”)**

**Parties:**

**Mrs Audrey Byrne, 19 Ballyhafry Road, Castlewelan, C Down, BT31 9HR (“the Applicant”)**

**Mr Christopher Francis Gallacher, 15 Craigie Avenue, Kilmarnock, KA1 4ED (“the Respondent”)**

**Tribunal Members:**

**Richard Mill (Legal Member) and Helen Barclay (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**

Introduction

This application seeks an eviction order and is under Rule 109 and Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016.

Intimation of the application and of the Case Management Discussion (CMD) was effected upon the respondent by Sheriff Officers on 1 December 2022.

The CMD took place by teleconference on 25 January 2023 at 2pm. The applicant was represented by Mr Steven Spence of Lomond Estate Agents Ltd. The respondent failed to participate in the hearing. There was no known barrier to him doing so.

## Findings and Reasons

The property is 15 Craigie Avenue, Kilmarnock, KA1 4ED.

The applicant is Mrs Audrey Byrne who is the heritable proprietor and registered landlord. The property is co-owned by her husband Mr John Byrne who has provided his written consent to the application being made. The respondent is Mr Christopher Francis Gallacher who is the tenant.

The parties entered into a private residential tenancy which commenced on 13 May 2019. The agreed rent in terms of the written lease was £375 per month.

The current eviction proceedings are based upon arrears of rent and the ground relied upon is ground 12, contained within Part 1, Schedule 3 to the 2016 Act, namely that the respondent is in rent arrears over three consecutive months.

The Tribunal found that the Notice to Leave upon which the eviction application proceeds is valid. It is dated 18 January 2022. 6 months' notice required to be given. The notice served stated an application would not be submitted to the Tribunal for an eviction before 27 July 2022. The notice was served personally upon the respondent on 20 January 2022 which is evidenced by a Sheriff Officer's execution. Sufficient notice was given.

The application is supported by an up to date detailed rent statement which reflects the arrears of rent relied upon. The Tribunal found this a credible and reliable document and attached weight to it. As at the date of application being processed £3,325 was outstanding. The arrears have now increased. As at the date of the Notice to Leave being served and as at today's hearing more than three months' rent is outstanding.

Ground 12 is established. As originally drafted this was a mandatory ground for eviction. All eviction grounds are now discretionary. The Tribunal proceeded to consider the issue of reasonableness.

The respondent is around 40 years of age. He resides alone. The respondent relies upon state benefits. He has no known disabilities or other vulnerabilities.

There is evidence that the local authority has been advised of the eviction proceedings with a relevant section 11 Notice having been issued by the applicants. In the event of an eviction order being granted the local authority is under an obligation to make alternative accommodation available to the respondent.

Under Part 2 of Schedule 1 to the Coronavirus (Scotland) No 2 Act 2020, Scottish Ministers were given the power to make Regulations setting out pre-action requirements for landlords in relation to certain cases. The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 were subsequently brought into force and apply in respect of any relevant application made to the Tribunal on or

after 6 October 2020. The applicant has evidenced to have supported and guided the respondent regarding the arrears of rent. He has failed to engage with the applicant.

The respondent has not opposed the application.

In all of the circumstances the Tribunal determined that it was reasonable to grant the eviction order sought by the applicant.

### **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.**

**Richard Mill**

**25 January 2023**

**Legal Member/Chair**

\_\_\_\_\_  
**Date**