



**The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) in respect of an application under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the Rules**

**Chamber Ref: FTS/HPC/EV/23/1073**

**Re: Property at Top Floor Left, 219 Victoria Road, Torry, Aberdeen, AB11 9NH (“the Property”)**

**Parties:**

**Mr Derek Featherstone, 4 Hallcroft Rise, Rathro, Edinburgh, EH28 8RX (“the Applicant”) per his agents Stonehouse Lettings, Neospace, Riverside Drive, Aberdeen, AB11 7LH (“the Applicant’s Agents”)**

**Mr Michael Nwaobi, Top Floor Left, 219 Victoria Road, Torry, Aberdeen, AB11 9NH (“the Respondent”)**

**Tribunal Member:**

**Karen Moore (Legal Member) and Elaine Munroe (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory grounds being established and the statutory procedures having been carried out, it is reasonable to grant the Order sought and so the Tribunal granted the Order.**

**Background**

1. By application received on 5 April 2023 (“the Application”), the Applicant’s Agents applied to the Tribunal for an Order for eviction and possession of the Property based on Grounds 12 and 12A of Schedule 3 to the 2016 Act.
2. The Application comprised the following:
  - i) copy private residential tenancy agreement between the Parties;
  - ii) copy Notice to Leave in terms of Grounds 12, rent arrears, and 12A, substantial rent arrears, of Schedule 3 to the Act;
  - iii) copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to Aberdeen City Council being the relevant local authority;

- iv) copy rent statement showing arrears of £4,236.14 due and owing and no rent paid since 14 February 2022;
  - v) pre-action requirement letters sent to the Respondent.
3. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (the "CMD") was fixed for 30 June 2023 at 14.00 by telephone conference.

#### **CMD**

4. The CMD took place on 30 June 2023 at 14.00. The Applicant was represented by Ms. L. Campbell of the Applicant's Agents. The Respondent was present and was unrepresented.
5. The Respondent advised that he opposed the Application as he disputed the rent claimed as due by him. He advised that the rent was paid direct to the Applicant by deductions from his Universal Credit entitlement. Miss Campbell advised that she was aware that there had been communication with Universal Credit but, as far as she knew, no payments had been received.
6. The CMD was adjourned to a Hearing of evidence in respect of:
- i) Whether or not rent has been paid direct by Universal Credit;
  - ii) Whether or not future rent might be paid direct by Universal Credit;
  - iii) The current amount of rent due and owing, if any;
  - iv) The Respondent's proposals to pay any arrears of rent;
  - v) The individual circumstances of the Parties and the impact of granting the Order on them;
  - vi) Any other matters which the Parties consider the Tribunal should have regard to in reaching a decision on reasonableness.
7. The Tribunal issued a Direction to the Parties to provide evidence in respect of the above.
8. The Applicant complied with the Direction and submitted information showing that benefit payments were not made direct to the Respondent's rent account and showing that the Respondent operates a business from the Property.
9. The Respondent complied with the Direction only to the extent that he provided a partial screen shot confirming receipt of benefit but which did not show that benefit payments were made direct to the Respondent's rent account. The Respondent did not provide any further information.

#### **Hearing**

10. A Hearing by Webex video conferencing was fixed for 29 September 2023 at 10.00 am and intimated to the Parties. Unsuccessful attempts were made by the Tribunal Chamber to ensure that the Parties had access to the Webex video conferencing. The format of the Hearing was then amended to a Hearing by telephone conference and intimated to the Parties.

11. The Hearing took place on 29 September 2023 at 10.00 am by telephone conference. The Applicant was present and represented by Ms. S .Bell of the Applicant's Agents. The Respondent was not present and was unrepresented. The Tribunal was satisfied that the Respondent was aware of the Hearing and was able to access the Hearing by telephone conference. Accordingly, the Tribunal proceeded in absence of the Respondent.
12. On behalf of the Applicant, Ms. Bell confirmed that the arrears accrued by the Respondent have risen to £6,167.65. She advised that two payments of £36.87 and £135.14 had been received in August and September and had been deducted from the total due. She confirmed that an Order was still sought.

### **Findings in Fact**

13. From the Application, the CMD, the Hearing and the written submissions, the Tribunal made the following findings in fact: -
  - i) There is a private residential tenancy of the Property between the Parties;
  - ii) The monthly rent is £330.00;
  - iii) There are rent arrears of £6,167.65, which amounts to in excess of 18 months' rent;
  - iv) The Respondent has not made any proposal to make payment of the rent due and
  - v) There is no evidence that rent has been or will be paid by state benefits. receives an element of housing benefit;

### **Issue for the Tribunal**

14. The issue for the Tribunal was to determine whether or not to grant the Order sought.
15. The Grounds on which the Application proceeds are Ground 12 "It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months" and Ground 12 A which at 12A (2) states: "*the First-tier Tribunal may find that the ground .... applies if (a)the tenant has accrued rent arrears under the tenancy in respect of one or more periods, (b)the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy when notice to leave is given to the tenant on this ground in accordance with section 52(3)*" Both Grounds require the Tribunal to be satisfied that it is reasonable to issue an eviction order.
16. The statutory ground and procedure being established, the issue for the Tribunal was to determine if it is reasonable to grant the Order. The Tribunal took the view that it had sufficient information to make a decision on reasonableness and so proceeded to determine the Application.

### **Decision and Reasons for Decision**

17. The Tribunal had regard to all the information before it and to its Findings in Fact.

18. The Tribunal then considered if it could be satisfied it is reasonable to issue an eviction order on account of those facts and on all of the information before it.
19. The Tribunal had regard to the facts that the Applicant is losing income as a result of the Respondent's failure to pay rent and that the rent due by the Respondent continues to increase. The Tribunal took the view that the level of rent arrears is not tenable for either Party. Accordingly, the Tribunal was satisfied that it is reasonable to issue an eviction order on both Grounds.

### **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.

# K Moore

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Legal Member/Chair

29 September 2023  
Date