



**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/23/1386**

**Re: Property at 7 Bannockburn Street, Greenock, Inverclyde, PA16 9DF (“the Property”)**

**Parties:**

**Mrs Ellen Gisbey, 30 Gordon Street, Greenock, PA15 4HY (“the Applicant”)**

**Mr Jamie Fisher, 7 Bannockburn Street, Greenock, Inverclyde, PA16 9DF (“the Respondent”)**

**Tribunal Members:**

**Andrew Upton (Legal Member) and Frances Wood (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that (i) the Respondent has been in rent arrears for a period in excess of three consecutive months, and (ii) it is reasonable to grant an eviction order.**

**Findings in Fact**

1. The Applicant is the landlord, and the Respondent the tenant, under and in terms of a Private Residential Tenancy Agreement.
2. The monthly rent is £500.
3. The Respondent is in arrears of rent in the sum of £3,268, which is a sum in excess of six months’ of rent.
4. The Respondent has been in arrears of rent continuously since 1 October 2022.

5. The Respondent is in financial difficulty.
6. The Respondent relies on state benefits for his income.
7. The Respondent is entitled to benefit payments totalling £1,069.84 per month.
8. After certain deductions at source, including housing benefit paid directly to the Applicant, the Respondent receives £612.21 per month, and has done since 6 October 2023.
9. The Respondent received a back-payment of Adult Disability Payment on or around 6 October 2023. The Respondent had previously committed to applying at least part of any back-payment received to his arrears, but applied the back-payment to other unspecified debts.
10. Since the Case Management Discussion on 2 August 2023, the Respondent's arrears have increased.
11. Since the Case Management Discussion on 2 August 2023, the Respondent has made no effort to (i) pay the monthly shortfall between his rent and his housing benefit entitlement, or (ii) reduce his rent arrears.
12. The Applicant is 61 years old.
13. The Applicant is a nurse. She retired from the NHS in 2018 and used her pension lump sum to purchase the Property. Her intention was to let the Property to supplement her income.
14. The Property is valued at around £85,000-£90,000. There is mortgage financing of £50,000 secured against the Property. The mortgage is on an interest only basis, with a contractual monthly instalment of £85 payable by the Applicant.
15. The Property is the Applicant's only rental property. She is not an experienced residential landlord.
16. The Applicant is suffering stress and anxiety because of the tenancy issues between the parties. Her increased stress and anxiety are contributing to problems in her personal life.
17. The Applicant has now returned to work two days per week in a GP surgery.

### **Findings in Fact and Law**

1. The Respondent having been in rent arrears for a continuous period in excess of three months, and it being reasonable to grant an eviction order, the requirements of Ground 12 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 are met.

## Statement of Reasons

1. This Application called for a Hearing by teleconference call on 23 October 2023. The Applicant was present and represented by Mr Caldwell, solicitor. The Respondent was initially represented by Miss Fidelo, solicitor, but was not personally present. The Application called alongside a related application for a payment order (CV/23/1387).
2. In this Application the Applicant seeks an eviction order. She relies upon Ground 12 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”), which is that the Respondent has been in rent arrears for a continuous period in excess of 3 months and that it is reasonable to grant the eviction order.

### Preliminary Issues

#### *Amendment*

3. As a preliminary matter, the Applicant sought leave to amend the Application to introduce a new issue; namely that the Respondent was now in substantial rent arrears, that a Notice to Leave had been served with reliance on Ground 12A of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”), and that an eviction order should be granted in consequence of it. The motion to amend had been lodged with the Tribunal on 2 October 2023 and intimated to the Respondent on 4 October 2023 by the Tribunal.
4. Miss Fidelo indicated that she had no difficulty *per se* with the motion to amend. However, her view was that if the amendment were to be insisted upon then the Hearing would require to be discharged and a period for written representations allowed. She referred the Tribunal to Rule 14 of the First-tier Tribunal Housing and Property Chamber Rules of Procedure 2017 (“the Rules”). In terms of Rule 14(2):-

*“Where an application is amended to include a new issue, any other party must be given an opportunity to make written representations in response to the amendment, or request the opportunity to make oral representations, by a date specified by the First-tier Tribunal which is not less than 14 days from the date on which—*

*(a) intimation of the amendment is served; or*

*(b) the amendment was made orally during the hearing in accordance with rule 13(2)(a).”*

Miss Fidelo’s submission was that the Tribunal had not specified a date by which the Respondent was to lodge written representations, and was now required to do so. That was the import of the word “must” in Rule 14(2). In fairness to Miss Fidelo, she was entirely candid in advising the Tribunal that the Respondent’s defence to Ground 12A would mirror his defence to Ground

12, which was only that it was not reasonable to grant the eviction order. Miss Fidelo's opposition was principally founded on an eviction order under Ground 12A not being subject to the moratorium in the Cost of Living (Tenant Protection) (Scotland) Act 2022.

5. Having considered Rule 14, the Tribunal concluded that there was merit in Miss Fidelo's submission. Rule 14 provided that the Tribunal "must" give an opportunity to make written representations in response to an amendment that includes a new issue. The inclusion of Ground 12A was a new issue. Those representations had to be on a date specified by the Tribunal, and no such date had been specified. Accordingly, if the Applicant wished to insist upon the amendment, then the Tribunal would require to discharge the Hearing, allow a period of fourteen days for written representations in response to the amendment, and fix a fresh Hearing which would likely be in the new year.
6. Following a brief adjournment to take instructions, Mr Caldwell confirmed that the Applicant did not wish to insist upon the amendment. The Tribunal allowed the motion to drop.

#### *Continuation of Hearing/Withdrawal of Respondent's Agents*

7. Thereafter, Miss Fidelo indicated that she had spoken with the Respondent on Friday and arranged for him to attend at her office to participate in the Hearing. However, he had not arrived, and attempts to contact him by telephone (no fewer than 6 times) and email had been unsuccessful.
8. Mr Caldwell confirmed that the Applicant had not intended to challenge or test the veracity of the Respondent's evidence pertaining to his financial position. However, the Applicant did not accept the Respondent's assertions in relation to his health. Mr Caldwell highlighted that the Respondent had not lodged any medical evidence to support his assertions.
9. Miss Fidelo confirmed that her intention had been to lead evidence from the Respondent directly regarding his health issues, but that she was evidently unable to do so in his absence. In the circumstances, she moved the Tribunal to continue the Hearing to another date. Her submission was that the Respondent's benefit issues had recently been resolved, and continuing the Hearing would allow payments to be made and show willingness and ability on the part of the Respondent to make the payments.
10. Mr Caldwell opposed the motion to continue. He highlighted that the Respondent's benefits had, according to the papers lodged by the Respondent, been resolved since mid-September. The first payments thereafter were on or around 6 October 2023. That included a back-payment of Adult Disability Payment, which the Respondent had at the Case Management Discussion committed to applying, at least in part, towards his arrears. Instead, the back-payment was applied to other unspecified "priority" debts, and the Respondent had failed to make up the shortfall between his

rent and his housing benefit, never mind a contribution towards his arrears. Mr Caldwell's submission was that any suggestion that the Respondent would take steps to arrest and address his arrears lacked credibility, and the Applicant continued to suffer prejudice in the form of increasing arrears. Miss Fidelo candidly accepted that there was nothing factually inaccurate in Mr Caldwell's submissions.

11. Having considered the parties' submissions, the Tribunal refused the motion to continue the Hearing. The Respondent had notice of the Hearing and was aware that it was to take place. He had made arrangements to attend the Hearing at his solicitor's office, and had failed to attend without explanation. The Respondent had received substantial benefit payments within the last few weeks and taken no steps to pay his rent shortfall in October or make a contribution towards his arrears.
12. At this stage, Miss Fidelo indicated that she was unable to proceed with the Hearing in the Respondent's absence. Her ability to present his proposed defence was tied to his attendance, and he was not there. Accordingly, Miss Fidelo withdrew from acting for the Respondent, and was permitted to leave the Hearing at that point.

#### *Hearing in Absence of the Respondent*

13. In terms of Rule 29 of the Rules, the Tribunal may proceed to consider an application at a hearing in absence of a party where satisfied that proper notice of the hearing has been given to the absent party. The Tribunal was satisfied that proper notice of the hearing had been given. In terms of Rule 2, the Tribunal must have regard to the overriding objective to deal with proceedings justly when making any decision, including the need to avoid unnecessary delay.
14. In this Application, the Respondent does not dispute that he is in arrears, or the value of the arrears. That much was confirmed by Miss Fidelo prior to her withdrawal from acting. In the circumstances, the Tribunal was satisfied that further delay in this case, which would have been caused entirely by the Respondent's failure to appear having agreed with Miss Fidelo on Friday 20 October 2023 to attend her office for that purpose, would be unnecessary. The Tribunal was able to take the Respondent's financial circumstances into account, their being a matter of agreement between the parties. Further, the Tribunal had a note of the Respondent's assertions regarding his health, addiction issues, treatment for stress and anxiety and requirement to be near to his grandfather for support and, notwithstanding those issues being in dispute, could take account of them. Accordingly, the Tribunal determined to proceed with this Application in absence of the Respondent.

#### Submissions

15. The Respondent had lodged written representations with the Tribunal in advance of the Case Management Discussion on 2 August 2023. In summary,

the Respondent admitted that he was in rent arrears, and had been for a period in excess of three continuous calendar months. However, his position was that it was not reasonable to grant the eviction order. This was due to (i) the Respondent's medical history, including his current mental health and continuing recovery from addiction issues, (ii) the Respondent's need to be near his grandfather to assist him, and (iii) the Respondent having applied for additional financial support. Since those representations had been lodged, the Respondent was now in receipt of additional financial support as more particularly set out above. The Respondent has also lodged two inventories of productions with documentation showing (i) the benefits that he receives, (ii) the deductions being made at source, and (iii) the Adult Disability Payment he now receives. In terms thereof, and adding into that equation his entitlement to Discretionary Housing Payment of £56 per month paid to the Applicant from source, the Respondent is in receipt of benefits totalling £1,069.84, and has deductions at source of £457.63, leaving a monthly surplus payable to the Respondent of £612.21. The Respondent relies on that surplus for his general living expenses, including food and utilities.

16. Mr Caldwell advised the Tribunal that the Applicant is 61 years old. She is a nurse. She retired from the NHS in 2018 and used her pension lump sum to purchase the Property. Her intention was to let the Property to supplement her income. The Property is valued at around £85,000-£90,000. There is mortgage financing of £50,000 secured against the Property. The mortgage is on an interest only basis, with a contractual monthly instalment of £85 payable by the Applicant. The Property is the Applicant's first and only rental property. She is not an experienced residential landlord. The Applicant is suffering stress and anxiety because of the tenancy issues between the parties. Her increased stress and anxiety are contributing to problems in her personal life. The Applicant has now returned to work two days per week in a GP surgery. Notwithstanding the Respondent being in receipt of additional benefit, the arrears were increasing. He was still failing to pay the shortfall between his rent and his housing benefit. He had previously committed to paying some of his arrears from any back-payment of Adult Disability Payment, but had made no payment. Mr Caldwell believed around six months of backdated ADP had been received. He was obviously prioritising other debts over his housing costs.

### Decision

17. For the purposes of determining this Application, and notwithstanding the Applicant's assertion that the Respondent's representations regarding his medical issues were not accepted, the Tribunal, as a starting point, decided to consider the Application on the assumption that the Respondent's assertions about his medical conditions were true. The Tribunal also accepted the submissions on behalf of the Applicant regarding her own circumstances and the impact that not granting the eviction order would have on her.
18. Having considered all of the material on that basis, the Tribunal determined that it is reasonable to grant an eviction order in this case. Whilst the Respondent's mental health is an important factor, the Tribunal considered

that he would be able to access support irrespective of whether the order was granted or not. However, his continued failure to make payment to meet his rent tended to suggest that he was not committed to prioritising his housing arrangements. It is not the Applicant's role to subsidise the Respondent's rent whilst he gets his life in order. The Respondent has not demonstrated any behaviour which gives the Tribunal cause to believe that he will address either his rent shortfall on a continuing basis or his arrears, or that he intended to prioritise his housing needs. Looking at the matter objectively, it appears that the Property is unaffordable for the Respondent, given (i) the monthly rent of £500, (ii) the housing benefit received by the Respondent totalling £406 per month, (iii) his accrual of significant rent arrears totalling more than six months' rent, and (iv) his inability to make meaningful inroads into repaying the arrears, with the current offer equating to £80 per month towards the arrears and taking nearly four years to pay the sum outstanding. In contrast, the Applicant had suffered, and continued to suffer, loss and damage as a consequence of the Respondent's actions. That loss and damage was both financial and to her wellbeing. To compound matters, notwithstanding the seriousness of the Applications under consideration, the Respondent chose not to attend the Hearing. Such conduct was instructive of the importance that the Respondent had applied to these proceedings.

19. Accordingly, having considered all of the material before it, the Tribunal determined that it was reasonable to grant the eviction order.
20. For the purposes of section 51(4) of the 2016 Act, the tenancy will end on the earlier of (a) the day following the end of a period of 6 months beginning with the day on which this order was granted as specified above, or (b) the expiry or suspension of Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022.

## 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.**

23/10/2023

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Legal Member/Chair

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Date

