



**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/22/1494**

**Re: Property at 4 Galt Avenue, Irvine, KA12 0NJ (“the Property”)**

**Parties:**

**Mrs Gabriele McCallum, 229 Bank Street, Irvine, Ayrshire, KA12 0YB (“the Applicant”)**

**Miss Tracy Douglas, 4 Galt Avenue, Irvine, Ayrshire, KA12 0NJ (“the Respondent”)**

**Tribunal Members:**

**Susan Christie (Legal Member) and Leslie Forrest (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under Ground 12 under Schedule 3.**

**Background**

1. The application for an eviction order was accepted by the tribunal on 8 July 2022. The Applicant seeks an eviction Order under Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (‘the Act’).
2. The tribunal paperwork was served on the Respondent personally by Sheriff Officer’s service on 8 August 2022.
3. No written representations were submitted by the Respondent.

**The Case Management Discussion- 21 September 2022**

4. A Case Management Discussion (CMD) took place on 21 September 2022 at 10am by conference call. Both Parties participated.

5. The Parties were given information about the purpose of the CMD. The paperwork submitted along with the Application was examined and discussed.
6. The Applicant is one of the registered owners of the Property and is the sole landlord.
7. A Private Residential Tenancy (PRT) was entered into between the Applicant and the Respondent on 14 June 2019, with the same start date.
8. The contractual rent is £440 per calendar month payable in advance on the 14th of the month.
9. A Notice to Leave dated 14 April 2022 was served on the Respondent by Royal Mail 'signed for' post.
10. A Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 was sent to the local authority on 14 April 2022.
11. The rent account statements produced were considered. The rent arrears as at the date of serving of the Notice to Leave was £7884. The rent arrears as at today are £10084.
12. The last payment made into the rent account of £250 was made on 14 April 2022.
13. The Applicant sought an eviction order today. She advised the tribunal that in addition to the Pre-Action Requirements letters produced along with the application, further efforts had been made to contact the Respondent to aid in paying the full rent and towards the rent arrears but there had been limited engagement over the period that the arrears had accrued. Letters had been sent and there had been regular contact by text, WhatsApp, and telephone. A Notice to Leave had been served in April 2020 but the Applicant did not proceed with it due to restrictions caused by Covid-19. There had been benefit payments being credited to the account between November 2020 and 6 September 2021 as the Applicant had taken the step of contacting the relevant benefit agency to seek direct payments. However, this stopped, and the Applicant received a letter that said either the tenant had no Universal Credit, no arrears or no longer was entitled to direct payments. The Applicant never found out the exact reason for the payments stopping. Promises had been made by the Respondent to start to pay towards the rent arrears. A repayment form had been sent out but this was never returned and the arrears were not tackled by the Respondent, nor was the ongoing rent met.
14. The Applicant stated that the Deposit had been returned to the Respondent early in the tenancy as she had requested it, saying she was in financial difficulty. No references for the Respondent had been taken at the outset of the tenancy by the Applicant as the applicant found them to be of limited value.
15. The Applicant stated that the rent arrears were significant, and the Applicant had run out of options other than to seek recovery of the Property. The last contact that had been made was on 9 May 2022 with a request that the Applicant drop the Notice to Leave in return for £500 to be paid that month and £500 the month after. The offer was declined given the full circumstances. No payments materialised.
16. The Applicant was mindful that the Respondent had not addressed the arrears, explained the lengthy periods of non-payment, or addressed the

deficit between any payments that had been made by way of benefits and the full rent due.

17. The Respondent explained that she did not understand how benefit payments had not been applied and she had contacted Shelter Scotland in May 2022 when the Notice to Leave had been served for advice. She had contacted the DWP, and they said they did not understand the issue although it appeared no action was taken to identify the benefits issue if there was any. She took no further action until she received the paperwork from the tribunal. Her income is such that she is unable to contribute towards the rent or the arrears. She accepts that she has buried her head in the sand and explained that she suffered from depression due to adverse life events. She is on medication, has access to other supports through her GP and had confided in her GP that this application has been made. She has family support, but they could not provide her with accommodation. She had previously been a local authority tenant with her father. She was unaware that she could contact the local authority directly. The tribunal outlined supports that could be available through the local authority as well as through Shelter that were within the tribunal's knowledge without pre-determining the application. The Respondent raised the condition of the Property as she said items within it were aged and needed upgraded such as the boiler. There had also been the issue with a blocked toilet. She has an appointment with Shelter arranged for 8 August 2022 following on from today.
18. The Applicant responded saying annual gas safety checks had been done and the boiler condition had not been raised as an issue by her contractor. There had been repairs matters attended to with regards to an outside communal drain being blocked. That had been resolved. She had understood that the Respondent had also contacted the Citizens Advice Bureau for advice in the past.
19. An adjournment took place to allow discussion between the tribunal members.

## **Findings in Fact**

- I. A Private Residential Tenancy (PRT) was entered into between the Applicant and the Respondent on 14 June 2019, with the same start date.
- II. The contractual rent is £440 per calendar month payable in advance on the 14<sup>th</sup> of the month, in terms of the PRT.
- III. A valid Notice to Leave dated 14 April 2022 was served on the Respondent by Royal Mail 'signed for' post.
- IV. A Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 was sent to the local authority on 14 April 2022.
- V. The Pre Action Requirements have been complied with.
- VI. The total arrears figure due today is £10084.
- VII. The last payment to rent totalled £250, made on 14 April 2022.
- VIII. No further payments have been received from the Respondent to address the monthly rent due or the arrears.

- IX. The Respondent as the tenant being in arrears of rent is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
- X. The Tribunal is satisfied that it is reasonable that an eviction Order should be granted.

### **Reasons for Decision**

- 20. The tribunal had regard to all that was said, and the paperwork produced and carefully considered the information. A Private Residential Tenancy (PRT) was entered into between the Parties. The Respondent had undertaken to pay the stated rent in advance on the 14th of the month. A Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 had been sent to the local authority. The Tribunal had regard to the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. It was satisfied they had been complied with. The Respondent had failed to address payment of the ongoing rent or arrears. Whilst benefit payments had been made by the DWP these had stopped without any real insight into the reason for that. The Respondent denied that her payments had gone up after that, but she had not facilitated either a reinstatement of the benefit payments to the Applicant or made an alternative arrangement for payment to the landlord. The Tribunal had regard to the amendments made to the Act in relation to the Coronavirus (Scotland) Act 2020, particularly the discretion to be applied. It seemed to the tribunal that the rent was not affordable to the Respondent from early in the tenancy and that the arrears had steadily climbed. The Applicant stated that the Deposit had been returned to the Respondent early in the tenancy as she had requested it, saying she was in financial difficulty. No references for the Respondent had been taken at the outset of the tenancy by the Applicant as the applicant found them to be of limited value
- 21. The rent arrears figure is substantial. The rent is due to be paid in full in advance on the 14<sup>th</sup> of each month. The payments that have been made do not achieve that, except for two months. There appeared to be no real prospect of the ongoing rent being paid nor any contributions towards the arrears.
- 22. It considered whether the tenant's being in arrears of rent is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit. There was no information presented to the tribunal to confirm that was the position. Benefit payments of varying amounts have been made to the account as detailed in the rent statement but stopped in September 2021.
- 23. The tribunal is mindful of the situation of the Respondent and appreciates that the Respondent has the support of her GP. She is able to access advice and assistance regarding homelessness and also has an appointment with an adviser arranged.
- 24. The Tribunal is satisfied on balance based on the information available and the material facts not being in dispute that an Order should be made today, and it was reasonable to do so. The decision is unanimous.

## 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.

Susan Christie

---

Legal Member/Chair

21 September 2022  
Date