



**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/22/3584**

**Property : 0/3, 25 Cumloddan Drive, Maryhill, Glasgow G20 OJT (“Property”)**

**Parties:**

**Richard Moore and Roxanne Moore, 14 Downs Road, Coulsdon CR5 1AA (“Applicant”)**

**Bannatyne Kirkwood France & Co, 16 Royal Exchange Square, Glasgow G1 3AG ("Applicant's Representative")**

**Carly Stevenson, 0/3, 25 Cumloddan Drive, Maryhill, Glasgow G20 OJT (“Respondent”)**

**Legal Services Agency, 3<sup>rd</sup> Floor, Fleming House, Glasgow G3 6ST (“Respondent’s Representative”)**

**Tribunal Members:**

**Joan Devine (Legal Member)  
Elaine Munroe (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined not to make order for possession of the Property.**

**Background**

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: a Tenancy Agreement dated 5 February 2020; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 ("Act") dated 28 October 2021 ("Notice to Leave"); a rent statement showing arrears of £1520 as at 14 October 2021; email to the Respondent dated 28 October 2021 attaching the Notice to Leave; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 30 September 2022; notes of calls between the Applicant’s

Agent and the Respondent over the period 30 June 2020 to 4 May 2022 and copy letter to the Respondent regarding rent arrears as at 21 September 2021.

A case management discussion (“CMD”) took place before the Tribunal on 21 February 2023. Reference is made to the note of the CMD. A continued CMD was fixed to allow the Applicant’s Representative to take instructions on the time to pay application lodged by the Respondent. A continued CMD was fixed for 7 June 2023. In advance of the continued CMD the Applicant’s Representative lodged an updated statement of rent arrears showing rent due as at May 2023 of £6220 and a response to the time to pay application in which the Applicant rejected the offer made. The Respondent’s Representative lodged a report from Dr Adam Hay, Occupational Therapist dated 25 May 2023 and a letter from the Accountant in Bankruptcy to the Respondent dated 5 November 2021.

### **Continued CMD**

A continued CMD took place by teleconference on 7 June 2023. John Jarvie of the Applicant’s Representative was in attendance as was the Respondent and Rachel Scott of the Respondent’s Representative.

The Tribunal asked Mr Jarvie if the monthly rent was being covered by universal credit. Mr Jarvie said that the sum paid each month varied. He said that the rent statement lodged showing arrears of £6220 was incorrect. He said the correct figure is £4184.

Ms Scott said that the Respondent receives universal credit which covers the monthly rent in full. She said that the Respondent was arranging for the universal credit to be paid direct to the Applicant and for a sum in addition to the rent to also be paid towards the arrears. She said that the Respondent’s financial circumstances have improved in that her benefits had increased from £1340 to £1408 per month and her PIP had increased from £345 to £384 per month. In addition her son pays her £100 per month. This meant that the proposal to pay £200 per month towards the arrears was sustainable. She said that the Respondent had started in full time employment on 17 April but had been signed off until 22 July due to abdominal pain, anxiety and depression. She said the Respondent hopes to return to work on 22 July. She said that the Respondent had suspected gastritis and investigations are ongoing. She said that the Respondent may have colitis and an allergic condition. She has fibromyalgia, anxiety and depression. She said that the Respondent is on medication for her mental health and attends the Queen Elizabeth Hospital monthly regarding her hyper mobility. She said that the Respondent’s health is well managed when stress is reduced. She said that the possibility of losing her home exacerbated the Respondent’s stress. She said the Respondent had applied to a number of housing associations but had been given no indication of timescales for alternative accommodation.

On behalf of the Applicant Mr Jarvie said that arrears had been outstanding since July 2021. The Notice to Leave had been served on 28 October 2021 and this Application had been lodged in September 2022. He said that the Respondent had been given reasonable notice that the tenancy was coming to an end. He said the Respondent had adequate time to find alternative accommodation. He said that the Applicant appreciated the difficulties encountered by the Respondent but the Applicant was bearing the financial brunt of it. He said it was not reasonable for the Applicant to deal with the situation on an ongoing basis. He said that payments received were erratic. He said that the application for time to pay was rejected by the Applicant as repayment arrangements had been entered into in the past and not adhered to.

The Tribunal asked Mr Jarvie about the Applicant and whether they owned other rental properties. He said he did not believe so but he did not know. The Tribunal asked Mr Jarvie how much the mortgage payments were. He said he had asked that question but a response had not been provided. He said that this is a private tenancy and the Respondent's obligation is to pay the rent.

The Tribunal asked Ms Scott if the Respondent's financial position would improve once she resumed employment. Ms Scott said that the Respondent would earn £20,000 and would retain some benefits. Overall she would probably be in a better position financially.

The Respondent told the Tribunal that she would not be able to obtain accommodation through a housing association for 3 months because of the rent arrears. She said she said that accommodation offered by the local authority may be anywhere in the city. She said that the Property suits her needs as it is ground floor and all on one level. The walk in shower is helpful as she cannot step over the side of a bath. She said that when her fibromyalgia flares up she cannot walk far and relies on her son. He has a car and car parking is in front of the Property.

Ms Scott told the Tribunal that payments made by the Respondent were not erratic. She said that £900 was paid on 2 June. The Tribunal asked Mr Jarvie if that payment was taken into account in the figure provided for arrears of £4184. He said that it was not as the payment had not been received. Ms Scott said she had a screenshot from the Respondent's banking app showing the payment had been made.

Ms Scott told the Tribunal that the Applicant had made a claim on their landlord insurance and were indemnified for lost rent. She said she did not know to what extent the arrears were covered by insurance. The Tribunal asked Mr Jarvie for more information regarding the insurance. He said that the Applicant does not feel the immediate impact of the arrears because of the insurance but the arrears impacted their premium.

The Tribunal noted that the only issue in dispute was whether or not it was reasonable to grant an order for eviction. The Tribunal noted that it had sufficient information to proceed to make a decision. Mr Jarvie and Ms Scott said they were content for the Tribunal to proceed to a decision and there was no further information they required to put before the Tribunal.

### **Findings in Fact**

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a Tenancy Agreement dated 5 February 2020 ("Tenancy Agreement").
2. The Notice to Leave was served by email on 28 October 2021.
3. The Notice to Leave stated that an application for an eviction order would not be submitted to the Tribunal before 1 May 2022.
4. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 30 September 2022.
5. At the date of making the Application, the Respondent had been in rent arrears for three or more consecutive months.
6. The Respondent suffers from multiple health issues.

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

1. It would not be reasonable to grant an order for eviction.

### **Reasons for the Decision**

In terms of section 51 of the Act, the First-tier Tribunal may issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

In the Application the Applicant stated that they sought recovery of possession of the Property on the basis set out in Ground 12 which states :

- "(1) *It is an eviction ground that 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.”*

The Tribunal considered the statement of rent arrears. There was a dispute between the Parties as to how much was currently outstanding as the Applicant did not agree that a payment of £900 was made on 2 June. On the assumption that the payment had been made, the rent would still have been in arrears for 3 or more consecutive months.

The Tribunal had been told that the Applicant had received payment of the arrears from a landlord insurance policy but suffered an increased premium as a result. The Respondent had provided a report from Dr Adam Hay, Occupational Therapist dated 25 May 2023 which explained the multiple health issues suffered by the Respondent. The Respondent had told the Tribunal why the Property suited her needs and why alternative accommodation would be less suitable. The monthly rent was being met in full from universal credit payments. In addition the Respondent was making an effort to repay the arrears. The Respondent had told the Tribunal about her attempts to obtain alternative accommodation without success.

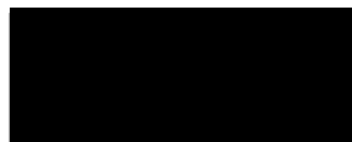
In all the circumstances the Tribunal determined that it would not be reasonable to make an order for possession of the Property.

### **Decision**

The Tribunal refuses to grant an order for possession of the Property.

### **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.**



**Joan Devine  
Legal Member**

**Date : 7 June 2023**