



**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/21/0486**

**Re: Property at 29 Mull Terrace, Irvine, KA11 1HR (“the Property”)**

**Parties:**

**Steven Easton Residential Ltd, 2 Newfield Drive, Dundonald, KA2 9EW (“the Applicant”)**

**Ms Audrey Chambers, 29 Mull Terrace, Irvine, KA11 1HR (“the Respondent”)**

**Tribunal Members:**

**Lesley-Anne Mulholland (Legal Member) and Sandra Brydon (Ordinary Member)**

**DECISION (IN ABSENCE OF THE RESPONDENT)**

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for eviction of the Respondent from the Property under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, ground(s) 11 and 12 of Schedule 3.

Grants order to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth and from the Property at 29 Mull Terrace, Irvine, KA11 1HR and to make the same void and ready that the Applicant or others in their name may enter thereon and peaceably possess and enjoy the same, said Order not to be executed prior to 12 noon on 11 June 2021.

**INTRODUCTION**

1. This is an application under Rule 109 and Section 51 of the Private Housing (Scotland) Act 2016 for an Eviction Order under Grounds 11 and 12 of Schedule 3.

2. On 3 March 2021 the Applicant made an application to evict the Respondent from the property at 29 Mull Terrace, Irvine, KA11 1HR. At the same time an application for a payment order was submitted under reference FTS/HPC/CV/21/0488.
3. The Respondent is the sole tenant. She entered into a private tenancy agreement on 5 October 2018. The tenancy agreement specifies that £450.00 is due in respect of rent each calendar month payable in advance.
4. The Applicant asserts that the Respondent has accrued rent arrears, at the date of application, in the sum of £4,177.22. The Applicant relies upon grounds 11 & 12 of Schedule 3 for the eviction order. The Tribunal has discretion to grant the eviction order if satisfied that rent arrears have accrued of more than three months and it is reasonable to grant the eviction order.
5. A two-member case management discussion took place at 10.00 am on 23 April 2021 by teleconference. The Applicant and the Respondent failed to attend. They had failed to make contact with the Tribunal to explain why. It was unclear whether the Respondent had received notice of the hearing. We therefore decided to continue the Case Management Discussion to 27 May 2021 with directions.
6. A two-member Case Management Discussion took place at 10:00 am on the 27 May 2021 by teleconference. The Applicant attended the hearing. The Respondent did not. The Respondent has failed to engage with the application or the Tribunal. We decided to continue in her absence after being satisfied that the papers had been properly served and that the Respondent was notified of today's Case Management Discussion in time by Recorded Delivery post. The Royal Mail track and trace system confirms this.
5. Since the coming into force of the Coronavirus (Scotland) Act 2020, all eviction grounds are discretionary. Additionally, the notice periods have been extended by virtue of the 2020 Act. The relevant notice period is now 3 months. We were satisfied that proper notice had been given.
6. As before the Respondent entered into the tenancy agreement on the 5 October 2018, having agreed to pay £450 per calendar month. However, from the outset the Respondent was in arrears. The first payment of rent was not made until the 28 November 2018 however this can be excused as it is clear that the Respondent at that time was dependent on housing benefit. However, from then on it is clear that the Respondent's Housing Benefit was insufficient to meet the rental liability. From 5 October 2018 until the start of March 2021, the Respondent had accrued rent arrears of £4,177.22. Mr Easton informed us that

the Respondent has not made any payment towards the rent liability since the application was raised and that rent arrears now stand at £5,527.22.

7. We brought to Mr Easton's attention that the Procedural Rules require him to make an application to amend the sum sued for at least 14 days in advance of the hearing. As this has not been done, Mr Easton asked us to grant the Payment Order in the sum of £4,177.22.
8. It is clear from the Schedule of Payments that the Respondent is inconsistent with her payments of rent. Mr Easton informed us that the Respondent is rarely in touch with him and that from time to time she has offered to bring her rent account up-to-date but has failed to do so. The Respondent informed him that she intended to go to college and would find a way to pay the rent arrears. Mr Easton was contacted by the Department of Work and Pensions who were seeking to recover rent paid to the Respondent claiming that she had been overpaid.
9. Mr Easton is not aware of her financial or personal circumstances. He stated that the Respondent had not been in touch with him since the application had been served and since then the Respondent has not made any attempt to meet her ongoing liability of rent or pay anything towards the substantial rent arrears. He confirmed that the Respondent continues to reside in the property. The last attempt to make any payment towards her liability was on 19 February 2021 which represented payment received through the Department of Work and Pensions. The Respondent has never declared her sources of income to the Applicant and did not provide any information that she may have been struggling due to the impact of the pandemic COVID-19 or any other reason.
10. Mr Easton informed us that there are two general modes of communication within his office. There is a direct telephone number to call which has a voicemail facility and a generic email which would be picked up by the 3 to 4 members of staff who monitor it. There is also an auto forwarding provision for the emails, should the person no longer be employed there. He confirmed that the Respondent has never communicated by email and instead communicates by telephone, albeit rarely.
11. Having considered the terms of the Private Residential Tenancy Agreement and the Rent Schedule, we were satisfied that the Applicant is entitled to the payment of £450 per calendar month and that significant rent arrears have accrued over a significant period of time, such that it is reasonable to grant the eviction order.

12. As at the date of application, the amount of rent arrears is £4,177.22. The Respondent has expressed no intention of paying that sum. Her failure to meet her rent liability is unreasonable.
13. As stated before, we were satisfied that the Respondent has failed to engage with the application in anyway. For that reason, we have no information before us to indicate that there are any particular circumstances to find that the granting of the order would not be reasonable. We were satisfied that the making of an Eviction Order was reasonable in all of the circumstances, having regard to all the information before us.
14. The property is situated within a designated Level 2 area for the purposes of Covid-19 restrictions imposed by the Scottish Government. The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 12) Regulations 2021 as amended by the Health protection (coronavirus) restrictions and requirements (minutes miscellaneous amendments) (Scotland) (Number two) regulations 2021 do not apply as they prevent evictions in a level 3 or 4 areas only. This does not affect properties situated within a designated Level 2 area.

### **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.**

Lesley-Anne Mulholland

Chair

\_\_\_\_\_ 27 May 2021  
Date