



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/22/3350

Re: Property at 45 Katrine Place, Irvine, North Ayrshire, KA12 9LU (“the Property”)

Parties:

Easton Property Limited, 2 Newfield Drive, Dundonald, South Ayrshire, KA2 9EW (“the Applicant”)

Ms Hollie Brown, 45 Katrine Place, Irvine, North Ayrshire, KA12 9LU (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatrige (Legal Member) and Sandra Brydon (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted. The decision was unanimous. The Tribunal grants an order for eviction in terms of S 51 of the Act on Ground 12 of Schedule 3 of the Act.

A: Background

1. The application for an order for eviction of rent arrears under S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act) arising from a Private Residential Tenancy Agreement between the parties was made by the Applicant on 13 September 2022.
2. The following documents were lodged to support the application and are referred to for their terms and held to be incorporated herein:
 - a. Copy tenancy agreement between the parties over the property commencing on 9 May 2019.
 - b. Notice to Leave indicating grounds 11 and 12 of schedule 3 of the Act, 21 February 2022, giving as the date when proceedings could first be raised 28 August 2022

- c. Tenancy rent statement for the period from 9 May 2019 to 9 September 2022
 - d. Tenancy rent statement for the period up to 9 January 2023
 - e. Tenancy rent statement for the period up to 9 March 2023
 - f. Email sending Notice to Leave dated 24 February 2022 at 16:34 hours
 - g. S 11 notice to North Ayrshire Council and email sending same dated 13 September 2022
 - h. Authorisation letter dated 13 September 2022
 - i. Rent increase notice dated 21 January 2021
 - j. Email Lyn Thoms to Respondent re request for telephone call dated 24 February 2022
 - k. Email 25 February 2022 from Respondent to Lyn Thoms with payment plan proposal
 - l. Email 10 March 2022 from Lyn Thoms to Respondent accepting same
 - m. Email Lyn Thoms to Respondent re rent increase notice dated 18 August 2021
 - n. PARS First letter engaging with tenant sent 24 February 2022.
 - o. PARS Tenant's Rights Information Letter sent 24 February 2022
 - p. Applicant's repose to direction with written representations sent to the Tribunal on 20 January 2023.
3. On 20 December 2022 a Case Management Discussion (CMD) took place. The CMD note and directions issued are referred to for their terms.
 4. On Friday 17 March 2023 at 12.37 the Respondent sent a 9 page document to the Tribunal acknowledging this had been lodged late.

B: The Hearing

1. On 20 March 2023 the hearing took place by teleconference. Ms Barclay appeared for the Applicant together with the witness Lyn Thoms. The Respondent Ms Brown also attended. The hearing was arranged for the conjoined applications for a payment order and an eviction order lodged by the Applicants and the evidence was heard in a conjoined hearing for both cases.
2. **Preliminary Matters:**
 - a) The legal member explained the purpose and format of the hearing. The legal member also explained that the first decision for the Tribunal would be whether or not to allow the documents sent by the Respondent on Friday 17 March 2023 to be introduced into the process. Both parties were referred to rule 22 (2) of the Rules of Procedure. Both parties were given the opportunity to make representations. The Respondent stated that she knew the documents were lodged late and that she had a lot going on with her health and interviews. She had not wanted to think about it. She had buried her head in the sand. She was going to go to the doctor about having a burnout and had tried to get her hands on a letter she wished to lodge and could not find. The documents on the email of Friday were all on her phone. She asked for the documents to be allowed to be lodged late.
 - b) Ms Barclay stated she was opposed to the documents to be allowed to be lodged. There was no time to react to the documents and if necessary to call other witnesses. She did not think the documents were particularly relevant.
 - c) After an adjournment the Tribunal decided not to allow the documents to be added to the process because the Respondent had not provided any evidence that there had been a reasonable excuse for the late lodging. She had been advised of

the need to lodge documents at the CMD and in the directions and had ignored these. She had been aware of the date of the hearing and not taken reasonable steps to lodge the documents in time so that the Applicants would have had fair notice of the content. The Tribunal was satisfied that the documents had been in the Respondent's possession and that she had had access to these for weeks prior to the hearing and that she had simply waited until Friday to lodge these for a Monday morning hearing, thus leaving no time for the Applicants to deal with the documents appropriately. There was no reasonable excuse for lodging the documents late and thus the Tribunal refused the request. The Tribunal had further considered the matter under the overriding objective stated in rule 2. Had the documents been allowed to be accepted this in all likelihood would have led to a delay and a postponement of the hearing. In all the circumstances the Tribunal saw no reason why the Respondent should be allowed to introduce the documents at this late stage.

d) The Tribunal was also advised that an up to date rent statement had been lodged by the Applicant on 13 March 2023. The clerk was able to verify that this had been the case but that for reasons unknown the administration had not sent this on to the Respondent and the Tribunal members. However, after discussion of the content of the rent statement and an update by both the Applicants and the Respondent of the payments made and received since the updated statement of 9 January 2023, the Tribunal noted that both parties agreed that since 9 January 2023 two payments of £425 Universal Credit (UC) and £33.49 arrears contributions had been received on 16 February 2023 and 16 March 2023 respectively and that thus there was agreement of this matter and it did not introduce new information the Respondent would not have been aware of.

3. Ms Brown's evidence:

- a) Ms Brown gave evidence first to allow the Tribunal and the Applicant to be fully aware of her position, which she had not put in writing as requested in the directions following the CMD.
- b) Her evidence was that she had agreed a rent of £425 verbally with Ms Easton when she first viewed the property on 24 April 2019 together with her mother. She could have had her mother give evidence about this but because her mother had health issues she did not wish to put the additional pressure on her of giving evidence. Ms Easton understood that £425 was what she would receive in housing benefit (HB). The first two months no payments were made because that was how long it took for HB to be put in place. She did not receive HB in May, June and July 2022 because of a change in her employment situation but received it again afterwards and did not pass on the payments for rent from November and December 2022 and January 2023 although she had received the payments from DWP.
- c) She stated she had invested in the property working on the kitchen and garden, which would make up for the arrears and thinks she should be compensated for this. She stated she was a good tenant. She lives there with her two sons, aged 4 and 11. She has issues and finds it difficult to deal with mail. Initially she stated she also rented a commercial property from the Applicants in 2021 for a cafe. She later changed her evidence and stated this was in November 2020. She asked why they would rent her a commercial property if she had arrears in her rent.

- d) She stated she had suggested a payment of £200 per week to repay the arrears in February 2022 because she was desperate to keep her family home but this was unrealistic and she could not afford the payments. She would have promised anything at that stage as she panicked. She stated the landlords should have known that and that she was suicidal and depressed but did not state how the Applicants would have known that. She had domestic issues and could not see her 11 year old son become homeless.
- e) She stated that the tenancy agreement was actually the one she signed in the office of the landlord in May 2019 and she just thought that the amount of rent stated in the tenancy agreement in clause 7 was "just legalities" for getting a house and did not think to challenge this. There were issues about the carpets and kitchen and she was pregnant at the time. She was excited to get the house and did not query the rent. If the rent really was £510 why would the landlord wait for years without evicting her. She confirmed having received an email with the rent increase notice. She stated she now thinks the landlords wanted to evict her so they can put up the rent for the property as this is what happened to someone she knows. She had not been aware that during Covid there were different rules about notice periods and evictions until she spoke to CHAP or the homelessness team. The Applicants had been nice to her. She agreed £510 would be a reasonable rent but she had told them she could only get £425.
- f) She stated she knew she had arrears, especially from the first two months after the tenancy started and when she paid £510 from August to October 2021 and in January 2022 this was to clear some of these arrears, not an acknowledgement that this was the rent due. She further stated that when she got the rent increase notice to £520 she again thought that was just legalities, like a gas safety check, and not a real notice of a rent increase. She did not think it was serious because of how nice the Applicants had been to her, for example when there was a problem with the ceiling and they trusted her to organise the repairs herself and repay her the money.
- g) She stated it was only when she got the Notice to Leave she challenged the rent amount. She stated that Ms Easton had come to her house with a handwritten rent statement and she queried it then and Ms Easton had told her she would adjust it and look into it, the amount of rent and that particular payments had not been shown on the handwritten statement,.
- h) She is now in touch with Woman's Aid and they will help her with sorting her finances. She was in a terrible financial situation not being able to afford her gas. She finds it hard to prioritise. She would now offer payments of £50 to £75 per month to clear the arrears as this would be realistic. This may be too little too late. She confirmed she did not get back to the landlords to say can she pay less than the £200 at the time. She stuck her head in the sand. She had now also contacted the Council about being re-housed but was just on a list.
- i) In her calculation, based on a rent of £425 a month, she would accept the arrears are £4,980 not the amount stated by the Applicant. She stated Lyn had said to her she would re-do the rent statement and had brought her a paper one to the door showing the £425 rent only. Then she did not hear anything further. When asked by the legal member why she had not raised this before she stated she has memory problems.

- j) She said she did not get the Notice to Leave emailed and her email of 25 February 2022 referred to an email from Lyn on the 24th and did not acknowledge the receipt of the Notice to Leave. She only got this when she was given the bundle of papers from Sheriff Officers when the Tribunal process started.
- k) The landlord should have taken more steps to help her and should have done more to allow her to pay the arrears.
- l) She stated that she lives at the property with her two sons and her older son will be going to high school next school year. If she had to move now this would not give him much time make friends and life is hard. She does not think it is reasonable to evict her.
- m) She also stated ultimately if she had to move that would be her own fault.
- n) She admitted that she had received Universal Credit payments for her rent in November, December 2022 and January 2023 but had not passed them to the landlord as rent because she was struggling financially.

4. Evidence on behalf of the Applicants:

- a) Ms Barclay stated the lease reflected the agreed rent position. The property is a 3 bedroom house and the £510 rent would have been the normal rent for that type of property at the time and the Applicants would not have accepted £425 rent for that type of house. There had been little effort of the Respondent to address the arrears and the Applicants had to ask for direct payments from Universal Credit (UC) which were now being received. However, even with the payments towards the arrears of £33.49 from UC, the payments do not cover the actual rent due and each month the arrears still increase.
- b) Ms Thoms was the main point of contact and after arrears reach a certain level the other department would then refer the case to her department and she would issue a Notice to Leave and the PARS letters etc. She never had direct communications with the Respondent but had sent the email with the PARS letter and the Notice to Leave to the Respondent on 24 February 2022. The Respondent had replied the next day with the payment plan proposal and she thought that this was likely in reaction to the enclosure of her own email which stated that that may be a step the Respondent wished to take and the email from the Respondent referred to "emails" plural.
- c) If the payment plan had been kept by the Respondent then the Notice to Leave would have expired and nothing else would have happened. As it was not kept, the matter was then referred to the Tribunal. There had been no attempt by the Respondent to communicate and ask for a change in the payment plan.
- d) Ms Barclay argued that there simply had not been sufficient engagement by the tenant to address the arrears. The Applicants had tried to work with her, had provided information about advice etc. and the Respondent had not kept in touch and simply not paid what she had specifically offered. The landlord had had to apply for direct payments as payments from Housing Benefit as there was no rent coming in from November onwards.
- e) Ms Thoms explained that she was employed as office manager and had worked for the Applicants for about 20 years. She did some Credit Control and was the personal contact for tenants. There is also a commercial letting

arm to the organisation and the private rental part dealt with about 280 houses.

- f) All rent increase notices are sent at the same time for all properties after the directors make a decision to increase rent. She sent out all the notices. The new rent applied from May 2021.
- g) The rent charges are taken from the tenancy agreement when a new tenancy is set up. There was no information this would be any different for this lease.
- h) When the tenant offered to pay £510 in cash in August 2021 she did not query that and ask for £520 because she would have just looked at the lease. After the 3x£510 payments the arrears worsened. There was a lot of telephone messages left for the tenant but she could not confirm exactly when these would have been. Emails had not been replied to, calls not returned. The initial UC request for direct payment was rejected, the one in January 2023 was granted. Although she had tried to work with the tenant, there were no telephone contacts after the Notice to Leave. The tenant had never disputed the rent being £510 before.
- i) She stated she thought the tenant was working when she offered the £200 and she did not know the tenant may have been struggling.
- j) All accounts are dealt with individually and there was no specific amount after which a notice would be served. It would be if payments stopped for example if an agreement was not kept. She had emailed the Respondent on 12 and 21 April 2022 but received no response.
- k) During Covid as long as tenants paid anything they would not have chased up payments and tried to evict tenants. In this case the arrears were now almost £9,000 and an eviction would be reasonable.
- l) Nobody ever approached them to say the tenant was a vulnerable person and she did not recall the tenant had ever told them about a breakdown.
- m) She stated she does not drive and never went to the tenant's property with a handwritten rent statement. She does not know if Ms Easton ever did. To her knowledge there was only one payment plan set up, that was the one offered by the Respondent.

C: Findings in Fact:

Based on the evidence lodged and the representations of the participants at the CMD and the hearing the Tribunal makes the following findings in fact:

1. The tenancy is a Private Residential Tenancy over the property which started on 9 May 2019.
2. The parties were the landlords and tenant of said Tenancy Agreement.
3. The tenancy is ongoing.
4. The monthly rent was initially £510 per calendar month payable in advance on the 9th day of each month (clause 7).
5. The monthly rent increased to £520 from 9 May 2021 by the rent increase notice dated 21 January 2021 served on the Respondent
6. Rent arrears of £8,968.02 accrued to the date of the hearing on 20 March 2023 and remain outstanding.

7. Payments of £425, £510 and £200 respectively were made as shown in the rent statement up to and including 9 January 2023 with two additional payments having been received of £458.49 on 16 February and 16 March 2023.
8. No payment were made May and June 2019.
9. No payments were made in November and December 2021 and in May, June and July 2022
10. No payments were made in November and December 2022 and January 2023.
11. The Respondent has been in rent arrears since the commencement of the tenancy in May 2019.
12. The Respondent's rent arrears are now in excess of the equivalent of 17 months rent.
13. Benefit payments of £458.59 including the element of arrears repayment will continue to leave a monthly shortfall of rent going forward.
14. The Applicant had written to the Respondent with the relevant information about rent arrears and advice and assistance contacts and with information suggesting setting up a payment plan prior to raising proceedings.
15. The Notice to Leave was sent by the Applicants on 24 February 2022 by email to the correct email address as stated in the tenancy agreement.
16. The Notice to Leave referred to the rent arrears as the ground on which the notice was issued.
17. The Notice to Leave provided the 6 months notice period as required by the legislation at that time and stated as the date when proceedings could be raised 28 August 2022.
18. The Applicant had served a S 11 notice on the local authority on 13 September 2022.
19. The payment plan offered by the Respondent on 25 February 2022 had not been adhered to and the payments of £200 stopped after 4 payments.
20. During the period of payment of £200 as shown in the rent statement, no separate payments of £510 for the ongoing rental charges were made as offered by the Respondent.
21. The Respondent is in receipt of relevant benefits and has not passed on rent payments covered by said benefits to the Applicants for the months of November, December 2022 and January 2023.
22. She lives at the property with her two sons, who are 4 and 11 years old respectively.
23. The 4 year old son only ever knew this property as the family home.
24. The 11 year old son will change to high school after the summer.
25. The Applicants are an organisation which lets approximately 280 houses under private rental arrangements and also has a branch of commercial properties.
26. During the period of Covid restrictions tenants were not chased for rent arrears and as long as payments, even if insufficient, were made, they were no sent a Notice to Leave.
27. Until 2022 the Respondent felt supported and treated well by the landlords.

D: Reasons for decision

Relevant Legislation: Ground 12 Schedule 3 Private Housing (Tenancies) (Scotland) Act 2016: Rent arrears

12(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

F28(2).

(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.

(4)In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider—

- (a) whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit , and
- (b)the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations.

(5)For the purposes of this paragraph—

(a)references to a relevant benefit are to—

- (i)a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971),
- (ii)a payment on account awarded under regulation 91 of those Regulations,
- (iii)universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,
- (iv)sums payable by virtue of section 73 of the Education (Scotland) Act 1980,

(b)references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.

(6)Regulations under sub-paragraph (4)(b) may make provision about—

- (a)information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),
- (b)steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,
- (c)such other matters as the Scottish Ministers consider appropriate.

1. The Tribunal makes its findings on the civil standard of proof, which is the balance of probability. The Tribunal carefully considered the documentary evidence and the oral evidence given by all participants.
2. It was not disputed that the parties entered into the Private Residential Tenancy which was evidenced by the tenancy agreement signed by both parties and dated 9 May 2019. The payments made were also not in dispute. The Tribunal is thus satisfied that the Respondent had entered into a Private Residential Tenancy Agreement with the Applicant for the property.
3. The Respondent challenged the amount of rent due as stated in the tenancy agreement. The rent is clearly stated as £510 per calendar month in clause 7 of the tenancy agreement and the Respondent agreed that she had signed the lease with that amount stated as the rent. She stated that she thought the amount was just "a legality", as was the rent increase, and she never queried the amount until she 2022 because she had verbally agreed an amount of £425 of rent with one of the directors of the Applicant organisation. She provided no evidence for this. The witness she had stated could have spoken to this agreement was not produced.
4. The Tribunal noted that payments of £510 had been made on 4 occasions as shown in the rent statements. Although the Respondent stated that was just a random amount to clear some of the arrears, the Tribunal considered that it was highly

unlikely that a random amount would have been chosen for these payments in the absence of any payment plan to that effect. The Respondent in her email of 25 February 2022 had also referred to payments of £510 plus additional payments of £200 per week. Again, the Tribunal considered that this was another indication that the rent had been agreed at £510 rather than £425 per month.

5. Both Ms Barclay and the Respondent stated that £510 would have been a reasonable rent for the type of property and Ms Barclay stated the organisation would not have accepted a significantly lower rent. The Tribunal further noted that although the Respondent repeatedly referred to it being unlikely that she would have not been evicted sooner if the rent was £510 per month, a degree of flexibility had been explained by Ms Barclay and Ms Thoms due to the Covid situation, during which a significant amount of the arrears accrued.
6. On balance, the Tribunal did not accept the Respondent's position regarding a verbal agreement of a rent of £425 per month for a 3 bedroom house having been made without that having been reflected in any way in correspondence or the tenancy agreement.
7. The Tribunal also did not believe that the Respondent would have considered one of the elementary and essential parts of the tenancy agreement, the amount of rent stated in the written tenancy agreement, to be something she would just ignore and sign although she stated it was not accurate.
8. The Tribunal further was satisfied that the Respondent received the rent increase notice and would have been aware that the rent increased to £520 from May 2021 onwards. Although both parties later in the emails about the payment proposal referred to £510 per month and additional payments, Ms Thoms had explained to the Tribunal's satisfaction that she would have looked at the tenancy agreement when she agreed to that payment proposal and had not checked for any increase. The Tribunal considered that this was a likely explanation and did not change the clear rent increase notice sent to the Respondent. The Tribunal did not consider it likely that the Respondent was not aware of the rent amount in particular after the rent increase notice was issued and considered that it would be unlikely that a tenant would ignore the rent stated in the tenancy agreement and the rent increase notice without raising this with the landlord if they thought that amount was incorrect.
9. At the hearing the Respondent for the first time stated that she had brought this to the attention of Ms Thoms and Ms Easton when they came both to her property with handwritten rent statements. She had not mentioned this before and despite having been asked to make all relevant representations by 20 January 2023 had not done so in answer to the direction issued by the Tribunal after the CMD. She had not produced any of the handwritten statements she stated had been taken to her. She had not produced any emails or texts, letters or other documents which would have supported her evidence that she challenged the rent amount. She did not give specific dates when these alleged visits would have happened.
10. The Tribunal believed Ms Thoms' evidence that she had never gone to the Respondent's property because she does not drive. The Tribunal also considered it highly unlikely that in a professional organisation with 280 properties and an

electronic rent and accounts system a director of the organisation would have drawn up and handed over a handwritten rent statement and found it equally unlikely that the office manager would have done so. The Tribunal did not accept Ms Brown's evidence in this regard.

11. On balance and taking all evidence into account, the Tribunal was satisfied that the rent was initially £510 per month, was increased to £520 per month from 9 May 2021 and that at the time of the hearing the amount of rent arrears outstanding was £8,968.02.
12. The Tribunal was satisfied that the Notice to Leave was served by the Applicant on the Respondent by email on 24 February 2023. The Applicant provided a copy of the email clearly showing the attachment of the Notice to Leave (item 2) and Pars letters (items 4 and 5) as well as a rent statement showing the arrears at the relevant time (item 3). The email was sent to the correct email address provided by the tenant in the tenancy agreement "hollibrown93@hotmail.com". The Respondent had been asked to provide evidence, if available, to show the email had not been received. This could have been a printout of the emails received during the relevant period. However, she did not do so. The Tribunal on balance of probability found that the email had been sent and received, not least because the Respondent on 25 February 2022 suddenly offered a payment plan because, as she stated at the hearing "she would have offered anything not to lose her family home". Her evidence was that this was in reply to the email sent by Lyn Thoms on 24 February 2022, which read "I tried to call you this morning but the number is not in service. Please call the office on 01563 851242 ASAP as we really need to discuss the repayment of the rent arrears and we also need you up to date contact number. I will also send of a copy of this email in the post." Given the content of the email she stated she received and the immediate offer of a payment plan the next day, the Tribunal agreed with Ms Barclay, that it was much more likely that the email sent by the Respondent on 25 February 2022 was in answer and as a reaction to the email from Ms Barclay sent on 24 February 2022 including the Notice to Leave and the PARS letters. The Tribunal further notes that the Applicant has complied with the requirements of issuing relevant information in terms of the Pre-Action requirements stated in the Act and that the Applicants had sent, as evidenced by copies in the bundle, the required S 11 notice to the local authority.
13. The Tribunal was thus satisfied that the Respondent had been in arrears of rent for a consecutive period of 47 months at the time of the hearing and for a period of 34 months at the time the Notice to Leave was issued. the Tribunal was further satisfied that the arrears were not due to non or delayed payment of relevant benefits.
14. With regard to the issue of reasonableness, the Tribunal fully considered all relevant matters, including in particular the position of the Respondent, her family, the duration of the tenancy, the conduct of the Applicant as landlord during the tenancy, the level of support and information provided by the Applicant, the payment history and conduct of the Respondent as tenant during the tenancy, the payment plan and the issue of lack of adherence to this by the Respondent, the nature of the business of the Applicant as described by Ms Thoms and the level and development of the arrears as well as the continuing increase of the arrears.

15. The arrears did not result from non or late payment of relevant benefits. In fact the Respondent admitted that recently she had simply not passed on relevant benefits received by her to cover her rent to the Applicant due to what she described as the cost of living crisis.
16. The Applicants are a large private housing provider but operate solely in a private capacity and are not a charity or social housing provider. A large organisation providing private housing like the Applicants would be expected to work with tenants to address arrears and to have a certain degree of tolerance and flexibility in dealing with arrears, especially in challenging circumstances for tenants. The Tribunal noted in that regard that the Respondent herself had commented at the CMD that the Applicants had been supportive to her. The Tribunal further noted that as a policy during the Covid restrictions the Applicants did not pursue tenants for arrears and would not have issued a Notice to Leave as long as some payments had been coming in. This was a policy to protect tenants during a difficult time. It now seems that the Respondent is actually using that provision of support to challenge the arrears figure, as she repeatedly stated if the arrears had been in place for that time and to that extent she would have expected to have been evicted long ago. The Tribunal considered the Applicants had been supportive and had tried to engage the Respondent in addressing the arrears. The Tribunal further concluded that the Respondent simply refused to accept that the rental charge had to be paid in full.
17. The Applicant has complied with the pre-action requirements. The information provided by the PARS letters appears to have enabled the Respondent to access some relevant advice. The Applicant accepted a payment plan to clear the arrears because, as Ms Thom stated, the Respondent had advised them that she had a job, which would allow her to make these payments. The Respondent is now criticising the Applicants that they did not enquire further. Since the offer came from her and gave a reason why she would be able to make the payments, the Tribunal considered there was no further duty for the Respondent to look behind this information at the time the agreement was made. It was the Respondent's proposal, she did not ask the payment plan to be altered or adjusted and she simply stopped the payments she herself had proposed after for instalments. The Applicants had been patient and supportive, provided relevant information and agreed to a payment proposal.
18. The Tribunal did not accept the Respondent's statement that she had been promised that the Notice to Leave would be taken back if she made payments. There is no documentary evidence supporting this statement and Ms Barclay clearly explained what the internal process would have been had a plan been adhered to. In this case the Respondent simply stopped making the promised payments, did not inform the landlord of any reason why and thus, in the opinion of the Tribunal, could not expect that a failed payment plan would have meant that the Notice to Leave would be no longer relevant.
19. Over all the Tribunal agreed with the Applicant's argument that the Respondent simply did not engage sufficiently in resolving the matter of rent arrears. There has been a prolonged and persistent failure by the Respondent to address the arrears despite the Applicant's steps to try and engage the Respondent. The Respondent stated that she just put her head in the sand. This kind of behaviour was also

apparent during the process before the First-tier Tribunal, for example in not complying with directions and not giving advance notice of her position throughout the case.

20. The Respondent did not address the rent arrears in any meaningful way and still has no means of covering the full rent for the property going forward without an ongoing monthly shortfall. It appears clear from the information available that the Respondent cannot afford the rent for the property even with appropriate benefits in place. If the tenancy was to continue this would only create further arrears and increasing debt for the Respondent.
21. There is no suggestion of any medical conditions of the Respondent's children. There is also no objective need for the Respondent to remain at this specific property such as for example special adaptations of the property.
22. The Tribunal considered that the level of arrears equivalent to 17 months rent together with the clear trajectory of further increase of the arrears due to insufficient direct payments, which do not cover even the rent for the property, are so significant that even a larger organisation cannot be expected to continue providing a private tenancy in those circumstances.
23. For the sake of completeness, the Tribunal did not attach any weight to the Respondent's statements about her providing finance to improve the property. She provided no details about this and provided absolutely no documentary evidence of any funds provided by her for a kitchen improvement or for works in the garden. She had ample opportunity to provide such evidence. She did not do so.
24. In all the circumstances the Tribunal thus finds that it is reasonable to grant the eviction order on ground 12 of schedule 3 of the Act.
25. In terms of S 51(1) of the 2016 Act the Tribunal thus grants the application for an eviction order as it is satisfied that one of the eviction grounds in schedule 3 of the Act applies.
26. As the Notice to Leave was served on 24 February 2022 and the application received by the Tribunal on 13 September 2022, the application is not affected by the provisions of schedule 2 of the Cost of Living (Tenant Protection) (Scotland) 2022. The Tribunal, having regard to the appeal period, determines that in terms of S 51(4) of the Act the tenancy ends on 24 April 2023.

E : Outcome

The Tribunal grants an order for eviction in terms of S 51 of the Act on Ground 12 of Schedule 3 of the Act.

F: 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.

Petra Hennig-McFatridge

**Petra Hennig McFatridge
Legal Member/Chair**

**21 March 2023
Date**