

**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/22/2609**

**Re: Property at 78 Frew Terrace, Irvine, KA12 9EB (“the Property”)**

**Parties:**

**Corgi Partners LTD, 33A Milton Road, Hampton, TW12 2LL (“the Applicant”)**

**Miss Tracey Beckett, 78 Frew Terrace, Irvine, KA12 9EB (“the Respondent”)**

**Tribunal Members:**

**Shirley Evans (Legal Member) and Leslie Forrest (Ordinary Member)**

### **Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at 78 Frew Terrace, Irvine, KA12 9EB under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with her goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in their name may enter thereon and peaceably possess and enjoy the same.**

### **Background**

- 1. By application dated 28 July 2022, the Applicant’s solicitor applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for repossession under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).**

2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the parties, a Notice to Leave dated 12 May 2022, a rent statement, various letters to the Respondent and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to North Ayrshire Council.
3. On 29 September 2022, the Tribunal accepted the application under Rule 9 of the Regulations 2017.
4. On 16 November 2022 the Tribunal enclosed a copy of the application and invited the Respondents to make written representations to the application by 7 December 2022. The Tribunal advised parties on 16 November 2022 that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 20 December 2022. This paperwork was served on the Respondents by Stuart Sinclair, Sheriff Officer, Glasgow on 17 November 2022 and the Executions of Service was received by the Tribunal administration.
5. The Respondent’s representative Mr Meek from CHAP requested further time to take instructions from the Respondent to allow him to lodge written submissions. The Tribunal granted this request. On 12 December 2022 Mr Meek emailed the Tribunal to advise that after discussing the case with the Respondent, she had confirmed she did not wish to dispute the application for an eviction order.

### **Case Management Discussion**

6. The Tribunal proceeded with a CMD on 20 December 2022 by way of teleconference. The Applicant’s solicitor Miss Donnelly from TC Young appeared for the Applicant. Mr Meek from CHAP appeared on behalf of the Respondent.
7. The Tribunal had noted the contents of the application and Mr Meek’s email of 12 December 2022. Miss Donnelly moved the Tribunal to grant an Order for eviction. A valid Notice to Leave had been served. She explained that the arrears had increased to £1442.39 an increase from £1300.74 when the Notice to Leave had been served. There was a shortfall in Universal Credit which had not been made up by the Respondent despite the efforts of the Applicant. The Respondent had last paid £350 on 7 December 2022 but as the monthly rent was £428 arrears were increasing. She submitted a case under Ground 12 of schedule 3 of the 2016 Act had been met. The Tribunal noted a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to North Ayrshire Council had been served.
8. Mr Meek advised that the Respondent did not dispute the application. Unfortunately, after meeting with the Respondent it was clear that the Property was unaffordable for the Respondent. She needed a date for eviction which would allow the local authority to offer her temporary housing. The

Respondent's intention was nevertheless to clear the arrears. However, she fully accepted that she could no longer afford to live in the Property. She lived in the Property alone.

### **Reasons for Decision**

9. The Tribunal was satisfied that the Applicant had properly served the Notice to Leave under the 2016 Act. The Tribunal was also satisfied on the basis of Miss Donnelly's submissions that the Applicant satisfied the eviction ground stated in the Notice to Leave, namely Ground 12 of Schedule 3 of the 2016 Act and that the Respondent was in rent arrears. A case under Ground 12 of Schedule 3 was accordingly met. The Tribunal noted that notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to North Ayrshire Council had been served.
  
10. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the submissions made by both parties. The Tribunal considered that the Respondent had not disputed the basis for the application. The Tribunal was satisfied on the basis of the documents lodged, together with submissions made by both parties and in particular Mr Meek for the Respondent, which were both frank and honest, that the factual basis of the application had been established. There was no dispute as to the facts. Arrears were increasing as the Respondent could no longer afford to meet the full rental charge.
  
11. In determining whether it is reasonable to grant the order, the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal was satisfied on the basis of the submissions of Miss Donnelly that the Respondent's arrears were increasing. The Applicant had attempted to get the Respondent to make up the rent shortfall. The Applicant had complied with the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. The Respondent found herself in a desperate position as she could no longer afford to live in the Property. The Tribunal empathised with her. The Respondent had sensibly taken advice from Mr Meek and the homeless team at North Ayrshire Council. The balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order.
  
12. In the circumstances the Tribunal considered that in terms of Ground 12 of Schedule 3 it was reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

### **Decision**

13. The Tribunal granted an order for repossession. The decision of the Tribunal was 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.

Shirley Evans

20 December 2022

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Legal Chair

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Date