



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies)(Scotland) Act 2016**

**Chamber Ref: FTS/HPC/EV/22/2741**

**Re: Property at 43 Catherine Drive, Galston, Ayrshire, KA4 8BU (“the Property”)**

**Parties:**

**Mrs Rona Archibald, 9 Redfox Crescent, Penicuik, Midlothian, EH26 0RQ (“the Applicant”)**

**Mr William Shaw, 43 Catherine Drive, Galston, KA4 8BU (“the Respondent”)**

**Tribunal Members:**

**Gabrielle Miller (Legal Member) and Elizabeth Currie (Ordinary Member)**

**Decision (in absence of the Applicant)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

**Background**

1. An application was received by the Housing and Property Chamber dated 20<sup>th</sup> June 2022. The application was submitted under Rule 111 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on the Respondent not maintaining rent payments.
2. A CMD was held on the 14<sup>th</sup> September 2022 at 2pm by teleconferencing. The Applicant was represented by Mr Andrew Archibald, the Applicant’s husband. The Respondent was present and represented himself. The case was adjourned to a further CMD to allow for a Time To Pay Direction (“TTPD”) to be lodged by the Respondent and considered by the Applicant. The Applicant was also going to lodge an increase of the amount sought so that it could be the figure used in the TTPD. This case was to be conjoined with the eviction case EV/22/2741 with a new CMD date of 21<sup>st</sup> November 2022 at 2pm by teleconferencing.

3. A CMD was held on the 21<sup>st</sup> November 2022 at 2pm by teleconferencing. The Applicant was represented by Mr Andrew Archibald, the Applicant's husband. The Respondent was present and represented himself. The Respondent said that he had a solicitor but has not yet been able to fully instruct her. He was now in receipt of Universal Credit. His solicitor was waiting for the award of Universal Credit to allow her to apply for Legal Aid. The Respondent said that he started making payments. He paid £50 then missed a week then paid £130. The letting agent then told him that the Applicant was still seeking an eviction order. The Respondent then readjusted his financial priorities and stopped paying. He wanted to save in case he was to move into another private property. He is also on the local authority housing list for the local area where his children are at school. The Respondent told the Tribunal that a payment of £500 would be made by Universal Credit on 25<sup>th</sup> November 2022 direct to the Applicant and then each subsequent month. He is to make a top up payment to ensure the full rent payment is being made each month. If his income dropped then he should receive a further top up of Universal Credit. He thought that he may get a backdate possibly to just before the previous CMD. The Tribunal noted that money advice remained open to him if he wishes to contact them. He can take money advice in addition to having a solicitor. He needed to take action about that himself. Mr Archibald said that he considered that he had been very fair through the process but that the Respondent had only paid £220 in total since the CMD in September. The arrears had now risen to £3900 with no attempt made to pay the ongoing rent charge. He was still seeking an order for payment and eviction in the conjoined case. The Tribunal considered that it was a matter of natural justice that the Respondent be allowed to fully instruct his solicitor and that the CMD had to be continued to allow that to happen.
4. On 16<sup>th</sup> January 2023 an email was received by the Housing and Property Chamber from Ms Lucia Petrescu, Solicitor, Barnetts Law advising that she was now instructed and acting on behalf of the Respondent in both cases. This email was not crossed over to the Tribunal until the day of the CMD.

#### The Case Management Discussion

5. A CMD was held on the 1<sup>st</sup> March 2023 at 10am by teleconferencing. The Applicant was represented by Mr Andrew Archibald, the Applicant's husband. The Respondent was present. He was represented by Ms Lucia Petrescu, Solicitor, Barnetts Law. Mr Archibald confirmed that he was still seeking an order to be granted. The arrears have risen to £5487. The payments have been small and sporadic. They have not covered the rent charge. The payments have been between £1 and £20. The last payment which was made was on 23<sup>rd</sup> February 2023 for £20. The payment before was £1 on 16<sup>th</sup> February 2023. He is also seeking an order for payment in the conjoined case. Mr Archibald considers that he has been as fair as he can be but he is simply not getting the rent payments. Ms Petrescu said that she had not had sight of the CV application but had seen the EV application. She is waiting for legal aid to be processed. She needs both applications to be able to do that. She has contacted the Housing and Property Chamber for copies of the application. The

Tribunal noted that decisions were on the website. She was able to attend this CMD as she has been granted special urgency legal aid. Ms Petrescu said that the Respondent was now in receipt of Universal Credit Housing Element. He has on two occasions tried to contact the DWP for direct payments to be made to the Applicant. His home circumstances have changed. He now has two further children living with him who have been placed with him by the Children's Panel. The children living with him are aged 1, 3, 14 and 15. The children's mother is still receiving benefits for the youngest children. The Respondent is trying to get that stopped and ensure that the benefits are paid to him. As he is not getting what he should be getting in benefits he has struggled financially and has prioritised his children's welfare. He is willing to pay by direct payments to the Applicant. The Respondent is on the housing list. He was offered a two bedroomed property but that is no longer suitable with the two other children living with him. His application has been amended with the local council and he is waiting to see if he will be allocated another house. The social work department is going to write him a letter to confirm his situation with the youngest children to assist him to get his entitlement to benefits. He is also waiting to see if he will get paid a payment from the social work department. The Tribunal noted that there were still matters of dispute which included possible payments to be made towards the arrears and whether reasonableness has been established. The Tribunal was bound to continue matters to a hearing given that there was a matter of dispute. The Tribunal issued a direction for the Respondent for vouching for his circumstances. Ms Petrescu said that she had contacts that could help the Respondent regarding money advice once she had legal aid. She anticipated it taking 4 weeks from the date of lodging all the information. The CMD was continued to a hearing along with the conjoined case. This is to allow the Respondent to present a case in terms of why it is not reasonable for him to be evicted. This should be fully evidenced. A direction was issued.

6. On 19<sup>th</sup> May 2023 the Respondent's solicitor emailed in a TTPD. The TTPD offered £10 per week. The email also responded to the direction issued by the Tribunal on 1<sup>st</sup> March 2023.
7. On or around 30<sup>th</sup> May 2023 the Applicant's representative sent a TTPD response to the Housing and Property Chamber accepting £10 per week.
8. On 31<sup>st</sup> May 2023 at 8.53 am the Applicant's representative emailed to say that he had been given a short notice hospital appointment at 9.30am on the day of the hearing. He anticipated that he may be 10 minutes late to the hearing.
9. On 31<sup>st</sup> May 2023 at 9.15am the Respondent's solicitor emailed attaching a rent account illustrating full payments of rent since March 2023. The arrears had reduced to £5222.15.
10. A hearing was held on the 31<sup>st</sup> May 2023 at 10am by teleconferencing. The Applicant was representative is Mr Andrew Archibald but he was not present. The Respondent was present. He was represented by Ms Lucia Petrescu, Solicitor, Barnetts Law. Given the email from the Applicant's representative on the morning of the hearing, the Tribunal had a brief adjournment to 10.30am to

allow for Mr Archibald to attend the hearing. After the adjournment Mr Archibald had still not joined the hearing. The Tribunal was very concerned that Mr Archibald had wanted to join the call but had not been able to due to his hospital appointment extending beyond a time that he had not considered it would do so. Ms Petrescu told the Tribunal that the Respondent has been offered a local authority 3 bedroom property. He needs to view it and for repairs to be undertaken before he can move in. He anticipates moving into the new property in 8 weeks. In the meantime, the Respondent has arranged for Universal Credit to make direct payments to the Applicant. The Respondent is paying the remainder of the rent due. The Respondent said that he has set up a standing order for the £10 per week payment to the arrears, which is the offer within the Time To Pay Direction that has been submitted. He phones his letting agent and pays the £50 per month rent shortfall manually. He has spoken to his letting agent about the new local authority property. They have advised him to give 28 days notice when he knows the date that he will be moving out of this property. He also noted that he had been at court last week and granted a residency order for his two youngest children. The Tribunal was concerned that it was not clear as to what amount was to be on the TTPD. This would need to be clarified by the Applicant. andMs Petrescu said that it would be the last figure in the rent account she had submitted that day which was £5222.15. The Tribunal will adjourn the hearing to allow for this information to be clarified by the Applicant. The Respondent's solicitor did not object to the matter being adjourned. Once this figure has been given then the Tribunal can deal with the TTPD administratively. The Tribunal directed the Applicant to confirm that the amount sought is £5222.15. The Tribunal adjourned the hearing to a further provisional hearing date. This was to allow Mr Archibald to attend and advise of the exact amount that he is now claiming for the arrears. This should be notified to the Tribunal no later than 28<sup>th</sup> June 2023. The Tribunal will then be able to deal with the matter administratively as the TTPD has been accepted. Once that has been done the matter will be concluded and not need to proceed to the hearing date.

11. On 2<sup>nd</sup> August 2023 parties were written to by email advising of the new date for the part heard hearing of 31<sup>st</sup> August 2023 at 10 am by teleconferencing.
12. On 25<sup>th</sup> August 2023 the Respondent's solicitor emailed the Housing and Property Chamber attaching an up to date rent account for the period 9<sup>th</sup> October 2020 to 25<sup>th</sup> August 2023. The arrear were detailed as being £5001.54.

### The hearing

13. A CMD was held on the 31<sup>st</sup> August 2023 at 10am by teleconferencing. This was the continuation of the part heard hearing from 31<sup>st</sup> May 2023. The Applicant was not present. She is represented by Mr Andrew Archibald who was also not present. The Respondent was present. He was represented by Ms Lucia Petrescu, Solicitor, Barnetts Law. Noting that neither the Applicant nor her representative were present, the Tribunal proceeded in terms of Rule 29 of the Rules. The Applicant did not make representations in advance of this hearing date.

14. The Respondent said that he was unable to take the house offered to him, which he had spoken about at the last calling of the hearing, due to its location as it was too far from his children's nursery. They are 2 and 3 and have only just settled with him and the nursery after traumatic period before coming to live with him. Yesterday he was given full residency of them. He has spoken to the housing department at his local council and he is at the top of their list. He has extended his area to enable him to be allocated a house. His father will help in the new area as he lives close by and can take the children to nurse if the Respondent is able to return to work. There has been no contact from the Applicant. Ms Petrescu motioned for the case to be continued to allow for the Respondent to be allocated a new property or for the case to be dismissed as the Applicant has not attended this hearing or the last calling of the hearing on 31<sup>st</sup> May 2023. She said that there is no evidence that the Applicant continues to rely upon the application.

15. The Tribunal was not satisfied that the Applicant continued to rely upon the application. The Tribunal refused the application. No order was granted.

#### Decision

16. The application was refused as the Applicant was not present and there was insufficient evidence to know that the application was still to be relied upon.

#### **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.**

**Gabrielle Miller**

**31<sup>st</sup> August 2023**

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**Legal Member/Chair**

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**Date**