



**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/22/4459**

**Re: Property at 142 Albert Street1/R, Dundee DD4 6QW (“the Property”)**

**Parties:**

**Mr Gerald Swan, t/a Town & City Investments, Suite 1/1, 79 West Regent Street, Glasgow, G2 2AW (“the Applicant”)**

**Mr Anthony Welsh, 142 Albert Street 1/R, Dundee, DD4 6QW (“the Respondent”)**

**Tribunal Members:**

**George Clark (Legal Member) and Helen Barclay (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be deemed to be withdrawn.**

**Background**

1. By application, dated 20 December 2022, the Applicant sought an Order for Possession of the Property under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Ground relied on was Ground 12 of Schedule 3 to the 2016 Act, namely that the Respondent was in arrears of rent over three consecutive months.
2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties commencing on 20 May 2019 at a monthly rent of £345, and a Notice to Leave, dated 2 November 2022, advising the Respondent that the Applicant was seeking an Eviction Order under Ground 12 of Schedule 3 to the 2016 Act and that an application to the Tribunal would not be made before 4 December 2022. The Notice to Leave stated that the arrears stood at £6,420. The application also included a Rent Statement showing arrears at the date of application of £7,130 and the current rent as £355 per month.

3. The Applicant's agents, S&D Properties Group, Dundee, provided the Tribunal with copies of a large number of emails, between them and Dundee Health & Social Care Partnership, and between them and Dundee Law Centre, both of which had been providing assistance to the Respondent in this case. It appeared from those emails that agreement had been reached that the Respondent would pay £400 per month, including £45 per month towards the arrears, but that the Respondent had failed to make these payments and that Dundee Health & Social Partnership were looking to apply for legal powers to enable them to take control of the Respondent's finances. On 30 December 2022, Dundee Law Centre had suggested that someone from their office might accompany the Respondent to the agents' office to make manual rent payments on the day the Respondent's pension is paid into his bank account. They had earlier indicated that the Respondent had been unsuccessful in an application for a Discretionary Housing Payment.
4. On 18 January 2023, the Applicant's agents asked that the application be amended to include Ground 12a of the 2016 Act as a Ground for seeking an Eviction Order. On 2 March 2023, they provided a summary of the Applicant's finances and details of a health issue which required him to pay for a housekeeper 4 days per week and further home care.
5. On 14 April 2023, Dundee Law Centre, acting on behalf of the Respondent, submitted written representations, advising the Tribunal that he had fallen into arrears due to certain health conditions, that he was now being supported by them and by Dundee Health & Social Partnership and that he had a note in his diary that on the day he receives his monthly personal pension payment, he pays £400 (including £45 towards arrears) to the Applicant's agents at their office. Dundee Law Centre would also contact the Respondent on the relevant day, to remind him of the arrangement, which, they said, had worked over the last couple of months. There were concerns about the Respondent's capacity and in particular his capacity to manage his finances and an "Adult with Incapacity" meeting was to take place on 4 May 2023, with a view to Dundee City Council taking control of his finances. The Respondent had applied for local authority sheltered housing and was first on the list for that. Accordingly, Dundee Law Centre moved on behalf of the Respondent that the case be continued, to enable the Respondent's payments to be monitored and to await the outcome of the meeting of 4 May.

### **First Case Management Discussion**

6. A Case Management Discussion was held by means of a telephone conference call on the morning of 19 April 2023. The Applicant was represented by Caroline Swan and by Gillian McCormack of S& D Properties Group. The Respondent was represented by Rebecca Falconer of Dundee Law Centre.
7. The Applicant's representatives told the Tribunal that the arrears now stand at £7,375 and that they had been tried everything they could to help the Respondent to resolve the issue of rent arrears, but they had no objection to the continuation that the Respondent's representative had requested.

Accordingly, consideration by the Tribunal of the application was continued to a later date.

### **Second Case Management Discussion**

8. A second Case Management Discussion was held by means of a telephone conference call on the morning of 3 July 2023. The Applicant was again represented by Caroline Swan and by Gillian McCormack of S& D Properties Group. The Respondent was represented by Kenneth Marshall, Principal Solicitor of Dundee Law Centre.
9. On 30 June 2023, Mr Marshall had requested that the application be put on hold, to monitor payments of rent in the hope of settlement of the case, the Respondent having paid his rent on time since the date of the first Case Management Discussion. The Respondent has had his capacity assessed and he “lacks capacity in regards to welfare and finances.” Mr Marshall attached documentation which indicated that an application for guardianship was being made for a possible intervention order to apply for benefits and access to his bank accounts
10. The Applicant’s representatives told the Tribunal that the Respondent has been adding £45 per month to his recent rent payments, to reduce the arrears, which now stand at £7,069.52. They understood that steps were being taken for guardianship and a possible intervention order, and they were content to agree to a further continuation of 3 months.
11. The Tribunal noted that this case had been continued once already but it appeared that a resolution of some sort might be possible in the coming weeks. A further continuation was, therefore, preferable to making a Decision, the outcome of which might have resulted in the eviction of the Respondent within a period of weeks. Accordingly, the Tribunal accepted the request, acceded to by the Applicant’s representatives, for a further continuation of 3 months.

### **Third Case Management Discussion**

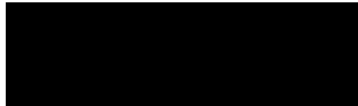
- 12 A third Case Management Discussion was held by means of a telephone conference call on the morning of 2 October 2023. The Applicant was again represented by Caroline Swan and by Gillian McCormack of S& D Properties Group. The Respondent was again represented by Kenneth Marshall, Principal Solicitor of Dundee Law Centre.
- 13 The Applicant’s representative told the Tribunal that the arrears now stand at £6,926.61, but that the arrangement whereby the Respondent would pay £45 per month on top of his rent was working. In the circumstances, the Applicant wished to withdraw the application for an Eviction Order.

## Reasons for Decision

- 14 Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.
- 15 The Tribunal noted that the Applicant wished to withdraw the application, as the Respondent was making his contractual rent payments and paying a further £45 per month towards the arrears. The Applicant also has the protection of an Order for Payment should the current arrangement break down. Accordingly, the Tribunal decided that the application should be deemed to be withdrawn and the case closed.

## 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.**



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Legal Member/Chair

2 October 2023  
Date