

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

---



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014 and Section 18 of the Housing (Scotland) Act 1988.**

**Chamber Ref: FTS/HPC/EV/23/2778**

**Re: Property at 10 Firth Gardens, Barassie, Troon, KA10 6TQ (“the Property”)**

### **Parties:**

**Ms Jacqueline Webster, 36 St Meddans Street, Troon, South Ayrshire, KA10 6NL  
Dr James Forrester Morman, 16 Balcomie Crescent, Troon, South Ayrshire, KA10 7AR and Pauline Ann Consgrrove, 13 Lang Road, Barassie, Troon, South Ayrshire, KA10 6TW (“the Applicants”) and**

**Waddell & Mackintosh, Solicitors, 36 West Portland Street, Troon, KA10 8AB (the Applicants’ Representative) and**

**Mr Michael Proctor and Ms Margaret Campbell, both residing at 10 Firth Gardens, Barassie, Troon, KA10 6TQ (“the Respondents”)**

### **Tribunal Members:**

**G McWilliams- Legal Member  
D Fotheringham - Ordinary Member**

### **Decision:**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determines to grant the Application.**

### **Background and Case Management Discussion on 29<sup>th</sup> February 2024**

1. This Application has been brought in terms of Rule 65 (Application for an order for possession in relation to assured tenancies) of The First-tier Tribunal for

Scotland Housing and Property Chamber Rules of Procedure 2017 (“the 2017 Rules”).

2. The parties entered into a short-assured tenancy agreement with a commencement date of 8<sup>th</sup> August 2014. The tenancy agreement’s monthly rental payment amount is £795.00. The Applicants, through their Representative, served a Notice to Quit the Property and Notice of Intention to raise Proceedings for Possession of the Property on 20<sup>th</sup> March 2023. The latter Notice stated that proceedings were to be raised on the basis of various Grounds in Schedule 5 to the Housing (Scotland) Act 1988 (“the 1988 Act”), in particular that the Respondents had substantial rent arrears of £6,360.00 (Ground 8A). The Applicants’ Representative subsequently lodged this Application with the Tribunal.
3. A Case Management Discussion (“CMD”) proceeded remotely by telephone conference call, at 2.00pm on 29<sup>th</sup> February 2024. The Applicants’ Representative’s Mr A. Stevenson attended. Mr Proctor and Ms Campbell did not attend and were not represented. Sheriff Officers’ had intimated details of the CMD and copies of the Application papers to both Mr Proctor and Ms Campbell by letterbox posting at the Property on 12<sup>th</sup> January 2024.
4. Mr Stevenson stated that, with the exception of a rent payment of £1,590.00 made in July 2023, the Applicants had not received any rental payments from the Respondents after July 2023. He said that the rent arrears currently owing are £12,760.00. He stated that the Respondents had intimated that they intended to move out of the Property in July 2022 and then stopped making rent payments. Mr Stevenson referred to a previous Tribunal’s order for payment of rent arrears, of £8,745.00 plus interest, which was granted on 22<sup>nd</sup> May 2023. He said that other than the said payment in July 2023, no other monies had been paid in terms of that order. Mr Stevenson stated that the Applicants consider that the Property is also falling into disrepair. He said that he understands that the Respondents have an adolescent child living with them at the Property. He stated that he was unaware of whether or not either or both of the Respondents were in employment. He said that the Respondent Mr Proctor may have owned, and may still be running, a business called “Tyre Doctor”. He further said that social media photographs of the Respondents on holiday abroad recently had been drawn to the attention of the Applicants. Mr Stevenson stated that he had no other information regarding the Respondents’ family and employment situations. He submitted that, in all the circumstances, it was reasonable that the Applicants be granted an order for eviction to recover possession of their Property on the principal ground that there are substantial rent arrears, of over 6 months, owing by the Respondents.

### **Findings in Fact and Law**

5. The parties have a tenancy agreement which began on 8<sup>th</sup> August 2014. The monthly rent due is in the sum of £795.00.

6. The Respondents were in substantial arrears of rent, of £6,360.00, on 20<sup>th</sup> March 2023, when the Applicants gave notice of their intention to raise proceedings to recover possession of the Property.
7. The principal Ground upon which the Application proceeds, namely Ground 8A in Schedule 5 to the 1988 Act, is satisfied. The Respondents had rent arrears of £6,360.00, an amount which exceeds the equivalent of 6 months' rent due, when notice of intention to raise these proceedings was given to them.
8. The rent arrears are currently in the amount of £12,760.00. The Respondents have only made one payment of rent, of £1,590.00 in July 2023, since that Notice was intimated to them.
9. It is reasonable that an order for possession is granted given the extent and increasing amount of rent arrears owing by the Respondents to the Applicants.

### **Reasons for Decision**

10. Section 16 of the Housing (Scotland) Act 2014 provides as follows:

“16. Regulated and assured tenancies etc.

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal -

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

11. Accordingly, the Tribunal now has jurisdiction in relation to claims by landlords, such as the Applicants, against tenants, such as the Respondents, for possession relating to a tenancy agreement, such as the parties' tenancy agreement.

12. In terms of Section 18 of the 1988 Act the Tribunal shall not make an order for possession of the house let on the tenancy except on one or more of the grounds set out in Schedule 5 to the 1988 Act.

13. Ground 8A in Schedule 5 to the 1988 Act provides that it is an eviction ground that the tenant has accrued arrears of rent and the cumulative amount of those arrears equates to, or exceeds, the equivalent of 6 months' rent when Notice of Intention to raise Proceedings is served or, if dispensed with, when proceedings are raised for an order for possession on this ground.

14. The Tribunal considered all of the Application papers and Mr Stevenson's submissions. Having done so the Tribunal made the above findings in fact and law. The Tribunal found that the arrears of rent amounts referred to by Mrs Stevenson were consistent with the documentation lodged with the Application.

They found that Mr Stevenson's submissions regarding the circumstances of the tenancy were also consistent with the terms of the Application papers. The Respondents had not made any representations to the Tribunal in respect of the Application and had not attended at the CMD to contradict the terms of the evidence in the Application papers and Mr Stevenson's submissions.

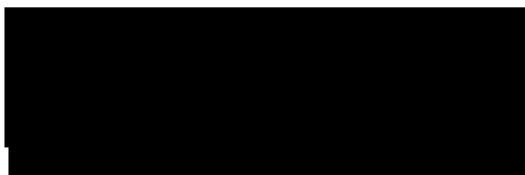
15. Therefore, having considered and weighed the available evidence, and Mr Stevenson's submissions, the Tribunal found, on a balance of probabilities, that there are substantial arrears of rent owing, currently in the sum of £12,760.00. The Tribunal found that the outstanding rent owing has been in a cumulative amount exceeding the equivalent of 6 months' rent since notice was given to the Respondents regarding these proceedings. The Tribunal also found that given the extent, and increasing amount, of rent arrears, it was reasonable that the Respondents' occupation of the Property, without payment of rent to the Applicants, be brought to an end.

### **Decision**

16. The Tribunal grants the Application.

### **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.**



29<sup>th</sup> February 2024

Legal Member

Date