



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18(1) of the Housing (Scotland) Act 1988**

**Chamber Ref: FTS/HPC/EV/22/3433**

**Re: Property at Flat 22, 25 Gullans Close, 264 The Cannongate, Edinburgh, EH8 8JW (“the Property”)**

**Parties:**

**Places for People Scotland in Association with Castle Rock Edinvar Housing Association Limited, 1 Hay Avenue, Edinburgh, EH16 4RW (“the Applicant”)**

**Ms Cristina Tessaro, Mr Kerr Christison, Flat 22, 25 Gullans Close, 264 The Cannongate, Edinburgh, EH8 8JW (“the Respondent”)**

**Tribunal Members:**

**Yvonne McKenna (Legal Member) and Gordon Laurie (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for Eviction should be granted against the Second Named Respondent Mr Kerr Christison only.**

**Background**

1. This was an application dated 16 September 2022 brought in terms of Rule 65 (Application for order for possession in relation to assured tenancies) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended.
2. The Applicant provided with the application copies of the short assured tenancy agreement, section 19 notice (form AT6), Notice to Quit, Section 33 Notice, Section 11 notice, rent arrears statement, pre-action correspondence and relevant executions of service. All of these documents and forms had been correctly and validly prepared in terms

of the provisions of the Housing (Scotland) Act 1988, and the procedures set out in that Act had been correctly followed and applied.

3. The form AT6 intimated to the tenant that the landlord intended to raise proceedings for possession of the Property on grounds 8, 11 and 12 of Schedule 5 to the Housing (Scotland) Act 1988. The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 30 November 2022, and the Tribunal was provided with the execution of service.

### **Case Management Discussion (CMD)**

4. A Case Management Discussion was held at 10:00 on 18 January 2023 by Teleconference. The Applicant did not participate, but was represented by Mr Kenneth Caldwell, solicitor. The Second Named Respondent did participate, and was not represented. The Respondent has not responded to this application at any stage either in writing or by any other form of communication.
5. The Tribunal was satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rule 17 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended.
6. The CMD was conjoined with an application to the Tribunal for an order for payment in respect of rent arrears under Tribunal Reference FTS/HPC/CV/22/3434.

### *Position of the Applicant*

7. Mr Caldwell informed the Tribunal that he was not seeking an order in respect of the First Respondent Ms Tessaro. He said that she had been in contact with him and that he was satisfied that she had left the Property on 20 January 2020, which is according to the Applicant, when the rent arrears started to accrue.
8. Mr Caldwell invited the Tribunal with reference to the application and papers to grant the order sought on grounds 8, 11 and 12 of Schedule 5 to the Housing (Scotland) Act 1988. The form AT6 narrated rent arrears of £13159.90 at the time of the notice. That figure had increased to

£15,507.46 at the time the application was made and £17276.02 as at the date hereof. The monthly rental due in terms of the tenancy agreement is £586.89 per month.

9. Mr Caldwell stated that there was at least 3 months' rent due at the date of service of the notice under section 19 and as at the date of the hearing and accordingly Ground 8 and 12 were satisfied. In addition the Respondent has persistently delayed payment of rent lawfully due and Ground 11 is satisfied.
10. The pre-action requirements were complied with. Mr Caldwell said that he was sure that earlier communication was sent from the Applicant to the Respondent but at the very least he had a letter sent on 2 November 2021 when the arrears stood at £9,726 pointing the Respondent in the direction of support agencies. In addition, the appropriate Government leaflet was forwarded along with the relevant Notices. A copy of that leaflet was lodged with the application. Another pre-action letter had been sent to the Respondent on 16 September 2022 when the application was lodged with the Tribunal.
11. He said that the arrears of rent were now significant and chronic. He referred to the fact that according to the updated rent statement that no rent had been paid from 3 August 2020, with the exception of a payment made on 3 January 2023, "out of the blue" from Mr Christison in the sum of £579. Accordingly there was a period of 29 months when no rent had been paid. He said that the Applicant had been approached by a Support Worker, Ms Shaw, at the request of Mr Christison. Ms Shaw indicated that Mr Christison was keen to remain in the Property and that he would pay the rent and an additional £20 per month moving forward. Mr Caldwell said that at that rate of payment the arrears would take 72 years to pay back. He said that other information which was passed on was that Mr Christison had received payments of Housing Benefit but not at the full rate. There was a potential application to be made for Personal Independence Payment, which would increase the Respondent's disposable income. He would be then able to make more substantial payments towards the arrears. Mr Caldwell said that there had however, until this point, been a chronic lack of engagement by Mr

Christison. Whilst he had some sympathy with Mr Christison's health issues, his position could not be accepted as reasonable.

### *Position of the Respondent*

12. Mr Christison opposed the application for eviction. He did not dispute that the arrears of rent were due in the amount of £17,276.02. He argued that it would be unreasonable to grant the order for eviction. He said that he had been made redundant in approximately January 2020 when Ms Tessaro left the Property.
13. He had received Universal Credit since 18 October 2020. He had used some money from his saved income to pay towards his rent prior to that.
14. He was awarded Housing Benefit in January 2021 at a rate of £412 per month.
15. He said that for the period from March 2022 until the end of December 2022 that his benefits had been sanctioned.
16. He had been in a poor state of health mentally and had not reached out for support. He said that he suffered from social anxiety and had been unable to leave the house, as a result of which, his benefits had been sanctioned, as he had not attended appointments with the Benefits Agency. It had taken him some time to regain his benefits.
17. He said that he had social anxiety, depression, agrophobia, epilepsy and autistic spectrum disorder. He maintained that he would be entitled to Adult Disability Payment and had been assisted by a friend's social worker to "regain control" and seek to have his benefits increased.
18. He had been advised to pay a full month's rent and an additional £20 as a gesture of goodwill and therefore he had paid £606 this month. Once he is in receipt of his additional benefit he will be able to pay an additional £240 extra per month.
19. He is currently in receipt of £746.91 per month which includes a payment of Housing Benefit of £412 per month. The balance is made up of Universal Credit.
20. If he were to be evicted he would more than likely require to apply for bankruptcy and that would prove difficult for him then to obtain a higher paid job.

21. Mr Christison accepted that he had received Housing Benefit from January 2021 until March 2022 at the rate of £412 per month. He accepted that he had not passed any of that on to the Applicant. He said that this was not done out of any malice on his behalf but that he had found things very hard to pull himself out of. The money was used for day to day essentials and a very large bill. He said that he accepted that he did not, “do myself any favours”. He said that he had not had access to some of his e-mails due to the costs of internet access.

### **Findings in Fact**

- 22. Parties entered in a short assured tenancy agreement with a commencement date of 12 January 2017.
- 23. Monthly rent due in terms of the agreement was initially £499 per calendar month and had increased to £586.89 per month.
- 24. The Respondent had fallen into arrears from January 2020.
- 25. Rental payments had been made inconsistently and arrears grew from January 2020.
- 26. Arrears as at 27 May 2022 when the relevant Notices were served amounted to £13,159.90.
- 27. Arrears at the date of the lodging of the application on 16 September 2022 amounted to £15,507.46 and as at today’s date amount to £17,276.02
- 28. The Applicant complied with the pre-action requirements set out in the Rent Arrears Pre Action-Requirements (Coronavirus) (Scotland) Regulations 2020.
- 29. Grounds 8, 11 and 12, in schedule 5 of the 1988 Act have been established.

### **Reasons for Decision**

- 30. The Tribunal had regard to the application and the documents lodged by the Applicant. The Tribunal also took into account Mr Caldwell’s submissions at the CMD.
- 31. The Tribunal determined that the correspondence sent to the Respondent complied with the pre-action requirements. The

Respondent has been provided with information relating to the rent arrears and guidance on how to access assistance.

32. The Tribunal was satisfied that the arrears at the property amounted to £17,279.02 as at the date of the CMD. This amounted to more than three months' rent. The Tribunal was satisfied that the Respondent had been persistently late in payment of rent. Accordingly, grounds 8, 11 and 12 had been established.
33. The Tribunal considered the question of reasonableness in granting the order and were satisfied weighing up both the position of the Applicant and that of the Respondent that it was indeed reasonable to grant the Order.
34. The Respondent accepts the arrears are due in the amount of £17,279.02. He does not dispute that the requisite Notices were served upon him. The Tribunal is of the view that the arrears are substantial and chronic as described by Mr Caldwell.
35. The Tribunal is not satisfied at the date of the CMD that Mr Christison will be entitled to any additional benefits. He is presently offering as a goodwill gesture only £20-30 per month to pay towards the arrears. This is insufficient. He has not paid rent other than one payment this month for 2 and a half years. Taking all the factors into consideration the Tribunal is satisfied that it is reasonable for the Order for Eviction to be granted.

### **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.**

18 January 2023

Legal Member/Chair

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Date