



**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/21/2235**

**Re: Property at 20 Michael Terrace, Chapelhall, Airdrie, ML6 8TQ (“the Property”)**

**Parties:**

**Ms Lindsay Thomson, 58 Martyn Street, Airdrie, ML6 9AU Mr: Mr Colin Tomney, Colin Tomney Letting Agents (“the applicant”)**

**Ms Caroline Maria Costello, 20 Michael Terrace, Chapelhall, Airdrie, ML6 8TQ per Ms Nicola Rylatt, Principal Solicitor, Lanarkshire Community Law Centre Ltd (“the respondent”)**

**Tribunal Members:**

**David Preston (Legal Member) and Gerard Darroch (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) dismissed the application.**

**Background**

1. By application dated 15 September 2021 the applicant applied to the First-tier Tribunal for Scotland Housing and Property Chamber for an order for eviction under ground 12 of Part 3 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (the Act).
2. The application was considered by the tribunal alongside an application for payment under reference cv.21.2236.
3. Along with the application the applicant lodged: Private Residential Tenancy Agreement dated 10 April 2018; Notice to Leave dated 26 January 2021 together

with Royal Mail proof of delivery dated 27 January 2021; Rent Statement; Notice under section 11 of the Homelessness etc (Scotland) Act 2003;

4. A Case Management Discussion (CMD) took place by telephone on 2 March 2022, following which a Note was issued by the tribunal on that date. The matter was continued to a further CMD to provide the applicant additional time to consider the terms of an offer under the Coronavirus Tenant Grant Fund by North Lanarkshire Council under which the sum of £1561.89 would be paid to the applicant towards the arrears.
5. The continued CMD was convened by telephone on 26 April 2022. In attendance at the CMD were: the applicant who was represented by Mr Tomney; and the respondent who was represented by Ms Rylatt
6. Prior to both CMDs Ms Rylatt lodged comprehensive submissions and representations on her behalf dated 25 February and 20 April 2022 together with a statement from the respondent and sundry correspondence and documentation. On 22 April 2022 Mr Tomney submitted the applicant's response to the representations.

## **Discussion**

7. At the outset the tribunal noted the extensive submissions, emails and documentation which had been lodged as well as the applicant's responses there to and invited the parties to supplement these submissions as they saw appropriate.
8. Mr Tomney advised that his client sought the eviction order. He referred to the rent statement which he had submitted on 22 April 2022 which showed that the respondent had been in arrears before the covid lockdown situation. He rejected the suggestion that the arrears had arisen as a consequence of the pandemic situation. He said that a payment arrangement had been agreed in September in terms of which the respondent was due to pay £10 per week but she had failed to maintain payments at this level consistently. He advised that his client did not accept that covid had caused the arrears. He pointed out that the applicant had been furloughed which meant that she was receiving 80% of her salary and that at least 80% of the rent should therefore have been paid. He suggested that the respondent had made little effort to maintain her rental payments and that his client simply wanted the respondent to be out of the property. He said that the applicant had no confidence that any arrangement made by the respondent to maintain rental payments and to cover the arrears would be honoured by her.
9. Mr Tomney did not agree that the fact that the arrears had reduced since the application had been made was an indication of the effort being made by the respondent. He pointed to difficulties with payments of the agreed sum of £10 per week and to periods when nothing had been paid. He had asked the respondent to produce details of payments in respect of housing benefit received within her Universal Credit, but this had not been forthcoming. He acknowledged that the

request had only been made within the past week but was of the view that if the respondent was genuine in her attempts, she would have paid more attention to providing the necessary information and would have made more effort to ensure that the rent was kept up to date.

10. It was pointed out to Mr Tomney that had his client accepted the Coronavirus Tenant Grant Fund as offered by North Lanarkshire Council in the sum of £1561.89, the outstanding balance of arrears would amount to £300 but he said that his client was more interested in having the respondent removed from the property. He referred to the rent statement for the period between October 2017 and February 2020 which he said demonstrated that the respondent was constantly in arrears of rent and showed that her past performance in relation to rent was atrocious.
11. The applicant reiterated what had been said on her behalf and suggested that she had done everything to assist the respondent in her difficulties but that she appeared unwilling to cooperate. She said that she understood that people have had issues through the pandemic but that the situation had caused her great amount of stress and that she wanted to recover the property in order that she could sell it and give up being a landlord. She said that she had a mortgage over the property which she had had to find the money for which had been difficult in the absence of the rental income.
12. Ms Rylatt referred to the submissions which she had lodged. She submitted that they demonstrated that the respondent had sought to engage with the applicant's representative. She said that the respondent had set up a standing order with which to clear the arrears which she pointed out were reducing. She pointed out that had the grant been accepted the arrears would have been reduced substantially. She said that the applicant had been insistent that the respondent make the application for the grant, which she had done in an effort to resolve the situation, but the offer of grant had then been refused by the applicant. Ms Rylatt said that she had heard nothing to indicate that the granting of an eviction order would be reasonable in the circumstances and that the applicant appeared to want to have the eviction order in place in case the agreed payments of £10 per week were not maintained which was not in, in her submission, in the spirit of the legislation.

## **Reasons**

13. Rule 17 of the Regulations states that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision. The tribunal decided that on the basis of the information presented to it, and in the absence of any disputed matters of fact it was able to determine the application at the CMD.
14. The tribunal was satisfied that the evidence of the emails produced demonstrated that the respondent had made efforts to maintain her income and employment in an effort to secure the tenancy.

15. The tribunal noted the correspondence regarding the Coronavirus Tenant Grant Fund which had been offered by North Lanarkshire Council in the sum of £1561.89 which, if accepted, would have reduced the amount of the arrears to £299.59. The terms of the grant did not require the applicant to write off that shortfall which could have been recovered through the civil application. The grant required that the application for eviction would require to be withdrawn and no future application for eviction could depend upon the amount of that shortfall, either in whole or in part. By turning down the offer of grant the respondent was now required to cover the amount of the grant in addition to the shortfall.
16. The tribunal had regard to the period of the rent statement prior to the lockdown. Whilst there had been a number of late payments of part of the rent the tribunal considered that to describe the tenant pattern as “atrocious” was entirely unreasonable. As of 10 February 2020 there had been no arrears of rent which had accumulated almost exclusively during the pandemic crisis. The tribunal also considered that at no point prior to the pandemic would it have been possible for the applicant to base an application for eviction on ground 12.
17. The tribunal considered that the respondent’s submissions clearly demonstrated that she accepted that the ground for eviction had been established insofar as arrears had accrued for a period of 3 or more consecutive months. However, it was satisfied that the arrears had accrued as a direct result of the difficulties faced by the respondent through her employment situation which had been fully detailed in the submissions made on her behalf and in her own statement.
18. In terms of the Coronavirus (Scotland) Act 2020 the tribunal is required to be satisfied that it is reasonable to issue an eviction order. In assessing the reasonableness, it is necessary for the tribunal to take into account all relevant circumstances as they exist. The applicant claimed that she found the situation to be stressful in so far as the respondent had accrued rent arrears and she found it difficult to maintain her mortgage payments. In this regard the tribunal took particular account of her refusal to accept the offer of grant in terms of which she would have received all but £300 of the current arrears, which would have been cleared in approximately 6 months the rate of £10 per week. As a result of that refusal, the respondent would require to pay the full arrears of £1861.48.
19. It was made clear to the tribunal that the applicant sought the eviction of the respondent on the basis of ground 1 of Schedule 3 to the Act and as such the present application was entirely inappropriate and fell to be dismissed.
20. The tribunal accepted the submission made on behalf of the respondent that whilst Ground 12 of Schedule 3 to the Act had been established it was not, in the circumstances presented to the tribunal, reasonable that the order for eviction 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.

David Preston  
Legal Member/Chair

26 April 2022

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Date