



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/EV/22/1582**

**Re: Property at 88 Cambusdoon Place, Kilwinning, Ayrshire, KA13 6SN (“the Property”)**

**Parties:**

**Steven Easton Residential Limited, 2 Newfield Drive, Dundonald, Ayrshire, KA2 9EW (“the Applicant”)**

**Miss Kirsty Downie, 88 Cambusdoon Place, Kilwinning, Ayrshire, KA13 6SN (“the Respondent”)**

**Tribunal Members:**

**Graham Harding (Legal Member) and Frances Wood (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for the eviction of the Respondent from the property.**

**Background**

1. By application dated 25 May 2022 the Applicant applied to the Tribunal for an order for the eviction of the Respondent from the property under ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant submitted a copy of the tenancy agreement together with a rent statement, copy Notice to Leave with proof of service and copy Section 11 Notice with proof of intimation in support of the application.
2. By Notice of Acceptance dated 8 June 2022 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 25 July 2022.
4. A CMD was held by teleconference on 24 August 2022. The Applicant was represented by its property manager Ms Aynsley Barclay. The Respondent attended in person. The Respondent accepted that the Notice to Leave had been properly served on her and that she had also received information in respect of assistance available for tenants in compliance with the Scottish Government's pre-action protocol. The Respondent advised the Tribunal she had recently obtained employment and had applied to her local authority for a discretionary payment to reduce her rent arrears which she accepted amounted at that time to £6390.00. The Respondent also advised the Tribunal that she lived in the property with her 6-year-old son and her mother and her brother who was in employment and would be able to contribute towards the rent. In light of the information provided by the Respondent the Tribunal continued the application to a hearing to allow determination of the Respondent's application for a discretionary payment and to consider whether in the circumstances it would be reasonable to grant the order.

### **The Hearing**

5. A hearing was held by teleconference on 8 November 2022. The Applicant was represented by its property manager Ms Aynsley Barclay. Mr Steven Easton was also in attendance. The Respondent did not attend nor was she represented. The Tribunal being satisfied that proper intimation of the hearing having been given to the Respondent determined to proceed in her absence.
6. Ms Barclay advised the Tribunal that since the CMD, the Respondent had made one payment of £250.00 on 30 August 2022. She had said she would continue to make subsequent payments at the rate of £250.00 each fortnight but no further payments had been made. The current amount outstanding had risen to £9700.00.
7. In response to a query from the Tribunal Ms Barclay said that the Respondent had emailed the Applicant to say that she intended vacating the property in November but had not given an exact date and as far as Ms Barclay was aware she remained in the property.
8. The Tribunal noted that there was a standard security in favour of the Bank of Scotland over the property that required to be paid by the Applicant despite no rent being received from the Respondent.
9. Ms Barclay confirmed the Applicant wished the order to be granted.

### **Findings in Fact**

10. The parties entered into a Private Residential Tenancy that commenced on 1 July 2020 at a rent of £525.00 per calendar month.

11. The Respondent fell into arrears in April 2021.
12. The Respondent was served with a Notice to Leave on 16 November 2021.
13. North Ayrshire Council was given intimation of these proceedings by a Section 11 Notice sent by email on 25 May 2022.
14. The Respondent owes rent as at the date of the hearing amounting to £9700.00.
15. The Respondent has advised the Applicant that she intends to remove from the property in November 2022.

### **Reasons for Decision**

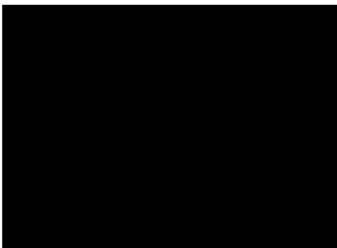
16. It was accepted by the Respondent at the CMD that she had been served with a valid Notice to Leave and that she had very substantial rent arrears. It was also accepted that the Applicant had complied with the pre-action requirements and had provided the Respondent with appropriate information. However, the Tribunal was not prepared at that time to grant an order for eviction without a hearing as it appeared that there was at least some prospect that the Respondent might be awarded a discretionary grant from the local authority and she was also in employment and offering to make regular payments to reduce the arrears.
17. The Respondent did not attend the hearing nor did she submit any written representations in advance of the hearing. She made only a single payment of rent of £250.00 following the CMD and the amount due to the Applicant has risen from £6390 then to £9700.00 now. Furthermore, the Applicant is having to service a secured loan over the property despite receiving no income from it. The Respondent has intimated her intention to remove from the property. In making its decision the Tribunal has taken full account of the Respondent's circumstances insofar as was disclosed to it by the Respondent at the CMD. Taking everything into account the Tribunal was satisfied that the terms for granting an order under ground 12 of Schedule 3 of the 2016 Act had been met and that in the circumstances it would be reasonable to grant the order on that ground. Non-payment of rent is not a breach of a term of a tenancy agreement that would support a granting of an order under ground 11 (sub paragraph 11(3) refers) and therefore the order is only granted under ground 12.

### **Decision**

18. The Tribunal having carefully considered the written representations and documents together with the oral submissions finds that the Applicant is entitled to an order for the eviction of the Respondent from the property under Ground 12 of Schedule 3 of the 2016 Act.
19. The decision of the Tribunal is unanimous.

## **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.**



**Graham Harding  
Legal Member/Chair**

**8 November 2022  
Date**