

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/21/2727**

**Re: Property at 22a Drummond Place, Edinburgh, EH3 6PN (“the Property”)**

**Parties:**

**Mrs Lois Bayne - Jardine, Humble Mains, Humble, EH36 5PW (“the Applicant”)**

**Mr Angus Stewart, 22a Drummond Place, Edinburgh, EH3 6PN (“the Respondent”)**

**Tribunal Members:**

**Richard Mill (Legal Member) and Helen Barclay (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a Payment Order be granted against the respondent in the sum of Eight Thousand Seven Hundred and Fifty Pounds (£8,750)**

**Introduction**

These are linked applications between the same parties. The first application is under Rule 109 and Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The second application is under Rule 111 and Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016.

Intimation of the applications and of the initial Case Management Discussions (CMDs) in both applications were effected upon the respondent by Sheriff Officers on 3 December 2021.

A CMD in both cases took place by teleconference on 13 January 2022 at 10.00 am. The respondent accepted that significant rent arrears were outstanding but relied upon an outstanding application under the tenant grant fund. This would have potentially had a bearing upon both applications and in the circumstances the

Tribunal fixed full hearings and issued directions regarding further documentation required from the parties.

The evidential hearing took place by teleconference on 2 March 2022 at 10.00am. Both parties joined personally and represented their own interests.

### Findings and Reasons

The property is 22a Drummond Place, Edinburgh EH3 6PN.

The applicant is Mrs Lois Bayne-Jardine who is the landlord. The respondent is Mr Angus Stewart who is the tenant.

The parties entered into a private residential tenancy in respect of the property which commenced on 3 August 2020. The rent was stipulated at £1,250 per month.

The respondent has fallen into significant arrears of rent. He has not made any payments of rent since November 2020. In terms of former proceedings before the Tribunal under reference CV/21/1728, a Payment Order in the sum of £10,000 was granted against the respondent on 29 July 2021 which required him to pay the sum of £10,000 to the applicant which represented the arrears of rent as at 20 July 2021. He has not made payment of any of this sum.

The current eviction proceedings are based upon arrears of rent and the ground relied upon is ground 12, contained within Part 1, Schedule 3 to the 2016 Act, namely that the respondent is in rent arrears over three consecutive months. The current civil proceedings before the Tribunal relate to a further Payment Order Application by the applicant which seeks to recover additional arrears of rent. Throughout the time the application has been pending the applicant has made Rule 14A amendment applications. By February 2022 a further £8,750 in rent has fallen due and remains unpaid.

The applications are supported by an up to date detailed rent statement which reflects the arrears of rent relied upon. The Tribunal found this a credible and reliable document and attached weight to it.

The applicant is entitled to recover arrears of rent due under and in terms of the written lease between the parties. The Tribunal therefore granted a further Payment Order against the respondent in the sum of £8,750.

Ground 12 as originally drafted was a mandatory ground for eviction. Since the coming into force of the Coronavirus (Scotland) Act 2020, all eviction grounds are discretionary. Additionally the notice periods have been extended by virtue of the 2020 Act. The relevant notice period under ground 12 was previously one of 28 days and is now one of 6 months.

The Notice to Leave upon which the Eviction Application proceeds is valid. It is dated 5 April 2021. Applying the provisions of Section 62 of the Act, 48 hours requires to be added on to allow for service and an additional period of one day requires to be added after expiry of the Notice to Leave. The assumed 2 days would be a deemed service of 7 April 2021. The 6 month notice period will run from then and end of 7 October 2021. An additional one day means the Notice to Leave should specify 8 October 2021 which it does.

Service of the Notice to Leave upon the respondent in fact took place by email on 5 April 2021. This is evidenced by production of the relevant email. This means that service is evidenced to have taken place 48 hours earlier than the deemed service under Section 62 of the Act. The fact that the Notice to Leave has been prepared in accordance with Section 62 of the Act, but service took place earlier does not invalidate it.

The Tribunal was satisfied that more than three consecutive months of rent remains unpaid by the respondent. This establishes ground 12. The Tribunal proceeded to consider the issue of reasonableness.

The respondent is aged 59 years of age. He describes himself as self-employed, though has not been working during the covid-19 pandemic. He advised that he has been living off family financial resources and will recommence work in April 2022. He has not claimed state benefits due to the resources he can rely upon. He lives alone and has no dependents. He has not vouched any physical health problems or other vulnerabilities.

The Tribunal was also satisfied that the respondent has other accommodation which he can reside in. The respondent is a man of means and has significant assets. In an email sent to the Tribunal on 24 January 2022 the respondent disclosed that he had transferred assets to an offshore holding for protection during the covid-19 pandemic. He has persistently referred to such other assets, both heritable and moveable in direct discussions with the applicant which she has documented. The Tribunal found the applicant's evidence on this credible and reliable. In his own oral submission made to the Tribunal the respondent advised that he has a houseboat available to move into in April 2022 and that he may also rely upon accommodation available to his son.

The Tribunal took into account the significant arrears of rent which is a relevant factor to weigh up in the reasonableness balancing exercise. It is unreasonable to expect the applicant to maintain the property for the respondent in the absence of him making rental payments. The respondent has made very few payments of rent throughout his occupation of the property.

Under Part 2 of Schedule 1 to the Coronavirus (Scotland) No 2 Act 2020, Scottish Ministers were given the power to make Regulations setting out pre-action requirements for landlords in relation to certain cases. The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 were subsequently brought into force and apply in respect of any application made to the Tribunal on or after 6 October 2020.

The applicant is evidenced to have fully supported and guided the respondent regarding the arrears of rent. The respondent has been advised of the tenant loan scheme (which closed to new applications on 31 December 2021) and the tenant grant fund (which can cover rent arrears for the period 23 March 2021 to 9 August 2021).

The applicant did not make any application for a loan. The applicant made contact with the local authority regarding tenant hardship grant but the respondent has not fully cooperated or at least has not been able to satisfy the local authority that he is entitled to such a grant. He has been afforded every fair opportunity to advance such application. The proceedings in both applications were delayed to allow the respondent to advance the application. He has not done so successfully. Based upon email correspondence produced by the applicant the respondent has not been fully forthcoming about his financial resources. It would not have been in the interests of justice to delay the Tribunal's determination of the applications further. This would be a breach of the principles which the Tribunal are obliged to adhere to in terms of Rule 2.

In all of the circumstances the Tribunal determined that it was reasonable to grant the eviction order sought by the applicant.

### **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.**

**R. M**

**2 March 2022**

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**Legal Member/Chair**

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**Date**