

**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**

**Chamber Ref: FTS/HPC/EV/22/1735**

**Re: Property at 14 Toberonochy, Isle of Luing, PA34 4UE (“the Property”)**

**Parties:**

**Mrs Annie Mackenzie, 29 Cullipool, Isle of Luing, Argyll, PA34 4UB (“the Applicant”)**

**Mr Neil Mccorriskin, 14 Toberonochy, Isle of Luing, PA34 4UE (“the Respondent”)**

**Tribunal Members:**

**Richard Mill (Legal Member) and Sandra Brydon (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it is not reasonable to evict the respondent and the application is dismissed**

**Introduction and procedural background**

1. This application seeks an eviction order and is under rule 109 and section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The application is founded upon arrears of rent.
2. A CMD took place on 2 March 2023 at 10.00 am. Whilst more than 3 consecutive months of rent was unpaid by the respondent as at the time the notice to leave was served, this no longer remained the case. As at the date of the CMD the arrears had been fully paid off. Despite this the applicant’s representative advised that

he was pursuing matters further. He believed that the respondent will default on his rental obligations again in the future.

### The Hearing

3. The evidential hearing took place by teleconference on 9 June 2023 at 10.00 am. The applicant did not join the hearing. She was represented by Mr Scott Mackenzie who is her son. The respondent joined the hearing and was represented by Siobhan Murphy solicitor of the Civil Legal Assistance Office.

4. On the basis of the medical evidence submitted on behalf of the respondent, the tribunal treated him as a vulnerable party.

5. Documentary evidence had been submitted on behalf of the respondent from a number of independent sources. Evidence from the respondent's GP, Dr Miranda Barkham, from his occupational therapist, Sarah Hill, from his housing support officer at Carr Gomm, and from his welfare rights worker, Sarah Nixon, was extensive but ultimately all of their written evidence was agreed by the applicant's son. The up to date rent statement and the medical report upon the applicant by Dr Miranda Barkham was not the subject of dispute. The tribunal attached weight to all of the documentary evidence.

6. The tribunal took some time to identify with both parties representatives that there were no material facts in dispute. In the circumstances, no oral evidence was led. Submissions were noted by both parties representatives. The applicant's position was that irregular payments of rent were causing her distress. Other conflict in the parties interactions were referred to but not specified.

### Findings and Reasons

7. The property is 14 Toberonochy, Isle of Luing PA34 4UE. The applicant is Mrs Annie Mackenzie who is the heritable proprietor and registered landlord of the property. Title to the property is held in the name of the applicant and her deceased husband, Duncan Mackenzie. The respondent is Mr Neil McCorrisken who is the tenant.

8. The parties entered into a private residential tenancy which commenced in April 2021. The agreed rent in terms of the written lease was £100 per week.

9. The eviction application is 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.

10. The tribunal found that the notice to leave upon which the eviction application proceeds is valid. It is dated 12 April 2022. At the time that the notice to leave was served, 28 days' notice required to be given. In terms of section 62 of the Act,

48 hours is to be added on to allow for service and an additional period of one further day. The notice served states an application will not be submitted to the tribunal for an eviction before 16 May 2022. The notice was served upon the respondent by way of Post Office tracked delivery. There is evidence that the notice was served on 13 April 2022. Sufficient notice was given.

11. The application is supported by an up to date detailed rent statement which reflects the full history of rent due and rent paid from the commencement of the tenancy through to late May 2023, some 14 days before the date of the hearing. There was no dispute regarding the terms of that rent statement which the tribunal found to be credible and reliable. Whilst more than three consecutive months of rent was unpaid by the respondent as at the time the notice to leave was served, this no longer remains the case. There has, in fact, been no significant arrears outstanding at any point since around October 2022. As at the time of the CMD in early March 2023, there was a zero balance on the rent account. There is no arrears outstanding as at the current date and, in fact, the rent statement reflects that in late May 2023 there was, in fact, a positive balance on the respondent's rent account of £416.69 reflecting almost one full month's rent in credit. As at the date of the hearing the arrears have been fully paid off.

12. The rent statement does evidence that the respondent has been in arrears of rent for three or more consecutive months in the past for a particularly lengthy period. The eviction ground is technically met despite no rent now outstanding. This is on the application of ground 12(3) which has always been a discretionary ground for eviction.

13. The tribunal proceeded to consider the issue of reasonableness. The tribunal requires to consider the personal circumstances of each of the parties.

14. There are also specific statutory requirements for the tribunal to consider in assessing reasonableness. The tribunal is mandated to consider whether the respondent's being in arrears of rent over the period in question is wholly or partly as a consequence of a delay or failure in the payment of a relevant benefit and also requires to take into account the extent to which the applicant has complied with pre-action protocol prescribed by the Scottish Ministers.

15. The tribunal commenced by considering the parties respective personal circumstances.

16. The applicant is a widow of 84 years of age and is of increasing frailty. She has a diagnosis of diabetes and cardiac disease and is under investigation as a consequence of further presenting symptoms. Her mobility is poor. Her health is evidenced to be typical of a woman of her age. She has owned the property since 1996. She has rented the property since around 2016. She too is a resident on the Isle of Luing. There is no suggestion of any financial hardship on the part of the applicant.

17. The respondent is 50 years of age. He resides in the let property alone. He is unemployed. The respondent has mental health problems which he has suffered from for many years. His health has also suffered due to a tragic accident in 2016 when his two young children died in a car accident. They are buried in the cemetery close to the let property. He has a close affinity to the area therefore. The respondent's GP offers the professional medical opinion that requiring the respondent to remove from his current locality would be devastating for his mental health. The respondent plays a large part in the local community. He has a significant support network there.

18. The respondent is supported by Sarah Hill, occupational therapist, who has provided written evidence regarding the adverse impact for the respondent in the event of requiring him to move. She confirms that the respondent has had numerous episodes of care with the Community Mental Health Service over the years and has previously been referred for community psychiatric nurse input and to herself. The respondent engages well with the offers of support which are provided to him. Her view is that an eviction would trigger a relapse in his depressive symptoms. The respondent also receives ongoing support from a senior housing support officer at Carr Gomm, Heather Shephard who offers support and advice on an ongoing basis.

19. In considering reasonableness consideration must be given to whether the applicant has complied with the rent arrears pre-action protocol. There is no evidence of such compliance.

20. The respondent fell into arrears of rent as his benefits were stopped by the Department of Work & Pensions. He had been in receipt of benefits on the basis that he was unfit for work. He was entitled to Employment and Support Allowance with the limited capability of work element. However, he was subject to review and found fit to work which resulted in the cessation of the elevated disability component. This decision of the Department of Work & Pensions was the subject of appeal by the respondent. On 31 March 2023 the First-tier Tribunal allowed the respondent's appeal and reinstated his entitlement. Sarah Nixon who is a welfare rights worker with Argyll & Bute Citizens Advice Bureau has confirmed specifically that it was the cessation of the respondent's DWP benefits which led to the cancelling of his housing benefit and which caused him to fall into arrears of rent. It is clear that the DWP's decision, which has had significant consequences for both parties in this process, was wrong and has been rectified by the respondent's successful appeal. There is also evidence that he has now been awarded Personal Independence Payment.

21. The previous arrears have been fully repaid by the respondent. The tribunal was satisfied that he has made tremendous efforts in the face of diversity to ensure that his rent payments were brought up to date. Whilst he does not have cash reserves he sold belongings in order to address the rent arrears. He made a payment of £420 on 7 March 2022, a payment of £1,580 on 9 September 2022, a payment of £3,150 on 30 September 2022 and a payment of £420 on 14 October 2022. Regular

payments of rent have continued to be paid from this time. It is acknowledged and accepted that sometimes a number of payments are made throughout the course of each month. However, the applicant can rely upon the full rent being paid. It also requires to be acknowledged that financial assistance which the respondent receives towards his rent are always paid in arrears.

22. There is evidence that the local authority has been advised of the eviction proceedings with a relevant section 11 notice having been issued by the applicants. In the event of an eviction order being granted that the local authority will make alternative accommodation available to the respondent. The likelihood of the local authority allocating housing to the respondent in his own rural location where he is part of a small community which is essential to the maintenance of his mental health is highly unlikely.

23. It is most unlikely that the respondent will fall into any further rent arrears. There is no prejudice to the applicant. The odd irregular payment of rent from time to time is not a material matter.

24. In all of the circumstances the tribunal determined that it was clearly not reasonable to grant the eviction order sought by the applicant.

25. The tribunal were concerned to hear from the applicant's son that in the event of the respondent successfully resisting the current proceedings, that it would be the intention of the applicant to seek to sell the property despite being willing to rent it to another tenant. The tribunal are concerned regarding the applicant and her son's motivation in this respect. It sadly appears that there is a lack of respect and understanding of the respondent's personal difficulties. It is hoped that the applicant and her son will reflect upon matters with a view to improving relations in the future.

### **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.**

**Richard Mill**

**9 June 2023**

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**Legal Member/Chair**

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**Date**