



**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/22/2260**

**Re: Property at 1/2 53 James Street, Helensburgh, Argyll and Bute, G84 8XF (“the Property”)**

**Parties:**

**Mr Christopher Riddler, 3 East Ross Dhu Drive, Helensburgh, Argyll and Bute, G84 7ST (“the Applicant”)**

**Mr Darren Pinner, 1/1 53 James Street, Helensburgh, Argyll and Bute, G84 8XF (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined not to make an eviction order**

**Background**

- 1 By application to the Tribunal the Applicant sought an eviction order against the Respondent in respect of the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). In support of the application the Applicant provided the following documentation:-
  - (i) Private Residential Tenancy Agreement between the parties dated 1 April 2019 which commenced on that same date;
  - (ii) Notice to Leave dated 27 May 2022 stating that proceedings for possession will commence no earlier than 28 June 2022 and citing ground 12, together with proof of service on the Respondent by recorded delivery mail;

- (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Argyll and Bute Council;
  - (iv) Rent Statement;
  - (v) Bank Statements; and
  - (vi) Copy messages from the Applicant's representative to the Respondent regarding rent arrears.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for the 1<sup>st</sup> March 2023 to take place by teleconference. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondent by Sheriff Officers.
- 3 The Respondent subsequently submitted a request for postponement on the basis of the teachers strike scheduled for 1<sup>st</sup> March 2023. The Tribunal refused said request on the basis that the Respondent had not provided sufficient explanation as to why the strike would prevent his participation in the teleconference. The Respondent then emailed the Tribunal with written representations in the form of photographs and a copy letter from Argyll and Bute Council confirming a grant payment of £3816.73 for the period 23 March 2020 to 9 August 2021.

### **Case Management Discussion**

- 4 The Case Management Discussion took place by teleconference on 1 March 2023. The Applicant was represented by Miss Ciara Young, Solicitor who was accompanied by his brother Simon Riddler. The Respondent was in attendance.
- 5 The Tribunal explained the legal test and asked parties to address the Tribunal on their respective positions regarding the matter.
- 6 Ms Young confirmed that the Applicant was a registered landlord and the proprietor of the property. The tenancy between the parties had been commenced on 1 April 2019. The rent was £500 per month. The Respondent had paid £1000, £500 for the first months rent and £500 for a deposit. A deposit scheme certificate had been provided at the time. Around July 2022, after rent arrears had accrued as a result of the Respondent having failed to pay rent, the Applicant received a grant from Argyll and Bute Council which had been given in satisfaction of arrears that had accrued between March 2020 and August 2021. The Respondent continued to fall into arrears therefore the Applicant had served a Notice to Leave bringing the tenancy to an end on the basis of three

months consecutive arrears. The current arrears amounted to £6521.98 however the Applicant had obtained a court order via a simple procedure action for arrears in the sum of £4760. Ms Young couldn't offer any comment as to why the court had granted such an order when the Tribunal had jurisdiction over such matters. The remaining balance of arrears was £1760.98.

- 7 Ms Young advised that the Notice to Leave had given the required 28 days notice. The Respondent should have known that the tenancy was being brought to an end. In response to questions from the Tribunal Ms Young advised that as at the date of service of the Notice to Leave the grant had not yet been received from the Council therefore that was the reason for the increased figure of £7000 referred to in the Notice. The Respondent had lodged a time to pay application in response to the simple procedure action offering payments of £200 per month however no money had been received. Ms Young advised that relations had previously been amicable between the parties, the Applicant had offered assistance to the Respondent and attempts were made to reach agreement as to payment of the sums due. Ms Young accepted that the correct forum for determining an application for payment of rent arrears would be the Tribunal and no enforcement action had yet been taken in respect of the court order on that basis. However the Applicant would require to give consideration to this in light of the cost of living crisis. Notwithstanding, his priority was getting vacant possession of the property.
- 8 The Respondent addressed the Tribunal. He felt the Applicant was not being upfront about the amount of money owed. Before moving into the property he had met the Applicant's brother to sign the paperwork. He had given him £1000 in cash and received written confirmation of that on the front of the tenancy agreement. Another £1000 was paid by bank transfer on 25 March 2019. It was the Respondent's position that he had paid a total of £19,606.73 which left a deficit of £4143.27, not the £6521.98 the Applicant had referred to. The Respondent advised that he had misread the contract for the Council grant and believed the arrears would be paid in full, and he was therefore at a zero balance. The Respondent confirmed that the Applicant received payments direct from his universal credit towards the rent. He referred to the contract for the Council grant which stated that both the landlord and tenant should do everything within reason to keep the tenancy going. He didn't feel that the Applicant was honouring this. The Applicant had chosen to wait until Christmas to tell the Respondent that he still owed money. The Respondent had received a letter stating that he was being taken to court by the Applicant. He had attended a meeting to try and set up a payment plan however the meeting had been cancelled. It was the Respondent's position that the Applicant was contractually obliged under the Council contract to work out a payment plan however this had not been done. The Respondent had offered to pay the Applicant £3000 in cash which he had refused. The Respondent felt he was doing all that he could to resolve the situation. If the Applicant had accepted the £3000 the debt would be £1443 which was manageable. The Respondent felt there were anomalies in the rent account when it came to the payment of his universal credit.

- 9 The Respondent advised that he suffered from mental health issues, which had previously resulted in attempting to take his own life. He had been due to go back to work when the Applicant commenced proceedings however was unable to do so as his mental health had deteriorated as a result of the situation. It had ruined him. He wanted to stay in the property as his son lived in the area and he wanted his son to stay in the same house as he grew up. The Respondent felt he would be able to return to work once this matter was sorted out. He would be happy to enter into a payment plan.
- 10 Ms Young was given an opportunity to respond. She confirmed that £1000 had been paid at the start of the tenancy but there was no evidence that the Applicant had received a second payment of £1000. In respect of the Council grant contract there was a clause that stated the landlord could not evict on the basis of rent arrears. However this application was based on arrears that had arisen since August 2021. The Applicant had never refused money from the Respondent. He did receive payments of universal credit but there was a shortfall between the payments received and the monthly rent which the Respondent required to pay. The Respondent had threatened to cancel the universal credits altogether. Ms Young stated that the Applicant wished the matter to be resolved. There had been a pre-existing relationship between the parties which was the reason the Applicant had not enforced the order when an agreement was reached. He had tried to work with the Respondent. The Applicant was suffering financial hardship as his properties were his only income. He lived overseas and was not working currently. His brother Simon Riddler managed the properties on his behalf. He had a portfolio of around 10 or 11 properties in the Helensburgh and Glasgow area, one of which was in the process of being sold. It was a small portfolio.
- 11 The Respondent questioned why the Applicant had not accepted the £3000 if he was in financial hardship. Any agreement that had been reached between the Applicant and the Respondent had been verbal or through text message which was not worth anything. Depression had got the better of the Respondent. At first he was only getting £300 from universal credit until his mental health was recognised as a disability. He was now receiving enough to live on.
- 12 Having heard from the parties the Tribunal identified the following issues to be resolved:-
- (i) Did the Respondent make a payment of £1000 on 25 March 2019 to the rent account?
  - (ii) Did the Respondent make an offer of £3000 to the Applicant towards the rent arrears?
  - (iii) What is the current balance of rent arrears due?
  - (iv) If ground 12 is found to be met, is it reasonable to make an eviction order?
- 13 Having identified the above issues to be resolved the Tribunal determined to fix a hearing. Parties were invited to submit any unsuitable dates by close of

business on 2 March prior to a date being scheduled. The Tribunal issued a Direction regarding the submission of any further documents or list of witnesses.

- 14 The Applicant submitted further documents consisting of redacted bank statements and an affidavit by Simon Riddler by email. The Respondent submitted photographs of a bathroom and an excerpt bank statement, also by email.

### **The Hearing**

- 15 The Hearing took place on 19 April 2023. The Applicant was not present but was represented by Ms Young who was again accompanied by Simon Riddler. The Respondent was in attendance. Neither party had any further witnesses.
- 16 As a preliminary matter the Respondent advised that he had submitted copy documents by post which were not before the Tribunal. The Tribunal was unable locate these documents. The Respondent advised that the documents were essential to his case. The Tribunal allowed a short adjournment for the Respondent to email over the documents. The Tribunal then noted that the documents contained within the email had all been previously submitted to the Tribunal by the Respondent and intimated to the Applicant, with the exception of an excerpt from an online bank account which showed payments made by the Respondent to the Applicant since March 2019. The Respondent advised that he also had a letter confirming the housing benefit element of his universal credit payments but had been unable to email this. The Tribunal asked Ms Young what the Applicant's position was in terms of whether the Tribunal should allow the documents into process. Ms Young advised that the Applicant's primary position was that the documents should not be allowed however if the Tribunal were minded to receive them the Applicant would want to proceed with the hearing. The Tribunal noted that the Respondent had previously emailed the Tribunal to confirm that he would be sending in the documents around the time he stated they had been sent and the Tribunal therefore found his account to be credible in that regard. Further, on the basis that the majority of the documents had already been lodged in process the Tribunal considered that there was little prejudice to the Applicant in allowing them to be received. The Tribunal did however allow Ms Young an opportunity to take instructions on the excerpt from the online account from Mr Simon Riddler before she confirmed she was content to proceed with the hearing. The Respondent confirmed he also wished to proceed. The Tribunal therefore determined to continue with the hearing and accept the Respondent's documents into process.
- 17 The Tribunal heard evidence from the parties on the issues identified to be resolved.
- 18 With regard to the additional payment of £1000 which the Respondent claimed to have made Ms Young confirmed that the position remained the same as was narrated at the Case Management Discussion. She directed the Tribunal to the bank statements lodged by the Applicant which showed a payment of £1000 from the Respondent on 25 March 2019. The Applicant's position was that a

payment of £1000 had been made by bank transfer on that date and the statement showed that £500 of that had been transferred over to the tenancy deposit scheme. The tenancy agreement had also been signed on 25 March 2019. Ms Young pointed to the screenshot lodged by the Respondent of the front of the tenancy agreement which had the account number and sort code for the bank transfer to be made by BACS. Mr Simon Riddler had signed the front of the tenancy agreement to acknowledge receipt of the payment by bank transfer. The Tribunal queried why the rent statement showed payments of £500 per month from the Respondent but the statements showed payments of £460. Ms Young confirmed that an arrangement had been reached whereby the Respondent would make payments 4 weekly which was in line with when he received his wages. The bank statements were correct. They reflected what was paid, which was the £1000 by bank transfer on the 25 March 2019. There had been no further payment in cash.

- 19 The Respondent advised that he had met Mr Simon Riddler in Costa Coffee on West Vincent Street. He had paid Mr Riddler £1000 in cash and had asked him to sign the front of the tenancy agreement in receipt. He wouldn't have asked Mr Riddler to do that if the payment had been made by bank transfer. The Respondent confirmed that a second payment of £1000 had been made on 25 March 2019 by bank transfer. It was all done at the same time.
- 20 With regard to the offer of £3000 Miss Young advised that the affidavit was fairly clear on that point. The Respondent had offered a payment of £3000 but nothing had been received. The Applicant did not think a statement that the Respondent could pay £3000 would constitute an offer. The Respondent had made offers of payment on a number of occasions but had not paid anything. At the time of the text exchange where the Respondent mentioned the £3000 there were accumulating arrears due to the shortfall between housing benefit and the rent not being met. Miss Young also made reference to the time to pay application the Respondent had lodged in response to the application for payment in the Sheriff Court. He had not stuck to that agreement. The Applicant didn't believe this was a genuine offer of settlement. In response to questions from the Tribunal Miss Young stated that no agreement had been reached regarding the £3000. There was no formal rejection by the Applicant, it had simply gone unaddressed. Miss Young confirmed that there had been reference to the Respondent having received a settlement payment of £3000 regarding a previous incident. She referred to the text messages where the £3000 had been referenced and noted that matters had moved on to discussion about the boiler. Mr Simon Riddler then addressed the Tribunal. He confirmed that the decision to seek an eviction order had come in advance of the £3000 text message. The Applicant felt he had given the Respondent many chances and felt he was playing for time. There were no payments forthcoming. The Applicant had therefore taken the decision to ignore the reference to the £3000 payment and continue with the eviction proceedings.
- 21 Mr Simon Riddler then explained the circumstances surrounding the grant payment from Argyll and Bute Council. The Applicant had looked into this and noted it was for landlords affected by Covid. A sum of £3816.73 was paid on 15<sup>th</sup> July 2022 after a long negotiation with Argyll and Bute Council. This was

after service of the Notice to Leave. The Tribunal queried the terms of the grant payment which required the Applicant to withdraw any Notice to Leave served on the basis of the arrears that were covered by the grant payment. Mr Riddler confirmed that his brother had contacted the Council and was told that didn't apply to any additional rent arrears. The payment related to a time period during the Covid pandemic. Any outstanding arrears that accrued out with that would not be included. The Tribunal asked whether the notice should have been withdrawn and a new notice served which related only to the arrears which were not covered by the Council grant. Mr Riddler stated he did not know the legal position. The Tribunal then queried the purpose of the grant, which was to sustain the Respondent in the tenancy. Mr Riddler advised that the Respondent had benefited through the reduction in his arrears, as had the Applicant.

- 22 The Respondent confirmed that he had been awarded £3000 in compensation on 3 February 2023. He referred to the bank statement he had produced which showed the money in his account. He had every intention of paying it but the Applicant had failed to respond. The Respondent advised he had a further £1000 that he could pay towards the rent account. He wanted to reach agreement on the balance outstanding. He understood the outstanding arrears to be £4493.83. If the Applicant had accepted the £3000 and the £1000 the balance would be down at around £400 and there would be no need for the application to proceed. The Tribunal queried what had happened with the £3000. The Respondent advised that the arrears weren't his only debt, he had accrued other debts when he was off work with depression. He was now on the mend and had obtained a few days of work at a local restaurant that he was hopeful about. He just wanted the eviction proceedings to be over with so that he could get on with his life.
- 23 The Respondent advised that his rent had been increased by £50 in October 2022 and he had not sought to argue with this. However he had misread the Council's grant agreement and thought his arrears had been reduced to a zero balance. The Respondent thought there was a cap of 3% on any rent increases from September 2022 under new regulations. Mr Simon Riddler confirmed that the notice to increase the rent had been issued in July 2022 and had given two months notice. He did not think the regulations would be applied retrospectively.
- 24 The Tribunal then asked Miss Young to clarify the current balance of outstanding arrears. Miss Young advised that after deduction of the grant and the amount awarded by the Sheriff Court the outstanding sum was £2110.98. The Respondent noted that this was less than he thought. Miss Young then confirmed that payments of housing benefit had been received since August 2022 of £375 per month however the Respondent had not met the shortfall.
- 25 The Respondent acknowledged that he had not made payments. Communication had broken down between the parties and there was a sense of ill air. The Respondent confirmed that he now receives £1006 after housing benefit is deducted. He was being selfish at the time as he didn't know how the eviction proceedings were going to go and he needed money to move if need be. He accepted the figure of £2110.98 as stated by Miss Young. He would be prepared to pay £1000 if he could stay in the property, then the rest would be

manageable. However if he was going to be evicted he would need the £1000 to fund a move to a new property.

- 26 The Tribunal then heard from the parties on the reasonableness of granting an eviction order. Miss Young explained that this was the Applicant's primary source of income. He was not working and lived overseas. He had been forced to raise the simple procedure action at the Sheriff Court as he believed that was the correct route. He had gone for the grant payment to address the arrears in order to relieve both his financial hardship and that of the Respondent. Necessary steps had been taken by the Applicant to try and resolve the matters however the difficulty was that several promises of payment had not been maintained. The Applicant had continually been mindful of the Respondent's personal circumstances. He had tried to support the Respondent by not enforcing the court order. However there was too much of a risk if he did not get the property back. The Applicant was entitled to receive rent. In response to questions from the Tribunal Miss Young confirmed that the Applicant rents out nine properties, some of which had the same difficulties. He also occupied a matrimonial property abroad with his wife. He had no dependents.
- 27 The Respondent outlined the issues he had experienced with his depression. He had found it hard to hold down a job during those times. That was why he was always paying sporadically or not at all. He had however been given time to get his health in order and he was ready to move on. He had been signed off work at the start and had applied for benefits however his depression had not been recognised as a disability and he had received little income. He couldn't afford his bills. The Respondent confirmed that he was still off work but felt 100% better. He had done a few shifts at a local restaurant. He referred to the £375 a month in housing benefit that was paid to the Applicant. The Respondent would be able to pay the additional shortfall and the debt. He reiterated that he was willing to pay £1000 which would leave around £1100. That was doable in a short period of time, even if he stayed on benefits. If he were to be evicted at this stage it would be detrimental to his mental health. He had been upfront with the Applicant about his illness and had been straight with him. In response to questions from the Tribunal the Respondent confirmed that he had his young son staying with him at weekends. He had moved to the area because his son lived there. He was now receiving treatment for his depression but he wasn't sure how much longer he would need that. He didn't spend days in bed anymore. There were times during the height of his illness when he would seldom eat or sleep, just stay in bed. It had been really bad. He was a different person now and did feel as if he had bounced back. He confirmed that it had taken a long time and he had been put on different types of medication until he found one that worked.
- 28 The Respondent stated he would be happy to pay an extra £200 per month to the rent to cover the shortfall. He would be happy to enter into a payment arrangement. The Respondent confirmed that he had accrued a lot of debt during his illness, gas and electric being one example. He had made a conscious effort to pay and his credit score had recently gone up. He had cleared most of his other debts off including a gas and electric bill of nearly £3000 and he was chipping away at his council tax bill. The restaurant where



he had worked a few shifts was one where he worked previously and he knew the chef. It had been easy for him to integrate into the environment and he was excited about it. In response to questions from the Tribunal the Respondent confirmed that he had spoken to the Council about alternative accommodation and he had been on the housing waiting list for a long time. He had no family in the area that he could stay with, explaining again that he had moved to Scotland from Birmingham to be near his son.

- 29 Miss Young acknowledged the Respondent's offer, and that he felt in a position to make payments. However history had shown that wasn't the case. She invited the Tribunal to find ground 12 to be satisfied and to grant an eviction order.
- 30 The Respondent concluded by stating that when he wasn't making payments previously he hadn't been well. He didn't have any money until recently and he had managed to save £1000. He knew the trust wasn't there between the Applicant and himself and rightly so due to the number of times he had defaulted. He would be the first person to hold his hands up. He was now willing to make payments if he was able to remain in the property.

### **Relevant Legislation**

- 31 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Private Housing Tenancies (Scotland) Act 2016, as amended by the Coronavirus (Scotland) Act 2020, the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020 and the Coronavirus (Extension and Expiry) (Scotland) Act 2021:-

#### **1 - Meaning of private residential tenancy**

1) A tenancy is a private residential tenancy where—

(a) the tenancy is one under which a property is let to an individual ("the tenant") as a separate dwelling,

(b) the tenant occupies the property (or any part of it) as the tenant's only or principal home, and

(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

(2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

#### **51 First-tier Tribunal's power to issue an eviction order**

(1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

(2) *The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.*

(3) *The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.*

(4) *An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.*

## **52 Applications for eviction orders and consideration of them**

(1) *In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.*

(2) *The Tribunal is not to entertain an application for an eviction order if it is made in breach of—*

*(a) subsection (3), or*

*(b) any of sections 54 to 56 (but see subsection (4)).*

(3) *An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.*

(4) *Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.*

(5) *The Tribunal may not consider whether an eviction ground applies unless it is a ground which—*

*(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or*

*(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.*

## **54 Restriction on applying during the notice period**

(1) *A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.*

(2) *The relevant period in relation to a notice to leave—*

*(a) begins on the day the tenant receives the notice to leave from the landlord, and*

*(b) in the case of a notice served before 3 October 2020 expires on the day falling—*

*(i) 28 days after it begins if subsection (3) applies,*

*(ii) three months after it begins if subsection (3A) applies,*

*(iii) six months after it begins if neither subsection (3) nor (3A) applies.*

*(c) in the case of a notice served on or after 3 October 2020, expires on the day falling—*

*(i) 28 days after it begins if subsection (3B) applies,*

(ii) three months after it begins if subsection (3C) applies,  
(iii) six months after it begins if neither subsection (3B) nor (3C) applies  
(3) This subsection applies if the only eviction ground stated in the notice to leave is that the tenant is not occupying the let property as the tenant's home. [ground 10]

(3A) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the tenant has a relevant conviction, [ground 13]

(iv) that the tenant has engaged in relevant anti-social behaviour, [ground 14]

(v) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour, [ground 15]

(vi) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(vii) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, [ground 17] or

(b) the only eviction grounds stated in the notice to leave are—

(i) the eviction ground mentioned in subsection (3), and

(ii) an eviction ground, or grounds, mentioned in paragraph (a)

(3B) This subsection applies if the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(a) that the tenant is not occupying the let property as the tenant's home, [ground 10]

(b) that the tenant has a relevant conviction, [ground 13]

(c) that the tenant has engaged in relevant anti-social behaviour, or [ground 14]

(d) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour. [ground 15]

(3C) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

*(iii) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]*

*(iv) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or [ground 17]*

*(b) the only eviction grounds stated in the notice to leave are—*

*(i) an eviction ground, or grounds, mentioned in subsection (3B), and*

*(ii) an eviction ground, or grounds, mentioned in paragraph (a).*

## **62 Meaning of notice to leave and stated eviction ground**

*(1) References in this Part to a notice to leave are to a notice which—*

*(a) is in writing,*

*(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,*

*(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and*

*(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.*

*(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.*

*(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).*

*(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.*

*(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.*

## **Schedule 3, Part 12**

*(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. ...*

*(3) The First-tier Tribunal may find that the ground named by subparagraph (1) applies if— (a) for three or more consecutive months the tenant has been in arrears of rent, and (b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order. (4) In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.*

32 The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 are also relevant to this application. For the avoidance of doubt the Cost of Living (Tenant Protection) (Scotland) Act 2022 is not relevant to this application, which was received by the Tribunal on 7 July 2022.

### **Findings in Fact and Law**

33 The parties entered into a Private Residential Tenancy Agreement dated 1 April 2019 which commenced on that date.

34 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.

35 In terms of Clause 8 of the said Tenancy Agreement the Respondent undertook to make payment of rent at the rate of £500 per calendar month.

36 The rent was increased by notice served in July 2022 to £550 per calendar month. The said increase took effect from October 2022.

37 On 27 May 2022 the Applicant delivered a Notice to Leave to the Respondent by email. The Notice to Leave cited ground 12 of Schedule 3 of the 2016 Act and confirmed that proceedings would not be raised any earlier than 28 June 2022.

38 The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.

39 As at the date of service of the Notice to Leave arrears in the sum of £7000 were outstanding.

40 The Applicant applied for and received a grant towards the arrears from Argyll and Bute Council in the sum of £3816.73 on 16<sup>th</sup> July 2022. The grant covered the period from March 2020 to August 2021 in respect of the impact of the Covid-19 pandemic.

41 The terms of the grant agreement state "*Where a notice to leave has been served by the Landlord by the Tenancy on the grounds of rent arrears, the notice must be withdrawn within one week of payment of the grant.*"

42 The Notice to Leave was not withdrawn by the Applicant and has been relied upon for the present application.

43 As at the date of the Case Management Discussion arrears in the sum of £2110.98 were outstanding.

- 44 The Respondent receives housing benefit of £375 per month which is payable directly to the Applicant leaving him with a balance of £1006 per month from universal credit.
- 45 On 2 February 2023, via text message, the Respondent advised the Applicant that he could pay the Applicant £3000 towards the arrears. The Applicant did not formally acknowledge this offer. The Applicant did not accept the offer, nor did he reject the offer. At the time the Applicant wished to proceed with the eviction application.
- 46 The Respondent subsequently made payment of the sum of £3000 towards other debts.
- 47 The Respondent has recently worked in a local restaurant. The Respondent wishes to return to work.
- 48 The Respondent suffered a lengthy period of depression which impacted on his ability to deal with his rent obligations and rendered him out of work. During this time the Respondent made offers of payment which were not honoured.
- 49 The Respondent moved to the area in which the property is based to be close to his son. The Respondent has his son to stay with him at weekends.
- 50 The Respondent has no other family in the area.
- 51 The Respondent is now willing to make payment of the sum of £1000 towards the arrears. The Respondent has made progress in paying other debts.
- 52 The Applicant has a letting portfolio of nine properties. The Applicant lives abroad in a matrimonial home with his wife. The Applicant has no dependents.
- 53 It is not reasonable to make the order sought by the Applicant.
- 54 The provisions of ground 12 of Schedule 3 of the 2016 Act have not been met.

### **Reasons for Decision**

- 55 The Tribunal was satisfied that it had sufficient information upon which to make a decision following the hearing having heard evidence from the parties and having considered the written representations lodged.
- 56 The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicants intention to rely upon ground 12 of Schedule 3 of the 2016 Act. The Tribunal was satisfied that the required notice had been given to the Respondent and therefore that application could be entertained.

- 57 The parties were in agreement as to the balance of rent arrears which stood at £2110.98. On the basis the Tribunal considered it did not require to make any findings regarding the dispute over the payment of £1000 in cash on the basis that it would have no impact on the rental figure. On that basis the Tribunal was satisfied that ground 12 had been in part met, in that rent had gone unpaid for three or more months and there was at least one month's rent arrears outstanding as at the date of the Case Management Discussion.
- 58 The Tribunal therefore considered the question of reasonableness. The Tribunal found the Respondent to be wholly credible in his submissions. He had stated that he was in a good place in terms of his mental health, and it was evident to the Tribunal that there had been an improvement in terms of his demeanour since the Case Management Discussion. He was coherent and frank in his statements and had taken responsibility where he felt he had been in the wrong.
- 59 The Tribunal accepted that the Respondent had suffered from depression for a significant period of time, which had unfortunately impacted on his ability to pay rent, but that he was now taking medication for this and his condition had significantly improved. The Tribunal further accepted his intention to regain employment and pay towards the rent account. He had offered the £1000 which was supported by the evidence produced confirming funds in his bank account. Given the mental health issues he had recently suffered, the Tribunal had serious concerns regarding the detrimental impact that could be caused by his removal from the property at this time in terms of his ongoing recovery. It was also accepted that he had moved to the area specifically to be near his son and had no family in the vicinity who could assist him.
- 60 The Tribunal then considered the Applicant's circumstances. The Tribunal noted that he resided abroad with his wife, had no dependents and had nine rental properties in total. This property was not therefore his sole source of income, albeit the Tribunal accepted that he may be facing similar issues with rent arrears in other properties.
- 61 The Tribunal further noted the circumstances surrounding the payment of the grant from Argyll and City Council. The grant agreement had specifically stated that any Notice to Leave served on the grounds of rent arrears would have to be withdrawn within one week of acceptance of the grant. The Applicant had failed to withdraw the Notice to Leave and proceeds to rely upon it for the present application.
- 62 The Tribunal considered that the purpose of the grant was to sustain tenants in their tenancies. The Applicant had however chosen to pursue eviction at that time. It appeared to the Tribunal that the more appropriate course of action would have been to make further efforts to assist the Respondent in sustaining

the tenancy. There did not appear to have been much contact with the Respondent in this regard, or at least nothing credible presented in the documentary evidence produced by the Applicant. The Tribunal accepted that the Respondent had purported to offer the Applicant a payment of £3000 in February 2023 in an attempt to remain in the tenancy but the Applicant had not acknowledged it. As stated by Simon Riddler, the Applicant was intent at that point on proceeding with the eviction.

- 63 The Tribunal accepted that the Respondent had defaulted on previous payment offers. However the Tribunal believed that this was a result of his severe depression which left him unable to work and in financial difficulty. The grant payment was the opportunity for the Applicant to reset and for discussions to take place between the parties but regrettably this had not happened.
- 64 Having identified the above as relevant to the question of reasonableness the Tribunal considered the particular facts and circumstances of this case. Ultimately the Tribunal was not persuaded by the Applicant that an eviction order would be reasonable. The Tribunal noted that rent was being paid in part and the Respondent was making what appeared to be a genuine offer of payment. The Tribunal therefore concluded that the impact of eviction on the Respondent in light of his personal circumstances would more than outweigh the impact on the Applicant in the event that payments continued. On that basis the Tribunal determined not to make an eviction order.
- 65 The decision of the Tribunal was 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.**

# R O'Hare

28 April 2023

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Legal Member/Chair

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Date



