



**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/23/2372**

**Re: Property at 6 Rubislaw Drive, West End, Aberdeen, AB15 4BX (“the Property”)**

**Parties:**

**Mr Kevin Cooper, Mrs Julie Cooper, Health End House, Burdens Health, Bucklebury, Reading, Berkshire, RG7 6SX (“the Applicant”)**

**Mr Francis Kiernan, 6 Rubislaw Drive, West End, Aberdeen, AB15 4BX (“the Respondent”)**

**Tribunal Members:**

**Gabrielle Miller (Legal Member) and Eileen Shand (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for recovery and possession should be granted in favour of the Applicant.**

**Background**

1. An application was received by the Housing and Property Chamber dated 17<sup>th</sup> July 2023. The application was submitted under Rule 109 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on ground 12 of the Private Housing (Tenancies) (Scotland) Act 2016.
2. On 27<sup>th</sup> September 2023, all parties were written to with the date for the Case Management Discussion (“CMD”) of 2<sup>nd</sup> November 2023 at 10am by teleconferencing. The letter also requested all written representations be submitted by 18<sup>th</sup> October 2023.

3. On 28<sup>th</sup> September 2023 , sheriff officers served the letter with notice of the hearing date and documentation upon the Respondent by letterbox service. This was evidenced by Certificate of Intimation dated 28<sup>th</sup> September 2023.
4. The Respondent emailed representations on 30<sup>th</sup> August 2023 and 30<sup>th</sup> October 2023. This included details of a payment proposal to address the arrears.

### The Case Management Discussion

5. A CMD was held on 2<sup>nd</sup> November 2023 at 10am by teleconferencing. The First Named Applicant was present and was represented by Mr John McKeown, Solicitor, Jackson Boyd solicitors. The Respondent was present and represented himself.
6. Mr McKeown told the Tribunal that he considered that there was sufficient evidence for an order being granted. He noted that £5000 was paid by the Respondent at the end of July 2023. This was after the application was lodged on 17<sup>th</sup> July 2023. He said that the Respondent had said in his representations that he was to make a payment on the week commencing 23<sup>rd</sup> October 2023. There have been no payments made. There have been many payment plans offered by the Respondent but they have not resulted in payments being made. Due to these other offers not being substantiated with payment, the Applicant is not prepared to accept the current payment offer.
7. Mr McKeown said that the Applicants have been put under financial pressure due to the Respondent not paying the rent. The Applicants only own this property as a rental property. The Property is mortgaged. The Applicants also have a mortgage over their own property. The Applicants have had to use their savings to pay the mortgage on this Property. They can no longer afford to do this. Mr McKeown said that the Respondent had responded to the Pre Action Requirement letter by saying that he would deal with it. The PARs letter was dated 12<sup>th</sup> May 2023. The Tribunal noted that it did not have a copy of the PARs letter or an up to date rent account. Mr McKeown then emailed a copy to the Housing and Property Chamber and the Respondent. The rent account was for the period of January 2023 to October 2023 with rent arrears amounting to £8509.72. There have been no payments made since the £5000 payment in July 2023. Mr McKeown said that the Respondent had included in this payment proposal that the deposit could be used against the arrears. Mr McKeown said that this was not appropriate use of the deposit. The deposit is there to address any end of tenancy issues and after that to address the arrears. This cannot be considered part of the payment proposal. Mr McKeown also said that there has been a lot of reference to the Respondent considering the rent charge was too high. He highlighted that this was not within the jurisdiction of the Tribunal. The Tribunal noted this to be true. The First Named Applicant said that at the point of renting the Property it was marketed for £1700. The Respondent wanted to pay £1600 so the Applicants allowed the Property to be rented for £1650. The Applicants mortgage costs now exceed the monthly rent of £1650. In addition to this they have to pay ground factoring costs and insurance. This is causing

financial stress upon the Applicants. The offer of £1400 would not be sufficient to cover the Applicants ongoing costs.

8. The Respondent said that he was sorry for the arrears that have accrued. He admitted that they had accrued due to non payment. He did not dispute the rent account lodged was accurate. He emphasised that he has made a payment proposal that would pay off the arrears over the next 6 months. He wants to stay in the Property until his son goes to University in Aberdeen in Autumn 2024. The Respondent had raised in his submission that the Notice to Leave was incompetent as there was not three months arrears. It was noted by the Tribunal that it considered that the Notice to Leave was competent at the point of service as there was three months arrears. The Respondent did make a payment but it was after the Notice to Leave was served. The Respondent accepted this point.
9. The Tribunal asked if he has looked into alternative accommodation that would be more affordable for him. He said that his business has picked up so he will be able to pay the rent going forward. The Tribunal asked if he had looked for alternative accommodation should he be evicted. He said that he had been in contact with his local authority but had found this process to be humiliating. He has not looked into alternative accommodation as he had a large amount of furniture from when he had lived in a large house which would be harder to accommodate in an even smaller property. He also noted that it was nearly Christmas which would make moving difficult and that his family liked the area that they lived in. The Respondent is in a position to pay £3000 tomorrow to reduce the arrears.
10. The First Named Applicant said that he would be open to continuing to negotiate with the Respondent should payments be made after an order was granted. He wanted the reassurance of an eviction order given lack of payments and the continued costs that the Applicants have to address.
11. The Respondent said that he was clear that the payment proposal that he had lodged would allow him to clear the arears in 6 months. The ongoing rent charge would be paid in November and December. This would allow the Applicants to recover their costs.
12. The Tribunal was satisfied that ground 12 was met. There were no issues of reasonableness to prevent an order for exciton being granted.

#### Findings and reason for decision

13. A Private Rented Tenancy Agreement commenced 11<sup>th</sup> May 2023.
14. The Respondent persistently failed to pay his rent charge of £1650 per month. The rent payments are due to be paid on 11<sup>th</sup> day of each month.

15. Arrears accrued to more than three months rent payment at the date of application and was more than one months rent payments at the date of the hearing.
16. The Respondent has failed to make the payment proposals previously offered including the payment on week commencing 23<sup>rd</sup> October 2023.
17. The Respondent admitted that the rent arrears were due to his non payment of his ongoing rent charge. He attributed this to his business not being as profitable during the financial crisis.
18. The arrears currently total £8509.72.
19. The Respondent has not tried to find other properties that could be more affordable given his financial situation.
20. There were no issues of reasonableness that prevented an order being granted.

### Decision

21. Tribunal found that ground 12 has been established and granted an order in favour of 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.**

# Gabrielle Miller

**2<sup>nd</sup> November 2023**

---

**Legal Member/Chair**

---

**Date**