



**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/23/1139**

**Re: Property at Flat 2, 168 Main Street, Prestwick, KA9 1PG (“the Property”)**

**Parties:**

**Mr Mark Mancini, 28 Morton Avenue, Ayr, KA7 2NH (“the Applicant”)**

**Miss Ellie Morrison, Flat 2, 168 Main Street, Prestwick, KA9 1PG (“the Respondent”)**

**Tribunal Members:**

**Jan Todd (Legal Member) and Elizabeth Williams (Ordinary Member)**

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

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

- **Background**
  1. This was a hearing set down to hear evidence to determine the application made by the Applicant dated 10<sup>th</sup> April 2023 for an order for possession of the Property in terms of Rule 109 of the Tribunal Rules. The hearing took place by teleconference.
  2. The Applicant is the owner of the Property and Landlord in a Tenancy with the Respondent who is the tenant, which commenced on 10<sup>th</sup> November 2021.
  3. The Applicant has lodged and the Tribunal had sight of and considered the following documents:-
    - a. Application for eviction dated 10<sup>th</sup> April 2023
    - b. Copy Tenancy Agreement between the Applicant and the Respondent dated 10<sup>th</sup> November 2021
    - c. Rent statement dated from 10<sup>th</sup> November 2021 to 10<sup>th</sup> March 2023 showing a sum due of £2200.
    - d. Copy Notice to leave dated 10<sup>th</sup> March 2023
    - e. Copy email sending notice to leave

f. Copy section 11 notice to Ayr Council and evidence of posting

4. The Applicant subsequently lodged in response to a direction from the Tribunal another rent statement and details of pre action protocol letters the Respondent. The rent statement showed that the rent outstanding as at 27<sup>th</sup> June 2023, was £1,550.
5. At the first CMD held on 4<sup>th</sup> July the Applicant's agent Ms Dunlop of Homesure appeared for the applicant and advised that the Applicant was seeking an order for eviction because she explained that the tenant had fallen into arrears early on in the tenancy and despite agreeing payment plans had not maintained them and was still in arrears. She confirmed under questions that the tenant had made a further payment on Friday 30<sup>th</sup> June and so the current arrears were £1000 a further reduction on the statement recently lodged.
6. The Respondent also attended on the call at that first CMD and admitted she was in arrears of rent, she agreed she had made a payment of £550 the previous week and had then asked what the balance was as she was unsure of how much as then due. She did advise that had the funds to pay this and indicated she could pay this immediately.
7. The Respondent also explained that she had been suffering with her mental health last year, with issues with her job as a bar manager as one venue had been sold by the owners and various members of staff, including herself, had their hours cut and salary reduced. She had tried taking on a second job to earn extra money but could not keep that when the hours in her main job increased again. She advised that she was keen to clear the arrears and agreed that she had not been good at communicating last year because of the stress she was under. She wished to remain in the tenancy and confirmed she lived there alone.
8. The second CMD took place on 7<sup>th</sup> September 2023 and again the Applicant's representative Ms Elaine Dunlop was in attendance on the teleconference call but there was no appearance by the Respondent and she had not asked for a postponement.
9. Ms Dunlop advised that she had met with the Respondent after the first CMD and that she did not have the money to pay the arrears but that they did agree a payment plan, and agreed to adjust the rent due date to 1<sup>st</sup> of each month. She acknowledged that the revised rent statement which showed a full month's rent due on 1<sup>st</sup> July was wrong and indicated that the rent due from 10<sup>th</sup> July to 1<sup>st</sup> August should be apportioned and that this was not being sought at the moment as they had arranged to accept a payment of £800 from the tenant from 1<sup>st</sup> August for one month's rent and £250 towards the arrears to try and clear the arrears and then the apportioned rent due from 10<sup>th</sup> July would be collected.
10. She confirmed that the tenant had made 2 payments of £800 so far on 31<sup>st</sup> July and 31<sup>st</sup> August bringing the arrears down to £500 plus the missing apportioned rent. Ms Dunlop indicated however that the Applicant wishes to sell the Property as his wife is currently on maternity leave and so they have lost some of her income and he cannot afford, she submitted, to keep the property. Ms Dunlop was not able to give any details of his commitments or mortgage payments on the Property although she advised that she now has a signed instruction to sell which she could send to the Tribunal.

11. On being asked if she had spoken recently with the Respondent she confirmed communication, which had been very poor had been better recently and she saw her last week. Ms Dunlop believes the Respondent still wishes to continue in the tenancy.
12. Prior to the hearing on 4<sup>th</sup> October and in response to the Tribunal's direction after the second CMD, the Applicant's representative provided the following further evidence:-
  - a. Copy rent statement dated 2<sup>nd</sup> October 2023 showing arrears due of £635
  - b. Copy sales agreement between the Applicant and Homesure to market and sell the Property dated 4<sup>th</sup> September 2023
  - c. Copy extract of bank payments showing mortgage payments over one year period to September 2023 increasing from £417.06 to £511.65
  - d. Statement from the Applicant confirming he wishes to sell the Property; that the rent does not cover the monthly costs and the tenant has been in arrears since the start of the tenancy and has not maintained any payment plan; and confirming his wife is on maternity leave and so household income is reduced.

### **The Hearing**

1. The hearing commenced at 10.10 on 21<sup>st</sup> December 2023 with on the Applicant's property manager, Ms Elaine Dunlop attending. She advised the applicant could not attend the hearing due to work commitments but referred to his statement which she advised he wished to be taken into account.
2. The Tribunal waited a further 10 minutes to see if the Respondent was going to join in but she did not call in and the Tribunal was satisfied notice had been sent to her so decided it would be appropriate to proceed with the hearing.
3. Ms Dunlop advised that the Applicant is still seeking an order of eviction on the ground of rent arrears and believes it would be reasonable because the rent has continuously been in arrears, the tenant has not maintained the payment plan previously set up after the previous 2 CMDs namely to pay £800 at the end of each month to allow for payment of the rent of £550 and £250 towards the arrears. She advised that the tenant had paid £800 on 31<sup>st</sup> July on 1<sup>st</sup> September and on 2<sup>nd</sup> October leaving a balance due of £635 but then has not paid any rent at the beginning of November which meant the arrears increased to £1185 and only paid again on 30<sup>th</sup> November the sum of £800 which when the next monthly rent of £550 was added on means the current arrears are now £935. Ms Dunlop advised that she contacts the tenant regularly twice a week by phone call, email and text and has had no response or explanation for the missing payment. Ms Dunlop explained that this has happened previously that the tenant has promised to make payments but that arrangements are not maintained and then arrears start to increase. She also confirmed that in the landlord's statement he is afraid that if no order is granted the Respondent will simply fall back into paying rent in an ad hoc way and suggests it is only this action that has led to her paying rent more regularly.
4. Under questions from the Tribunal Ms Dunlop confirmed that the Applicant's mortgage has increased substantially and is now £511.65 per month and together with his monthly management fees to her company of £85 per month it means the rental income even if paid would not cover the regular monthly

expenses the landlord has to pay, she advised that for this reason he now wishes to sell the Property. She confirmed that the Applicant's wife is still on maternity leave, and that she does not know if the Respondent's employment position has changed because there has been no contact from the Respondent.

### **Findings in Fact**

1. The Applicant and the Respondent entered into a lease of the Property which commenced on 10<sup>th</sup> November 2021
2. The Respondent is still occupying and in control of the Property and the tenancy is continuing.
3. A notice to leave dated 2023 was served on the Respondent by email dated 10<sup>th</sup> March 2023 confirming that no proceedings would be raised before 10<sup>th</sup> April 2023.
4. These proceedings were raised on 10<sup>th</sup> April 2023 and the application included a copy of the Notice to Leave.
5. A Section 11 notice has been served on South Ayrshire Council
6. Rent was outstanding for at least 3 months' at the date of service of the Notice to Leave.
7. The Rent due in terms of the lease is £550 per month.
8. The current rent contractually due and not paid is £935.
9. Payments of rent have been irregular throughout the tenancy and there have been arrears of rent due since September 2022.
10. The Respondent has failed to communicate recently or respond to the Applicant regarding the rent arrears
11. The Respondent attended the initial CMD but has not attended this hearing or made any further written representations.
12. The Applicant's monthly mortgage costs and monthly management fee due to his letting agent now exceed his rental income.
13. The Applicant wishes to sell the property.
14. The Tribunal finds it reasonable that an order for eviction is granted for the reasons stated below.

### **Reasons for Decision**

- The Tribunal was satisfied that the Respondents had been served with a valid Notice to Leave under S52 (3) of the 2016 Act specifying Ground 12 of Schedule 3 of the Act as the relevant grounds of eviction.
- The Notice to Leave was also accompanied by evidence of how the ground was met namely a rent statement.
- Grounds 12 require 28 days' notice under the current rules. The Notice sets out the notice period as expiring on 10<sup>th</sup> April 2023 and was served by email on 10<sup>th</sup> March 2023. This Application is therefore timeous.
- The Tribunal considered whether the terms of Ground 12 were met namely that the tenant has been in rent arrears for 3 or more consecutive months and on the day on which the Tribunal first considers the application for an eviction order on its merits the tenant is in arrears of rent equal or greater than one

month's rent and has been in arrears consecutively for 3 or more months and the Tribunal finds it reasonable that an order for eviction be granted. The rent statement shows that the tenant had regularly paid her rent at the end of each month from the beginning of the tenancy even though the rent date was the 10<sup>th</sup> of the month. However rent arrears started to accrue from 10<sup>th</sup> September 2022 when no rent was paid until 31<sup>st</sup> October 2022 leaving one month in arrears and then no rent was paid in January, February and March 2022 resulting in rent arrears of £2200 when the notice to leave was served. Rent was restarted in April 2022 and the sum of £1100 paid on 2<sup>nd</sup> May to reduce the arrears to £1100. At the first CMD however the Respondent advised she could pay all the arrears off and the Tribunal continued the case to see if this would occur. At the second CMD the Respondent did not attend, stating later she was on holiday, but the Applicant's representative explained that she had changed the date of payment to the end of each month and agreed with the Respondent she should pay £800 to the rent and arrears however as the Applicant still wished to seek an order of eviction and did not trust the payment plan would be adhered to a hearing was arranged. The Tribunal heard from Ms Dunlop that the payment plan has not been fully adhered to that the tenant made 3 payments but has now missed one month's payment due on 1<sup>st</sup> November and the arrears are still £935. The Tribunal has seen a rent statement supporting that and accepts on this basis the ground of eviction is met.

- They found Ms Dunlop to be credible in her response to questions and accepted that the Respondent has been difficult to contact, has not maintained the payment plan agreed and that this has happened previously during the tenancy. There is no suggestion that the failure to pay is a consequence of any delay or failure in the payment of benefit.
- The Tribunal notes that although the Respondent has made some payments to the rent and towards the arrears she has now missed another payment, there has been no explanation for the missed payment and she has not attended or submitted any written representations for this hearing. The Tribunal also notes the Applicant has a genuine reason for wishing to sell the Property which is the increased costs and these now exceeding the rental income even if paid. In view of the Respondent's failure to adhere to the payment plan, despite being given a chance to show she would adhere to this payment plan, and in the absence of any information from her to explain her absence or failure to make payment, the Tribunal considers that the arrears are likely to continue to accrue or not decrease as this has been the pattern for over a year. In addition the Respondent has not advanced any reason why it would not be reasonable to grant the eviction order and so given continuous arrears, failure to engage and the fact the financial impact on the landlord is increasing and he genuinely wishes to sell the Property the Tribunal accepts that it would be reasonable to grant the order of eviction.
- There being no response to counter this from the Respondent, the Tribunal is satisfied in terms of S 51 (1) of the Act that Ground 12 being an eviction ground specified in the application and in the Notice to Leave is met, and that it is reasonable for the Tribunal to grant the application.
- Decision

An order for possession is granted.

### **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.**

# Jan A Todd

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**Legal Member/Chair**

\_\_\_\_\_21<sup>st</sup>

**Date**

**December**

**2023**