



**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/23/0921**

**Re: Property at 11 Jura Court, Dreghorn, Irvine, KA11 4JG (“the Property”)**

**Parties:**

**Catherine Brown, 5 St Josephs Drive, Chippenham, SN15 2AZ (“the Applicant”)**

**Adele Clarke, 11 Jura Court, Dreghorn, Irvine, KA11 4JG (“the Respondent”)**

**Tribunal Members:**

**Joel Conn (Legal Member) and Ann Moore (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

1. This is an application by the Applicant for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”). The PRT in question was by the Applicant to the Respondent and her former joint tenant Jack Duffy commencing on 1 August 2022. The application was dated 21 March 2023 and lodged with the Tribunal on that date.
2. The application relied upon a Notice to Leave dated 15 February 2023 in terms of section 50 of the *Private Housing (Tenancies) (Scotland) Act 2016*, intimated upon the Respondent by recorded delivery post, and posted on that date. The Notice relied upon Ground 12 of Schedule 3 Part 1 of the 2016 Act, being that “the tenant has been in rent arrears for three or more consecutive months”. In regard to Ground 12, the body of the notice referred to arrears of £2,651.51 as of that date, and detailed missed payments and underpayments making up this amount. The rent stated in the Tenancy Agreement lodged was £575 a month, meaning the arrears as at the date of the Notice to Leave of over 4.5 months of

rent. The Notice intimated that an application to the Tribunal would not be made before 18 March 2023.

3. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon North Ayrshire Council on or about 15 March 2023 was provided with the application. There was no evidence of the Applicant providing pre-action protocol information to the Respondent (other than those elements within the Notice to Leave) but there was much correspondence between the Applicant and the Respondent's representative evidencing that the Respondent had sought and received advice.

### **The Hearing**

4. The matter called for a case management discussion ("CMD") of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 16 May 2024 at 10:00. We were addressed by Kenneth (Kenny) Brown, the Applicant's husband. The Applicant was in attendance but nominated her husband as her representative for the CMD, though she provided all submissions on the calculation of the arrears. The Respondent was not in attendance but was represented by Tracey Tait, Service Manager, of CHAP, the advice agency engaged by the Respondent.
5. At the CMD, the Applicant's representative confirmed that the application for eviction was still insisted upon and that arrears were now £2,321.88. A rent statement up to 4 August 2023 was lodged with the application, showing arrears at that date of £2,513.19, principally made up of arrears that had arisen from missed or short payments from 1 September 2022 until 1 February 2023. During February 2023, payments of £425/month from Universal Credit commenced, along with a monthly payment from Universal Credit against arrears (which varied between £33.59 and £46.35). The tenant made a variety of payments to make up the £150 shortfall on rent. Any inroads to the arrears up to 4 August 2023 came from the smaller Universal Credit payment. The Applicant provided submissions bringing matters up to date from the figure of £2,513.19 on 4 August 2023. She explained that since that time the £425/month from Universal Credit had continued, as had the smaller payment against arrears (which was now £36.87/month since October 2023). The tenant had generally paid £150/month but had missed one month. The arrears had thus reduced slightly to £2,321.88 but were not reducing swiftly.
6. The Respondent's agent explained that no opposition was made to the order sought, other than to seek that any eviction order be suspended for two months. The Respondent lived with her two primary school aged children (both at the local school). She was not in a position to vacate voluntarily but was, however, in contact with the local authority regarding rehousing. She had not yet received an offer and wished to avoid the risk of being placed in temporary accommodation before receiving a permanent housing offer. She wished the suspension so that there was a greater chance of suitable accommodation being identified, as well as avoid moving during the school year.

7. In regard to the arrears, the Respondent's agent confirmed the arrears figure of £2,321.88 was not disputed and that the Respondent regarded the Property as unaffordable for her as the rent exceeded her maximum potential benefit support. She hoped that local authority housing would be more affordable.
8. Following submissions, we noted that the Applicant did not dispute the Respondent's submissions regarding the size of the Respondent's family, and that parties were agreed on the following information:
  - a. That that the Property was not adapted for the needs of the Respondent nor any dependent;
  - b. That the Property's location and nature did not possess any specific suitability for the Respondent (such as proximity to a support network or medical facility); and
  - c. The Property was a three-bedroom property.
9. In regard to the parties' respective financial circumstances, the Applicant and her husband had two other rental properties but the Applicant was currently minded to sell the Property once she obtained vacant possession. The Applicant's husband confirmed no opposition was made to a suspension in any order for eviction of two months.
10. In regard to the Tenancy Agreement, both parties agreed that no new lease documentation was issued after Mr Duffy intimated that he wished to leave (which was 24 August 2022 according to an email lodged by the Applicant) but that the parties had agreed since that date for the Tenancy to continue with the Respondent alone on the same terms as the Tenancy Agreement of 1 August 2022.
11. In regard to the lack of adherence with the pre-action protocol, the Respondent's agent confirmed no issue was made on this as the Applicant had long been in contact with CHAP, on the Respondent's behalf. The Applicant's position was similarly to rely on the contact with CHAP on issues of the Respondent's arrears and seeking a resolution.
12. No motion was made for expenses.

### **Findings in Fact**

13. On or around 1 August 2022 the Applicant let the Property as a Private Residential Tenancy to the Respondent and Jack Duffy under a lease with commencement on 1 August 2022 ("the Tenancy").
14. On 24 August 2022, Jack Duffy intimated his intention to terminate the PRT and left the Property on or around that date.
15. Subsequent to 24 August 2022, the parties mutually held the Tenancy to continue in place on the same terms as the original Tenancy Agreement but with the Respondent as the sole tenant.

16. In terms of clause 7 of the Tenancy Agreement, the Respondent required to pay rent of £575 a month in advance on the 1<sup>st</sup> day of each month.
17. On 15 February 2023, the Applicant drafted a Notice to Leave in correct form addressed to the Respondent, providing the Respondent with notice, amongst other matters, that she was in rent arrears for a period in excess of three consecutive months and detailing arrears at that date of £2,651.51.
18. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior to 18 March 2023.
19. The Applicant served a copy of the Notice to Leave on the Respondent by recorded delivery post on 15 February 2023.
20. Clause 3 of the Tenancy Agreement permits for service of notices by recorded delivery post.
21. The Applicant raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 12 of Schedule 3 Part 1 of the 2016 Act on 21 March 2023.
22. As at the date of the Notice to Leave, rent arrears were in excess of 4.5 months and there had been some level of arrears outstanding in regard to the Property since 1 September 2022, a period in excess of 5 months.
23. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon North Ayrshire Council by the Applicant on or about 15 March 2023.
24. As of 16 May 2024, the Respondent remained in arrears of rent in the amount of £2,321.88 which is equivalent of over 4 months of rent, and there had been some level of arrears outstanding in regard to the Property for a period in excess of 20 months.
25. The Respondent does not claim to have paid any amount of the arrears of £2,321.88 remaining as at 16 May 2024.
26. The sum of arrears remaining as of 16 May 2024 is neither wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, other than any referable to an act or omission of the Respondent.
27. The Respondent has two dependent children, both in full-time education in a local primary school.
28. The Property is not specially adapted for the use of the Respondent.
29. The Property is not especially suitable for the Respondent by reason of its location.

30. The rent for the Property under the Tenancy Agreement is not affordable for the Respondent and her family given the level of rent and the shortfall between her Universal Credit payment and the current monthly rent.

### **Reasons for Decision**

31. The application was in terms of rule 109, being an order for eviction from a PRT. We were satisfied on the basis of the application and supporting papers, and in consideration of the Respondent's lack of any objection, that the Notice to Leave had been correctly drafted and served upon the Respondent.
32. Ground 12 of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:
- (1) ...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 sub-paragraph (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*
    - (a) 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, and*
    - (b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations.*
33. The arrears information provided at the CMD clearly showed that Ground 12 was satisfied in regard to the length of arrears and amount outstanding. The Respondent's agent conceded that the Respondent's failure to pay is not related to an issue with a relevant benefit. Ground 12 is satisfied subject to paragraph 3(b) regarding reasonableness.
34. We require, in terms of the Act as currently amended, to consider the reasonableness of the application even in regard to persistent arrears. We were satisfied that the Applicant's reasons for seeking eviction were reasonable given the duration of the arrears. Though granting the order was placing a family at risk of homelessness, clearly the Property was currently unsuitable for the Respondent's needs due to affordability and the Respondent was not opposing eviction in the hope of being allocated more suitable public sector housing.
35. The material issue of reasonableness was thus whether to grant the suspension. As this was a short suspension was for understandable reasons, and not

