



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/23/2795

Re: Property at Flat 5 36 Arthur Street, Edinburgh, EH6 5DD (“the Property”)

Parties:

Mr Alan Doory, Rua Conde de Baependi 62, Apartment 504, Flamengo, Rio De Janeiro, 22231-140, Brazil (“the Applicant”)

Cameron Marr, Flat 5 36 Arthur Street, Edinburgh, EH6 5DD (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Gordon Laurie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined 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;
- (ii) Notice to Leave dated 12 July 2023 stating that proceedings for possession will commence no earlier than 11 August 2023 and citing grounds 12 and 12A, together with proof of service on the Respondent by Sheriff Officers on 13th July 2023;

- (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Edinburgh City Council together with proof of service by email;
 - (iv) Rent Statement; and
 - (v) Copy letter from the Applicant's representative to the Respondent dated 24 April 2023 in compliance with the pre-action requirements.
- 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. The application was therefore referred to a Case Management Discussion. 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 On 12th October 2023 the Applicant's representative emailed the Tribunal with an updated rent statement.

Case Management Discussion

- 4 The Case Management Discussion took place on 14 November 2023. The Applicant was represented by Mr Scott Runciman of Gilson and Gray Solicitors. The Respondent was in attendance. The Tribunal explained the purpose of the Case Management Discussion and the legal test. Parties were invited to address the Tribunal on their respective positions regarding the application.
- 5 Mr Runciman confirmed that the Notice to Leave had been served on grounds 12 and 12A of Schedule 3 of the Private Housing Tenancies (Scotland) Act 2016. There were significant arrears on the rent account, which currently stood at £7387.50. A rent statement had been produced by the Applicant as at 1st October 2023 which confirmed this amount. Mr Runciman was not aware of any further payments having been made to the account.
- 6 Mr Runciman confirmed that the Respondent had moved into the property in October 2020. He had fallen into arrears in February 2021. There had been sporadic payments here and there and the Respondent had been close to clearing the rent account on one occasion. However the account remained in rent arrears amounting to more than six months. The Applicant therefore sought an eviction order on ground 12A.
- 7 Mr Runciman confirmed that the Applicant had lodged the pre-action correspondence which had been sent to the Respondent. However the situation was now untenable. The Tribunal asked Mr Runciman about the Applicant's circumstances, in particular whether he had a property portfolio and an explanation as to why his landlord registration had expired. Mr Runciman advised that he did not have information on those points. However he pointed out that landlord registration was not relevant to the application. The Applicant had also provided a prima facie case for reasonableness, having regard to the rent arrears

and the correspondence offering the Respondent assistance. It was for the Respondent to rebut that presumption. The situation was now untenable and unsustainable.

- 8 The Respondent addressed the Tribunal. He advised that he had been suffering from a severe mental illness since the beginning of the pandemic. He was on a waiting list to be assessed for autism, ADHD and bipolar disorder. He did not deal well with demanding and challenging situations, which had led to him putting his head in the sand regarding his tenancy. He had failed to fully understand the gravity of the situation and had failed to take advice at times. He had not applied for any benefits, despite being out of work for over a year, and had been relying on handouts from family members. His mother had given him some cash sums to pay towards his arrears but that was all she could give.
- 9 The Respondent advised that he had sought support for his mental health issues and recently things had started to improve. He had secured a job and was exploring a payment of backdated housing benefit with the local authority. He would start his new job on 20 November. The Respondent accepted that his account had been in arrears, as a result of his illness. He had experienced suicidal ideation. He did not expect this to be an excuse, it was not normal behaviour. He had made attempts to seek support from the Council however due to his condition things had to become fairly serious before the penny dropped. The Respondent asked for as much time as possible to get things back on track and start making payments towards the arrears.
- 10 The Tribunal asked the Respondent if he had confirmation as to any award of backdated housing benefit. The Respondent advised that it was too early to say. He had tried to get in touch with the Council to confirm the outcome of his application. The only way he could contact them was by email. The Respondent confirmed that he had received the pre-action letters but the situation had caused him to shut down. He understood that his mental health issues were a result of severe trauma he had experienced in his teenage years which he was only dealing with now. He had been told that the type of autism he had could result in something called pathological demand avoidance. It was quite common for persons who had experienced trauma like he had. He would shut down and be unable to deal with anything, even when people were showing kindness and support. The Respondent confirmed that he resided alone in the property with no dependents. He had spoken with the Council about the prospects of rehousing, but only in the lead up to the Case Management Discussion.
- 11 The Tribunal asked the Respondent when he would be in a position to make payments to the rent account. He confirmed that he would receive ten days salary at the end of November from his new employer WithYouSupport. He would be willing to pay the entirety towards his rent account. He would then receive a full salary moving forward and was prepared to pay double rent amounting to £1550 per month. It was not his intention to remain in the property in the long term but his mental health had stopped him from making plans to move and he wanted to maintain his recovery. He needed a roof over his head to be able to do that. He apologised to the Applicant for the situation.

- 12 The Tribunal asked Mr Runciman if he wished to comment. He advised that he had sympathy with the Respondent. However the Applicant's position was reasonable. Mr Runciman advised that there had been nothing paid to the account since a lump sum payment of £3000 from the Respondent's mother. The Respondent had been in touch with the Applicant's representative in May 2023 to advise that he was unemployed. He had been told to seek housing benefit. It was now November and nothing had progressed. The Applicant maintained his motion for an eviction order.
- 13 The Respondent advised that it was never his intention to lie about seeking advice. It was always his intention to take things forward. However his brain shut down which prevented him from doing anything to address the problem. He had made attempts to contact Connor Burns, an advisor at the local authority but had received no response.
- 14 The Tribunal held a short adjournment to determine further procedure. Having considered the application paperwork and the submissions from the parties the Tribunal concluded that there were issues to be resolved regarding the question of reasonableness and it would therefore be prejudicial to the Respondent were the Tribunal to make a decision without hearing further evidence. The Tribunal therefore determined to fix a hearing in the matter.
- 15 The Tribunal identified the issues to be resolved at the hearing as:-
- (i) Whether the Respondent is entitled to backdated housing benefit, and if so, what impact this will have on the level of arrears;
 - (ii) Whether the Respondent is suffering from a mental health illness that impacts on his ability to manage his rent account, and what treatment/support he is receiving to treat this;
 - (iii) Whether the Respondent is now in permanent employment and is able to make payments of £1550 per month towards his rent account;
 - (iv) Whether in all the circumstances of this particular case it is reasonable to make an eviction order.

- 16 The Tribunal issued a Direction to parties regarding the conduct of the hearing in the following terms:-

"The Applicant/Respondent is required to provide:

1. Copies of any documents they wish to submit as evidence for consideration by the Tribunal. The documents should be numbered with a cover sheet listing each document with the corresponding page number for ease of reference.

2. A list of any witnesses they wish to give evidence at the hearing together with contact details.

In particular, the Respondent is requested to provide documents to support his

submissions at the Case Management Discussion regarding his current employment, mental illness and treatment, and housing benefit application.

The said documentation should be lodged with the Chamber no later than close of business on 26 January 2024.”

The Respondent was also encouraged to seek independent legal advice to assist him with the conduct of the proceedings.

- 17 A hearing was scheduled for 16 February 2024 however this was subsequently discharged following a request from the parties. A further hearing was scheduled for 7 June 2024. In response to the Direction the Applicant provided four lists of documents together with a list of witnesses. The Respondent did not provide any response.

The Hearing

- 18 The hearing took place on 7 June 2024. The Applicant was represented by Mr Runciman. The Respondent was in attendance.
- 19 The Tribunal explained the procedure for the hearing and asked Mr Runciman to lead his first witness, Karel Park, Finance Director of Burgh Property.

Evidence from Karel Park

- 20 Ms Park confirmed her date of birth and her occupation as Finance Director of Burgh Property. She explained that Burgh Property managed the tenancy on behalf of the Applicant by collecting rent and dealing with any repairs and maintenance. Her specific role involved collecting rent and processing payments to landlords and contractors. The Respondent's lease had commenced on 1 October 2020 with a rent of £775 per month. The rent had never been increased over the term of the tenancy. Ms Park confirmed that the rent arrears had begun to accrue in January 2021 and the Respondent's rent account had remained in the red since then. She spoke to the rent account that had been lodged by the Applicant. The last payment to the rent account had been a payment on 29 February 2024, which was a payment by Ann Marr. Ms Park believed Ann Marr to be the Respondent's mother.
- 21 Ms Park stated that the current level of rent arrears was £10,262.50. She spoke to the correspondence that had been sent to the Respondent over the term of the tenancy, including the Notice to Leave served in July 2023. Since that Notice had been served only three payments had been made to the rent account. Ms Park confirmed that she had been in regular correspondence with the Respondent, encouraging him to make payments towards the rent. She had regular telephone calls with him. His engagement was sporadic. Ms Park referred to an email to her from the Respondent in June 2022 when he stated that he had booked a call with Shelter for advice. She had not seen anything result from that. The Respondent would often arrange telephone calls but not be available. Ms Park spoke to the email in June 2022 in which the Respondent had mentioned backdated universal credit. However this had not transpired. Ms Park stated that

she believed she had tried to assist the Respondent throughout his tenancy. She was trying to be helpful and encouraging. She did not want to cause any stress. She had told him that she was happy for him to call her if he needed to. Ms Park referred to a call from the Respondent in which he stated that he was no longer able to live in the property. However he was yet to leave. During the course of the tenancy he had often made pledges to pay additional amounts to the rent account but failed to do so. Three lump sum payments had instead been made to the rent account by his mother. Ms Park advised that she believed that the Respondent would be able to live with his mother in the event that he had to leave the property. He would not be rendered homeless. Ms Park confirmed that she had seen no evidence of any benefit entitlement on the Respondent's part, nor any application for backdated benefits. The Respondent had mentioned his medical condition but she had seen no evidence from a GP or any other medical professional to support that.

- 22 Ms Park advised that during the course of the tenancy the Respondent had been in various jobs. She understood he had commenced new employment in January 2024 however he was no longer in that job. She confirmed that the hearing fixed for February 2024 had been postponed as the Respondent had offered to pay £1275 towards the rent and arrears. The Applicant felt he should be given a chance to make those payments. The Respondent had made one payment. There had been a further payment from his mother. The Respondent had advised Ms Park that his employment had been terminated. Ms Park spoke to the various correspondence that had been sent to the Respondent regarding his arrears, including correspondence in compliance with the rent arrears pre-action protocol.
- 23 Ms Park spoke to the impact on the Applicant as a result of the increasing arrears. She confirmed that the Applicant paid factoring charges for the property in the sum of approximately £800 per year. The impact of the tenancy continuing would be devastating for him. The Applicant had been a conscientious landlord, fulfilling all of the duties in terms of maintenance and other obligations. She explained that her company reviewed rents for tenancies on an annual basis however the Applicant had chosen not to increase the rent in order to try and assist the Respondent. The Respondent simply had a track record of not being able to maintain employment. There had been months where rent went unpaid. She had worked hard to get updates from the Respondent but the situation continued to escalate. If the Tribunal declined to make an eviction order she felt that the Respondent would continue to bury his head in the sand. She stressed that the application for an eviction order was the absolute last resort. The Applicant was not the type of landlord who would want to go down that route. He was concerned about the Respondent in terms of the affordability of the tenancy and felt he should now obtain alternative accommodation that he could afford.
- 24 In response to questions from the Tribunal, Ms Park confirmed that this was the only property that her company managed on the Applicant's behalf. She understood he may have another property in England but she did not have any information on that. She confirmed that it was open to landlords to apply for direct payments from the Department of Works and Pensions however that had not been done in this case. She had been advised that the Respondent had not claimed for housing benefit and it was only under encouragement from her that

the Respondent had considered making an application. She only had his word that he had in fact made a claim, she had not had sight of any documentation to confirm this.

- 25 The Tribunal invited the Respondent to cross-examine Ms Park, providing guidance on how to approach this. At this point in the proceedings the Respondent advised that he did not wish to continue. He explained that hearing the evidence was making him feel suicidal. He wished to leave the call. The Tribunal explained the consequence of this, in that the Tribunal could continue to make a determination on the application without having heard his evidence. He confirmed he understood this. The Tribunal asked if there were any reasonable adjustments it could make in order to facilitate the Respondent's participation in the proceedings. The Respondent answered this in the negative. The Tribunal then explained that it would adjourn the hearing for a short period to discuss how best to proceed and to allow the Respondent the opportunity to consider his position. The Tribunal resumed the hearing. The Respondent did not return to the call.
- 26 The Tribunal therefore concluded the hearing, having been satisfied that it had sufficient information upon which to make a determination of the application in the Respondent's absence.

Relevant Legislation

- 27 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.

Schedule 3, Part 12A

- (1) It is an eviction ground that the tenant has substantial rent arrears.
- (2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—
 - (a) the tenant has accrued rent arrears under the tenancy in respect of one or more periods,
 - (b) the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy when notice to leave is given to the tenant on this ground in accordance with section 52(3), and
 - (c) the Tribunal is satisfied that it is reasonable to issue an eviction order.
- (3) In deciding under sub-paragraph (2) whether it is reasonable to issue an eviction order, the Tribunal is to consider—
 - (a) whether the tenant being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit,
 - (b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers under paragraph 12(4)(b) (and continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022).
- (4) For the purpose of this paragraph—
 - (a) references to a relevant benefit are to—
 - (i) a rent allowance or rent rebate under the Housing Benefit Regulations 2006 (S.I. 2006/213),
 - (ii) a payment on account awarded under regulation 93 of those Regulations,
 - (iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,
 - (iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,
 - (b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.

28 The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 are also relevant to this application.

Findings in Fact

29 The parties entered into a Private Residential Tenancy Agreement which commenced on 1 October 2020.

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

31 In terms of Clause 8 of the said Tenancy Agreement the Respondent undertook to make payment of rent at the rate of £775 per calendar month.

32 On 13 July 2023 the Applicant delivered a Notice to Leave to the Respondent by Sheriff Officers. The Notice to Leave cited grounds 12 and 12A of Schedule 3 of the 2016 Act and confirmed that proceedings would not be raised any earlier than 11 August 2023.

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

34 As at the date of service of the Notice to Leave arrears in the sum of £5062.50 were outstanding.

35 As at the date of the Case Management Discussion arrears in the sum of £7387.50 were outstanding.

36 As at the date of the hearing arrears in the sum of £10,262.50 were outstanding.

37 The Applicant has made efforts to engage the Respondent and encourage him to take steps to maintain payments to the rent account.

38 The last payment to the rent account was on 29 February 2024.

39 The Respondent has made various promises of payment which have not transpired.

40 The rent arrears have had, and continue to have, a significant impact on the Applicant.

Reasons for Decision

41 The Tribunal was satisfied that it had sufficient information upon which to make a decision following the hearing, having considered the application paperwork,

the submissions at the Case Management Discussion and the evidence led by the Applicant at the hearing.

- 42 The Tribunal carefully considered whether it could proceed to determine the application following the Respondent's departure from the hearing. The Respondent had been clear that he could not continue, and had not indicated any steps that the Tribunal could take in order to facilitate his participation. The Tribunal had regard to the fact that the Respondent had been advised at the initial Case Management Discussion to seek independent legal advice to assist him with the conduct of the proceedings. The Tribunal also took into account that he had confirmed his understanding of the consequences of his actions. Accordingly the Tribunal concluded that it could proceed to make a decision on the application in his absence.
- 43 The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicants intention to rely upon grounds 12 and 12A 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.
- 44 The Tribunal accepted the evidence from Ms Park regarding the history of the rent account. She had been clear and credible in her evidence to the Tribunal on this point. The Respondent had not sought to dispute the outstanding arrears balance, which now stood at £10,262.50.
- 45 The Tribunal therefore considered the question of reasonableness. The Tribunal found the evidence to Ms Park to be credible and reliable. She was frank in explaining the history of her involvement with the Respondent and detailed in outlining the various attempts at communication with him. The Tribunal accepted that the application to the Tribunal had been a last resort, and that numerous attempts had been made to assist the Respondent in sustaining the tenancy. The Tribunal also accepted that the ongoing situation would have a significant impact on the Applicant, who appeared to have been more than reasonable in his dealings with the Respondent.
- 46 The Respondent had outlined his position at the Case Management Discussion, citing housing benefit claims and his mental health which impacted on his ability to maintain the tenancy. However he had provided no evidence to support his submissions on these points. The Tribunal noted that the Direction had made reference specifically to these matters. The Tribunal was therefore unable to make any findings on these issues given the lack of evidence from the Respondent at the hearing.
- 47 Where rent arrears are significant, as in this case, it will always be a challenge for a Respondent to counter an argument as to the reasonableness of making an eviction order. It was clear from the evidence before the Tribunal that the

situation had worsened over a period of time. The arrears now represented approximately 13 months of unpaid rent. The payment of rent is a fundamental obligation of any tenancy. The Respondent had been given opportunities to show good faith in making regular payments to the rent account, including the discharge of a previous hearing to allow for one last chance. However the arrears continued to accrue. The Tribunal therefore gave significant weight to the level of arrears and the history of the tenancy in reaching its decision. The Tribunal also accepted Ms Park's view that the Respondent would have alternative accommodation in the event that an eviction order was granted. The Respondent had not sought to challenge this and it was a reasonable assumption given the support that had previously been provided by his mother in the form of lump sum payments to the rent account.

48 Accordingly, having identified the above factors as relevant to the questions of reasonableness, the Tribunal concluded that grounds 12 and 12A had been met and it would be reasonable to make an eviction order in this case.

49 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.

Legal Member/Chair

Date: 6 July 2024