



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in respect of an application under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and in terms of rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)**

**Reference number: FTS/HPC/EV/23/2819**

**Re: Property at 216, Rowan Street, Paisley, PA2 6SA (“the Property”)**

**The Parties:**

**Kenneth Edward Properties Limited, 45, Causeyside Street, Paisley, PA1 1YN (“the Applicant”)**

**Ms Tammy Annan residing at the Property (“the Respondent”)**

**Tribunal Members:**

**Karen Moore (Legal Member) and Gordon Laurie (Ordinary Member)**

**Decision of the Tribunal**

**The Tribunal granted the Application and issued an Order for Eviction.**

**Background**

1. By application received between 17 August 2023 and 15 September 2023 (“the Applications”), the Applicant applied to the Tribunal for an Order for eviction and possession of the Property based on Ground 12 of Schedule 3 to the 2016 Act.
2. The Application comprised the following:
  - i) copy Notice to Leave dated 4 July 2023;;
  - ii) copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to Renfrewshire Council being the relevant local authority;
  - iii) copy tenancy agreement between the Parties;
  - iv) copy rent increase notices issued by the Applicant;

- v) copy rent statements showing arrears and late payment of rent;
- vi) copy text and email correspondence between the Parties and
- vii) copy pre-action requirement (PAR) letters sent by the Applicant to the Respondent.

3. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (“CMD”) was fixed for 21 December 2023 by telephone conference.

4. Prior to the CMD, the Respondent lodged submissions in respect of her health issues and matters relating to a fridge freezer.

### **CMD**

5. The CMD took place on 21 December 2023 at 14.00. The Applicant was represented by Mr. Fallon, one of its directors. The Respondent, Ms. Annan, was present and was not represented.

6. The tribunal at the CMD noted that Ms. Annan had no issues to raise with the application paperwork and accepted that some rent was unpaid. She stated that she had paid for a fridge freezer and repairs at the Property and that she had suffered financial loss due to not having a fridge freezer. Ms. Annan stated that the Applicant has added sums which are not due to the rent statement because of changes in the payment date. She estimated that her losses were about £1000 for things the Applicant ought to have dealt with. Ms Annan advised that she had offered to repay the arrears at £50.00 per month but this was refused. She explained that her Universal Credit housing award does not cover the whole rent charge and she has to make up the shortfall.

7. For the Applicant, Mr Fallon disputed the claim that any sums have been added to the rent account when the payment date changed and explained that an adjustment was made to take account of the change. He further disputed that the Applicant had failed to deal with repair matters promptly or that Ms. Annan had had to pay for these. He stated that a fridge freezer was delivered to the Property but was not in evidence when the Property was inspected.

8. With regard to the Applicant itself, Mr Fallon advised the tribunal that the Applicant is a limited company which owns 21 rental properties and that the Property is the only one with rent arrears issues. He stated that this it is causing financial difficulty as the directors are having to cover the cost of the mortgage and other outlays without rental income. He advised that the Applicant has received two payments from Universal Credit but that these did not cover the rent.

9. The tribunal at the CMD adjourned the CMD to a Hearing and issued the following Direction:

*“The Applicant is required to provide:*

- 1. An updated rent statement which shows the rent due, all payments made and the running monthly total outstanding;*
- 2. Evidence of the financial difficulty caused to the Applicant by the rent arrears;*
- 4. Any correspondence received from Universal Credit regarding the Respondent*
- 5. A copy of any other document upon which the Applicant intends to rely at the hearing and*
- 6. The names and contact telephone number of any witnesses who will give evidence at the hearing.*

*The Respondent is required to provide:*

- 1. A submission which addresses any errors or discrepancies in the rent account;*
- 2. Correspondence from Universal Credit in relation to her housing costs;*
- 3. A list of all benefits received, to include the amount of each benefit;*
- 4. Information about her medical condition and the condition affecting her children, to include evidence of these, if available;*
- 5. Vouchers and receipts for all payments made by her in relation to repairs at the property and replacement of the fridge freezer;*
- 6. A copy of all correspondence between the parties in relation to repair issues being reported;*
- 7. A copy of any other document upon which the Respondent intends to rely at the hearing and*
- 8. The names and contact telephone numbers of any witnesses who will give evidence at the hearing.”*

10. The Applicant complied with the Direction. The Applicant submitted witness statements from Alan Johnston and Paul McCormick in respect or repairs and access to the Property.

11. Ms. Annan complied with the Direction in part. She did not provide a submission setting out her position on errors or discrepancies with the rent, a list of the benefits which she receives or the vouchers for all of the costs which she incurred.

## **Hearing**

12. A Hearing was fixed for 30 April 2024 and postponed to 1 July 2024.

13. The Hearing took place on 1 July 2024 at 10.00 at the Glasgow Tribunal Centre. The Applicant was represented by Mr. D. Fallon and Mr. K. Fallon, its

two directors. The Respondent, Ms. Annan was present and was not represented.

14. Before evidence was heard, the Tribunal asked Ms. Annan to confirm on which basis she was retaining rent. The Tribunal explained the differences between abatement of rent for loss of use of the Property or part of it, withhold rent pending notified repairs being carried out, a contractual right to pay for repairs and replace furnishings in terms of the tenancy agreement or an arrangement with the landlord, and, a counter-claim for damages. Ms. Annan stated that as she was holding £1,100.00 in cash at the Property, she was withholding rent. She stated that she understood that withheld rent fell to be paid when the defect complained of was remedied. She accepted that the amount she was withholding is less than the rent which is due and explained that the balance is the rent which is in arrears.

### **Evidence of the Applicant**

15. Mr. D. Fallon of the Applicant gave evidence in respect of the rent arrears which had accrued. He referred to the rent statement lodged by the Applicant on 27 June 2024 which shows a negative balance of £3,383.97, including the rent of £587.00 which fell due on the date of the Hearing. He accepted that a payment from Universal Credit was pending. He explained that Ms. Annan had twice requested that the rent payment date be changed and that the Applicant had agreed to this. He explained that adjusting the rent payment dates resulted in the rental month also changing, with the end result of the two rent adjustments being underpayments of £168.66 and £165.70. He stated that Ms. Annan had made some payments towards the shortfalls caused by the rent payment dates being altered, but had not made payment in full. Mr. Fallon stated that there had been four full months with no payments at all and so the Notice to Leave was issued. Mr. Fallon advised that Ms. Annan and her mother had told his business partner and himself that the rent and arrears would be paid but that payment did not materialise. He stated that the payments made by Ms. Annan rarely covered the full rent due and that, although Universal Credit is now making part payments to the rent and the arrears, this does not cover the full amount due and that the deficit will increase further when the rent is increased later in the year.
16. With regard to the financial outlays which Ms. Annan claims to have made, Mr. Fallon advised that the first he heard of this was at the CMD and that he disputed that these outlays had been made or were necessary. He stated that he had not been advised by Ms. Annan that rent was being withheld.

17. The Tribunal noted that there appeared to be three matters raised by Ms. Annan at the CMD which were replacing a fridge freezer, paying for a plumber to fix a leak in the kitchen and paying for an electric shower to be replaced and asked Mr. Fallon to address these points.
18. With regard to the fridge freezer, Mr. Fallon confirmed that Ms. Annan first reported that the freezer part of the fridge freezer was not working in April 2023. He stated that he and his business partner had tried to have Ms. Annan explain exactly what the issue with the freezer was without success. Therefore, on 21 June 2023, they purchased a fridge freezer from the Applicant's usual white goods supplier which was delivered on 23 June 2023, when the original fridge freezer was uplifted. On 24 June 2023, and with reference to text message screenshots lodged, Mr. Fallon stated that Ms. Annan reported that the replacement fridge freezer was not working and said that she would arrange to purchase one. Mr. Fallon advised that the Applicant agreed to this, but, when Ms. Annan contacted the Applicant to ask for an update on the further replacement, the Applicant arranged for a second replacement to be provided and that he understood that this had been done on 28 June 2023. Mr. Fallon referred the Tribunal to the receipt from Sunshine Electricals for £180.00 and to the witness statements which had been lodged and which confirmed this.
19. With regard to the shower, Mr. Fallon explained that this has been a longstanding issue which the Applicant has tried to remedy. He stated that various attempts have been made to fix the leak and that it is now likely that the shower tray will have to be removed for the leak to be investigated. He was not aware that Ms. Annan had replaced the electric shower at her own cost.
20. With regard to the kitchen sink leak, Mr. Fallon stated that Ms. Annan had reported a leak from under the kitchen sink when he and his business partner were on holiday. He stated that they had advised Ms. Annan that they would arrange for a plumber to call the following day but it seemed that Ms. Annan went ahead and arranged a plumber herself. Mr. Fallon stated that Ms. Annan always insisted that she be given 48 hours' notice for contractors to attend and, with reference to the text message screenshots, access was not always available.
21. Mr. Fallon stated that the Applicant did not seek any sums from Ms. Annan in respect of repairs or the replacement fridge freezer and that all that was sought was the rent.
22. With regard to the reasonableness test, Mr. Fallon advised that the Applicant has been a residential landlord in the Lochfield area of Paisley for around 20

years and has 21 properties. He stated that this Property is the only one of the Applicant's properties with rent arrears issues and is causing financial difficulty as he and his business partner are having to cover the cost of the mortgage and other outlays without rental income. He confirmed that mortgages are secured against all of the properties. He stated that the Universal Credit payments do not cover the running costs of the Property.

23. Ms. Annan advised that she had no specific questions for Mr. Fallon but stressed that she disputed his evidence in respect of the repairs and would address that points raised in her own evidence.

### **Evidence of the Respondent**

24. Ms. Annan gave evidence on her own behalf.

25. She accepted that the rent adjustments were likely to be due to be paid by her.

26. With regard to the fridge freezer, Ms. Annan confirmed that she reported that the freezer part was broken in April 2023. With reference to the text message screenshots and emails lodged, she disputed that the freezer door had been damaged by her or her family. She agreed that a replacement fridge freezer had been delivered but disputed that a further replacement had also been delivered, stating that her mother had told the deliverymen that it was not needed and told them to take it back to the supplier. With reference to an Argos receipt for purchase and delivery of a fridge freezer on 24 June 2023 for £292.95, she confirmed that this was the fridge freezer which she had purchased and which is still in the Property. Ms. Annan queried why the Applicant had produced only one respect for the replacement fridge freezer when Mr. Fallon's evidence was that two were purchased. She stated that she withheld rent after from July 2023 in respect of the fridge freezer issue. She stated that she had additional costs of around £100.00 in respect of wasted food because she did not have a working fridge freezer for five days. Prior to that, she and her 6 year old son were greatly inconvenienced as the lack of freezer impacted negatively on her son's health. Ms. Annan explained that he has a skeletal and neurological condition which means that extra care must be taken with his skull and that ice packs are essential to alleviate and manage his condition.

27. With regard to the shower, Ms. Annan agreed that this had been an ongoing problem. She disputed that she had been difficult to deal with in respect of access and explained that her own medical condition means that she requires notice of when workmen will attend and that a working shower is essential for her. She stated that she was uncomfortable with certain workmen calling when she was on her own and so had to arrange for her mother to be present.

Although she could not recall when she instructed her own contractor to replace the electric shower and could not trace the invoice which she paid, she was certain that this part of the shower had been replaced and that she had paid around £400.00 for this.

28. With regard to the kitchen sink leak, Ms. Annan stated that this had happened on 11 September 2023 when the washing machine was running. She stated that water was flooding the kitchen floor and that she was concerned that water damage would be caused and that she would be liable for additional costs for the water damage. She stated that the plumber had called and resealed a pipe under the sink. She accepted that she did not have the receipt for the repair. She referred the Tribunal to photographs of the sink and the pipe which were lodged in evidence.
29. With regard to the reasonableness test. Ms. Annan advised the Tribunal that she has health issues and has been unable to work since the birth of her son. She explained that both of her children, aged five years and six years, were born with a medical condition which causes developmental delays and explained that the condition is more severe in respect her son who requires to have surgery next year. She stressed the impact which the lack of a freezer had on her and her son as she could not provide him with the ice packs necessary to manage his condition. Ms. Annan advised that both children attend a local school and nursery which provide essential support and stability for the family group. Ms. Annan stated that she has a serious medical condition which caused her abdominal pain and bleeding, rendering her to be bed bound three out of four days a week, and that she relies on her mother who lives locally to assist her. With regard to finding alternative housing, Ms. Annan has approached Renfrewshire Council who could not assist. She stated that she is supported by a housing officer who visits every two weeks. With regard to the rent and the arrears, Ms. Annan stated that she cannot afford the payment she is being asked to make and that she is awaiting the outcome of an appeal in respect of benefits, but that the benefits are not related to housing costs. Ms. Annan stated that she no longer wants to reside in the Property and is trying to arrange accommodation with relatives in Ayrshire. She had advised the Applicants by text that this is her intention.
30. In cross-examination by both Mr. D. Fallon and Mr. K. Fallon, Ms. Annan did not accept that she had not notified the Applicant about replacing the shower and Ms. Annan insisted that she was holding £1,100.00 in cash at the Property in respect of rent unpaid because of the repairs and replacement fridge freezer which she had paid for. She disputed that the fridge freezer in the Property is a replacement provided by the Applicant. She accepted that although she had offered to pay £50.00 a month towards the arrears she had not done so and explained that her reason for this was that Universal Credit had begun making

payments towards the arrears and the Applicant had refused her offer and had asked for an unrealistic payment.

31. She accepted that, as she had paid for the fridge freezer, it was in her ownership and not the Applicant's.

32. Ms. Annan's mother, Ms. Susan Annan or Goodwin, gave evidence that she had been present at the Property to allow access for a plumber to deal with the leaking shower. She stated that the arrangement with the Applicant was that the plumber would call on 12 June 2024 between 10.00 and 12.00 and give a half hour notice by text of his estimated time. Ms. Goodwin stated that no text message was received by her and the plumber did not attend, even though she waited beyond the allocated time. Ms. Annan stated that this proved her willingness to provide access for repairs and that the Applicant was not reliable.

### **Summing Up for Applicant**

33. Mr. D. Fallon summed up the evidence on behalf of the Applicant. He stated that the Applicant simply wanted Ms. Annan to pay her rent. He stated that Ms. Annan had not shown that she was entitled to withhold rent or that the Applicant had not carried out repairs. He stressed that the Applicant was under a financial pressure due to the non-payment of rent.

### **Summing Up for Respondent**

34. Ms. Annan summed up the evidence on her own behalf. She stated that she was very stressed and that she could no longer afford the rent for the Property and did not want to remain there.

### **Additional information before the Tribunal**

35. The Tribunal had the benefit of the information lodged by the Parties in response to the Directions issued by it.

### **Findings in Fact**

36. From all of the information before it, the CMDs and the Hearing, the Tribunal made the following findings in fact: -

- i) There is a private residential tenancy of the Property between the Parties which began on 15 January 2021;
- ii) A valid Notice to Leave was issued by the Applicant to the Respondent;
- iii) PAR letters were issued on behalf of the Applicant to the Respondent;
- iv) The Respondent accepts that she has fallen into arrears of rent;



- v) The amount of rent due as at the date of the Hearing is £3,383.97, of which £587.00 is rent for the current month;
- vi) The Respondent has made irregular payments and underpayments throughout the tenancy and made no payments of rent during July to October 2023;
- vii) Since October 2023, the Applicant has received direct payment of rent and a payment towards arrears from Universal Credit on behalf of the Respondent;
- viii) The Universal Credit payments do not meet the full amount of the rent;
- ix) The Respondent personally has not made any payments in respect of rent since June 2023;
- x) The Respondent has been in rent arrears for three or more consecutive months;
- xi) The Respondent is not entitled to further benefits to assist with housing costs;
- xii) In April 2023, the Respondent notified a fault with the freezer part of the fridge freezer supplied by the Applicant;
- xiii) On 20 June 2023, the Applicant purchased a replacement fridge freezer which was delivered to the Property on 23 June 2023;
- xiv) On 24 June 2023, the Respondent notified the Applicant of a fault with the replacement fridge freezer;
- xv) On 24 June 2023, the Respondent purchased a fridge freezer at a cost of £292.95;
- xvi) On 28 June 2023, the Applicant attempted to have a further replacement fridge freezer delivered to the Property;
- xvii) On 11 September 2022, the Respondent notified a leak at the kitchen sink to the Applicant and, on that date, the Applicant advised that a plumber would attend the following day;
- xviii) The Respondent did not wait for the Applicant's plumber to attend and instructed a plumber herself;
- xix) There has been an ongoing repair issue with the shower at the Property for some months;
- xx) The Respondent has notified the Applicant of the repairs issue with shower on several occasions;
- xxi) The Applicant has attempt to effect a repair to the shower and continues to do so.
- xxii) The Applicant has a portfolio of twenty-one properties including the Property;
- xxiii) All of the properties in the Applicant's portfolio are subject to a secure mortgage;
- xxiv) The Applicant relies on regular payment of the full rent to finance the mortgage on the Property and the running costs;
- xxv) The Respondent is a single person and has two young children;
- xxvi) The Respondent and her children all have serious health conditions;

- xxvii) The Respondent is unable to work due to her and her children's health conditions;
- xxviii) The Respondent relies on her mother who lives locally to assist her on daily basis;
- xxix) The Respondent receives support from her children's school and nursery school;
- xxx) The Respondent receives support from a housing support worker.

### **Issue for the Tribunal**

37. The issue for the Tribunal was whether or not it should grant an Order for eviction in terms of Ground 12 of Schedule 3 to the Act as set out in the Application.

38. Ground 12 of Schedule 3 to the Act states *“(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 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. (5) For the purposes of this paragraph (a) references to a relevant benefit are to (i) a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971), (ii) a payment on account awarded under regulation 91 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. (6) Regulations under sub-paragraph (4)(b) may make provision about (a) information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy), (b) steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy, (c) such other matters as the Scottish Ministers consider appropriate.”*

### **Decision and Reasons for Decision**

39. The Tribunal had regard to all the information before it and to its Findings in Fact.
40. Having found that the Respondent has been in rent arrears for three or more consecutive months, the Tribunal found that the eviction Ground has been met.
41. The Tribunal then considered the Respondent's defence that she was withholding rent and was entitled to withhold rent. The Tribunal had no evidence that the Respondent had notified the Applicant that she was withholding rent or the reasons for the rent being withheld. The Tribunal had no evidence that the Property of the furnishing and fittings supplied by the Applicant were in a state of disrepair to justify rent being withheld. The Tribunal had no evidence that the Applicant had refused or had unreasonably delayed to carry out repairs notified by the Respondent. The Tribunal found that the Respondent had been unrealistic in her expectations of the Applicant's repairs response times and had been impatient in taking matters into her own hands without reasonable excuse to do so. Therefore, the Tribunal was not satisfied that the Respondent was entitled to withhold rent.
42. The Tribunal then considered if the Ground applies and if it is reasonable to grant the Order.
43. The Tribunal, having found that the Respondent is in receipt of Universal Credit with a housing cost element and is not awaiting any further benefits relating to housing costs, was satisfied the her being in arrears of rent over the period in question is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
44. The Tribunal noted that the Applicant had followed the statutory procedures and had followed the Government Guidance on pre-action protocols for notices issued after 1<sup>st</sup> October 2022.
45. The Tribunal then had regard to the circumstances of the Parties.
46. The Tribunal must establish, consider and properly weigh the "whole of the circumstances in which the application is made" (*Barclay v Hannah* 1947 S.C. 245 at 249 per Lord Moncrieff) when deciding whether it is reasonable to grant an order for possession.
47. The Tribunal then looked to balance the rights and interests of both parties.

48. The Tribunal found the evidence of Mr. D. Fallon to be straightforward and truthful without exaggeration. The Tribunal accepted that the Applicant relies on the rental income in order to meet the running costs of the Property. The Tribunal accepted that the Applicant is a professional landlord and is entitled to make a profit from its business without subsidy from its directors. The Tribunal had no reason to believe that the Applicant was not a reputable landlord or that the rent charged by Applicant was unreasonably high for the Property. The Tribunal had regard to the fact that the Respondent was not entitled to any further state assistance with payment of the rent, could not afford to make up the shortfall between the state benefit and the cost of the rent and could not make a greater contribution towards the arrears. The Tribunal took the view that the rental position is untenable for both Parties and is not likely to improve.
49. With regard to the Respondent's evidence, the Tribunal found her to be truthful in respect of her family's medical issues and her financial circumstances and had great sympathy for her and her family in those regards. However, the Tribunal noted that she could not afford to remain in the Property and had no real wish to do so. The Tribunal took the view that not granting the Order would not alleviate the Respondent's situation. With regard to alternative accommodation, the Tribunal had regard to the fact that, if evicted and made homeless, the Respondent and her family would have protection in terms of Part II of the Housing (Scotland) Act 1987 and so would be able to access accommodation suitable for their needs.
50. Accordingly, the Tribunal is satisfied that it is reasonable to grant the Order and so grants the Application.
51. Having found that it is reasonable to grant the Order, the Tribunal had regard to the particular circumstances of the Respondent's family's medical issues and considered it reasonable to stay the Order for a period of two months to allow further time for the relevant local authority to source suitable accommodation for the needs of the Respondent and her family.

## **Right of Appeal**

**In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by a 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.

**Karen Moore**

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**Legal Member**

**15 July 2024**  
**Date**