



**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 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)**

**Chamber Ref: FTS/HPC/EV/23/3584**

**Re: Property at 19 Cameron Drive, Auchinleck, KA18 2JE (“the Property”)**

**Parties:**

**Mr Shafiq Usman, 23 Catrine Road, Mauchline, KA5 6AA (“the Applicant”)**

**Ms Alanna Harrison, 19 Cameron Drive, Auchinleck, KA18 2JE (“the Respondent”)**

**Tribunal Members:**

**Nicola Weir (Legal Member) and Sandra Brydon (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 recovery of possession of the property be granted.**

**Background**

1. By application received on 10 October 2023, the Applicant applied to the Tribunal for an order for recovery of possession of the property in terms of Grounds 12 (rent arrears over 3 consecutive months and Ground 12A (substantial rent arrears) of Schedule 3 to the 2016 Act. Supporting documentation was submitted in respect of the application, including a copy of the tenancy agreement, the Notice to Leave/proof of service of same, the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003/proof of service of same and a Rent Statement showing the balance of rent arrears owing at the time of the Notice to Leave being served of £3,150. An payment application in respect of rent arrears amounting

to £4,050 was lodged at the same time and has been conjoined with this application.

2. Following initial procedure, the application was subsequently accepted by a Legal Member of the Tribunal acting with delegated powers from the Chamber President who issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations on 9 November 2023. Notification of the application was made to the Respondent, together with the date, time and arrangements for a Case Management Discussion (“CMD”). Service was made on the Respondent by way of Sheriff Officers on 13 December 2023. No written representations were lodged by the Respondent prior to the first CMD on 31 January 2024 and she did not attend the CMD which was only attended by the Applicant’s legal representative, Mr Gilius. At the CMD, the Tribunal heard submissions from Mr Gilius as to why the application should be allowed to proceed on both grounds 12 and 12A, given that only Ground 12 had been included in the Notice to Leave. The Tribunal decided that both grounds should be permitted in the circumstances. Both applications were adjourned on 31 January 2024 to a further CMD for further information to be provided by the Applicant and for the rent arrears figure to be updated.
3. Further CMDs were scheduled to take place on 26 February 2024 and 13 June 2024 but both were postponed at the request of the Applicant’s legal representative. A further CMD was scheduled for 22 October 2024 and details of same were notified to the Respondent by post on 17 September 2024.
4. On 13 June 2024, the Applicant’s legal representative lodged two Affidavits by email, one of the Applicant and one of his brother, Mr Imran Shafiq detailing the background to the applications, the rent arrears, attempts to engage with the Respondent regarding the matter, personal/financial information pertaining to the Applicant and some details regarding the Respondent’s circumstances (as far as known to the Applicant). On 5 September 2024, the Applicant’s legal representative emailed the Tribunal with further information, including an updated rent statement, an application to amend the sum claimed to £4,305 and copies of letters sent to the Respondent by the Applicant’s solicitors both dated 5 September 2024, attaching copies of the application to amend, the tenancy agreement, the updated rent statement and information in respect of the ‘pre-action protocol’.
5. All further information received was also circulated by post to the Respondent by the Tribunal. There was no engagement with the Tribunal, nor representations lodged with the Tribunal, by the Respondent prior to the further CMD on 22 October 2024.

### **Case Management Discussion**

1. The Case Management Discussion (“CMD”) took place by telephone conference call on 22 October 2024 at 10am, attended only by the Applicant’s legal representative, Ms Gillian McBlane of Black Hay solicitors. The

commencement of the CMD was delayed for 5 minutes to allow an opportunity for the Respondent to join late but she did not do so.

2. Following introductions and introductory remarks by the Legal Member and mention of the procedural background, Ms McBlane was asked to address the Tribunal on both applications. By way of background, Ms McBlane confirmed that there was a high level of cross-over in terms of the applications. She confirmed that, at the CMD in January 2024, the pre-action protocol had been discussed and the fact that the Applicant and his brother had tried to engage with the Respondent many times regarding the rent arrears. Ms McBlane referred to the detailed Affidavits lodged with the Tribunal since, from the Applicant and his brother, outlining the background circumstances and the Applicant's own financial circumstances. She also referred to the letters her firm had sent to the Respondent, one of which dated 5 September 2024, fulfilled the pre-action protocol requirements, in particular including a lot of information on various sources of help available to the Respondent regarding rent arrears, debt and housing advice. Ms McBlane explained that, since the date of the updated rent statement, one further payment has been received from the DWP on behalf of the Respondent in October 2024 in the sum of £475. The current level of arrears is accordingly now £4,035 and it is an order in that sum which is now sought in terms of the payment application.
3. As to the reasonableness of an eviction order being granted, Ms McBlane referred to the consistently high level of arrears. Reference was made to the updated Rent Statement and to the contents of the Affidavits lodged. The Applicant himself is a labourer and is not in receipt of a high salary. He is reliant on the rental income from this and his other property, in order to pay his mortgages. She did not know how much his monthly mortgage payments are in respect of this property or whether he has incurred any difficulties with mortgage arrears but said that the Applicant had explained the financial pressures on him as a result of these arrears. It was noted by the Tribunal that it appeared from the rent statement that no rent had been paid at all for the first six months of the tenancy and that there had been other gaps but that payments were now being received regularly from the DWP covering the rent. Ms McBlane conceded this but confirmed that the Applicant still wishes to seek an eviction order due to the unpredictability of the payment situation and the complete lack of engagement from the Respondent. Ms McBlane explained that the difficulty for the Applicant has been that the Respondent has never engaged, either with him or with her firm and they do not therefore know the explanation for the rent arrears or the reason for the various gaps in payments being received from the DWP. The DWP have not provided any information direct to the Applicant regarding the matter either. Ms McBlane confirmed that if the Respondent had engaged, there may have been the possibility of a payment arrangement being considered by the Applicant. However, the lack of engagement, explanation or payment proposals have led to the Applicant having no option but to seek these orders. Ms McBlane has no explanation as to why the October payment received was in the sum of £475, when previous payments from the DWP were £425. The Applicant's Affidavit contains all the information the Applicant knows concerning the Respondent's circumstances. Ms McBlane stated that she is thought to be in

her early 30s, with one child of unknown age and to be reliant on benefits, although it is unknown to what extent. The Applicant had also previously tried to speak to the Respondent's mother who lives in the near vicinity of the Property in an attempt to engage the Respondent. It is not known, due to the Respondent's failure to engage, whether she has sought alternative housing. In all the circumstances, Ms McBlane submitted that it was reasonable to grant the eviction order sought by the Applicant.

4. The Tribunal adjourned briefly to discuss and, on re-convening, advised that the Tribunal would grant the eviction order sought. Ms McBlane was thanked for her attendance.

### **Findings in Fact**

1. The Applicant is the owner and the landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy which commenced on 1 December 2022.
3. The monthly rent in terms of the tenancy is £112.50 per week (£450 per month).
4. There was a background of rent arrears, with no rent being paid for approximately the first 6 months of the tenancy, then a further period with rent payments being missed in February, March and April 2024.
5. The Respondent is understood to be in receipt of benefits and payments towards rent have been received direct from the DWP.
6. Rent payments of £425 per month were received from the DWP from May 2024 to date, with the most recent payment being £475 received in October 2024.
7. The Applicant and his solicitors have sought to contact the Respondent numerous times regarding the rent arrears and in respect of the pre-action protocol but have not been given any explanation, nor payment proposals in respect of the arrears.
8. The rent arrears outstanding when Notice to Leave was served amounted to £3,150.
9. The rent arrears when this application was submitted to the Tribunal on 10 October 2023 amounted to £4,050, rose to £4,305, and now amount to £4,035.
10. A Notice to Leave in proper form and giving the requisite period of notice was served on the Respondent by Sheriff Officer on 30 June 2023.

11. The date specified in the Notice to Leave as the earliest date an eviction application could be lodged with the Tribunal was specified as 29 July 2023.
12. The Tribunal Application was submitted on 10 October 2023.
13. The Respondent has been called upon to make payment of the rental arrears or enter into a satisfactory payment arrangement but has failed to do so.
14. The Respondent has been in arrears of rent for three or more consecutive months.
15. The Respondent has accrued rent arrears under the tenancy in respect of one or more periods and the cumulative amount of those arrears exceeded the equivalent of 6 months' rent both when the Notice to Leave was served and currently.
16. The Respondent did not submit any representations or attend either of the CMDs.

### **Reasons for Decision**

1. The Tribunal considered all of the background papers, including the application and supporting documentation and the oral submissions made on behalf of the Applicant by his solicitor, Ms McBlane at the CMD. The Tribunal noted that no representations had been made by the Respondent and that she did not attend either of the CMDs, having been properly and timeously notified of same.
2. The Tribunal found that the application was in order, that a Notice to Leave in proper form and giving the correct period of notice had been served on the Respondent and that the application was made timeously to the Tribunal, all in terms of the tenancy agreement and the relevant provisions of the 2016 Act.
3. The Tribunal considered the grounds of eviction relied upon in this application, namely Grounds 12 and 12A of Schedule 3 to the 2016 Act, as amended, and were satisfied that all requisite elements of each of these grounds had been met. The Tribunal was satisfied that the Respondent was still occupying the let Property, that there were substantial rent arrears, exceeding £4000, and that the rent had been continuously in arrears for a lengthy period of time, albeit that payments were currently being received regularly from the DWP .
4. As to reasonableness, all the factors mentioned above satisfied the Tribunal that it was also reasonable to grant an order in these circumstances and given the circumstances of both parties, and to do so at this stage. The Respondent had not entered into the Tribunal process which had been ongoing for some time and the Tribunal therefore had no material before it either to contradict the Applicant's position nor to advance any reasonableness arguments on

behalf of the Respondent. The Tribunal was satisfied that the Applicant was experiencing financial pressures as a result of the level of arrears and the persistent nature of the arrears. The Tribunal was also satisfied that the Applicant had done what he could to engage directly, and through his solicitors, with the Respondent. The Respondent had chosen not to engage with the Applicant or the Tribunal. Although the Tribunal is aware from the Applicant that the Respondent's rent has been paid via the DWP, there is no indication that any of the arrears are due to a failure or delay in the payment of a relevant benefit, nor any certainty that further payments would be made. There is no information before the Tribunal from either the Respondent herself or the DWP explaining the position. Accordingly, the Tribunal determined that an order for recovery of possession of the Property could properly be granted at the CMD as, in the circumstances, there was no need for an Evidential Hearing.

### **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.**

# Nicola Weir

Legal Member/Chair \_\_\_\_\_

**22 October 2024**  
Date