

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber)**

**Chamber Ref: FTS/HPC/EV/23/1819**

**Re: Property at 1/1 49 Kenley Road, Renfrew, PA4 8BN (“the Property”)**

**Parties:**

**Lowther Homes Limited, 25 Cochrane Street, Glasgow, G1 1HL (“the Applicants”)**

**Mr Gavin Dickie, Ms Samantha Smith, 1/1 49 Kenley Road, Renfrew, PA4 8BN  
 (“the Respondents”)**

**Tribunal Members:**

**Virgil Crawford (Legal Member) and Gordon Laurie (Ordinary Member)**

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

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

**BACKGROUND**

1. By Lease dated 30<sup>th</sup> July 2021 the Applicant let the Property to the Respondents.
2. Rent was initially payable at £650.00 per month. That was subsequently increased on various occasions, most recently the rent being £740.70 per calendar month.
3. Arrears of rent have been accruing since May 2022. As a result, on 17<sup>th</sup> April 2023, a Notice to Leave was served upon the Respondents. The ground of

eviction was ground 12A of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act).

4. At the date of service of the Notice to Leave arrears of rent amounted to £4,378.00.
5. A Notice in terms of s11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the local authority.
6. On 3<sup>rd</sup> June 2023, the Applicants presented an application to the Tribunal seeking an eviction order.
7. On the same date, a separate application was submitted seeking a payment order in relation to rent arrears. As at the date of that application the arrears had increased to £5,697.50. That application has been disposed of separately, but the history of rent arrears is relevant to these proceedings.
8. A case management discussion was assigned to take place by teleconference on 2<sup>nd</sup> October 2023. Prior to that case management discussion an updated rent statement was provided to the Tribunal. The updated rent statement indicated that, as at 1<sup>st</sup> September 2023, arrears of rent amounted to £7,716.33.

#### **CASE MANAGEMENT DISCUSSION 2<sup>ND</sup> OCTOBER 2023**

9. At the case management discussion on 2<sup>nd</sup> October 2023 the Applicants were represented by Mr D Adams, Solicitor. The Respondents did not participate in the case management discussion.
10. Mr Adams moved the Tribunal to grant an order for eviction. Despite the absence of the Respondents, the Tribunal sought further information in relation to the Respondents. The Tribunal was advised of the following:-
  - a. Mr Adams understands that, since the proceedings have been raised, Mr Dickie has vacated the premises although Miss Smith is still in occupation.
  - b. It is understood that Miss Smith has a teenage son, believed to be approximately 15 or 16 years of age, residing with her.
  - c. There are no known health concerns in relation to the Respondents nor the teenager residing at the Property.
  - d. The Applicants have no information as to why rent has not been paid.
  - e. The Applicants have previously engaged with the Respondents in relation to making an arrangement for payment of arrears. Earlier in 2023 it had been agreed that a payment of £1,000.00 would be made in April 2023, a payment of £1,000.00 the following month

with payments thereafter being at the rate of £910.00 per month. None of those payments have been made.

- f. It is believed Miss Smith receives Universal Credit. There are no known difficulties with payments of Universal Credit and no reason has been provided as to why any benefit payments have not been made in relation to rent.

11. On the basis of the information then available, and the absence of the Respondents, the Tribunal granted an order for eviction.

### **APPLICATION TO RECALL DECISION OF 2<sup>ND</sup> OCTOBER 2023**

12. The Second Respondent thereafter presented an application seeking a recall of that decision. In the recall application she provided an explanation as to her failure to participate in the case management discussion and provided information which may have led the Tribunal to conclude that it was not reasonable to grant an order for eviction. In particular, the application to recall the decision advised:- The Application for recall provided significant information which was not available to the Tribunal when it made its previous decision to grant an order for eviction. In particular, the Application seeking recall of the previous decision advised:-

- a) While the lease was in the joint names of the Respondents, the Respondents are now separated, the First Respondent having left the Property and left the Second Respondent with all financial responsibilities.
- b) She could not participate in the Case Management Discussion as her mother had passed away suddenly and the funeral was on 3<sup>rd</sup> October 2023. She was not "in the right frame of mind or in a good place".
- c) She is willing to enter into a payment plan to resolve the arrears.
- d) Her son has mental health issues and an eviction will affect him.

13. The Tribunal recalled the earlier decision and assigned a further case management discussion.

### **CASE MANAGEMENT DISCUSSION 5<sup>TH</sup> APRIL 2024**

14. A further case management discussion was assigned for 5<sup>th</sup> April 2024. On that day the Applicants failed to attend. The Respondents also failed to attend. Due to the failure of the Applicants to attend, the Tribunal dismissed the application for want of insistence.

### **APPLICATION TO RECALL DECISION OF 5<sup>TH</sup> APRIL 2024**

15. The Applicants, thereafter, presented an application to recall that decision with a reason being provided in relation to the failure of the Applicant's

representative to attend and also provided information suggesting that it was reasonable that an eviction order be granted in the circumstances of this case.

16. The Tribunal granted that recall application also and, given the clear conflict between the parties in relation to the issue of reasonableness, determined that it was appropriate to assign a hearing.

17. A hearing was assigned for 13<sup>th</sup> December 2024 to be conducted by teleconference.

## **HEARING ON 13<sup>TH</sup> DECEMBER 2024**

18. In advance of the hearing an updated rent statement was provided to the Tribunal by the Applicants. This indicated that, as of 1<sup>st</sup> November 2024, arrears of rent had increased to £17,474.53. No payments had been made since March 2023.

19. The Applicants were represented by Mrs Graham of Wheatley Housing Group Litigation team. The Respondents did not participate in the hearing. The Tribunal, however, being satisfied that the Respondents were aware of the date and time of the hearing, determined that it was appropriate to proceed with the hearing in the absence of the Respondents in accordance with Rule 29 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

20. Mrs Graham, on behalf of the Applicants, moved the Tribunal to grant an order for eviction. She advised the Tribunal that, since the last rent statement provided, a further rental payment has been missed. Rent arrears now amounted to £18,215.23.

21. It is the understanding of the Applicants that the First Named Respondent has vacated the premises some time ago. The Second Named Respondent is believed still to be in occupation.

22. No payments of rent have been made since March 2023. Arrears of rent existed even following that payment. The arrears of rent have increased consistently since then. The Applicants are not aware of any problems in payment of housing benefit nor universal credit. It is understood by the Applicants that the Second Named Respondent does receive universal credit, but no payments are being made to the Applicants from that.

23. While the Second Named Respondent had, in her application seeking recall of the decision dated 2<sup>nd</sup> October 2023, provided certain information in relation to her son and health issues affecting him, no further information had, at any stage, been placed before the Tribunal in relation to that matter.

24. Mrs Graham, quite properly, advised the Tribunal that the Second Named Respondent had contacted the Applicants the evening before the hearing. She had made contact to advise that she was unwell and wished the Tribunal hearing to be postponed. Mrs Graham believed this was by way of telephone call but, upon further questioning by the Tribunal, conceded that she could not be certain about that, the contact may have been by email. The Second Named Respondent thereafter forwarded an email to the external legal correspondence e mail box at the Applicants' organisation in which she indicated that she was unwell, believed she had COVID, her throat was sore or swollen and she was unable to speak. She was requesting a postponement of the hearing.
25. The Tribunal noted that the Respondents had not communicated with the Tribunal seeking a postponement nor providing any reasons for the same. The medical information provided through the Applicants was, clearly, unvouched. It did, however, make it perfectly clear to the Tribunal that the Respondents were aware of the proceedings and the fact the hearing was calling on 13<sup>th</sup> December 2024 at 10am.
26. Having regard to the lengthy history of the case, the very significant arrears of rent, the absence of any payment of rent whatsoever since March 2023, and the absence of any representations made by the Respondents, the Tribunal concluded that it was reasonable and appropriate that an order for eviction be granted.

## **REASONS FOR DECISION**

27. This case has a lamentable history. It is regrettable that it has taken a period of more than one year from the first case management discussion for a hearing to be conducted. The passage of time, however, has served only to show that the Respondents are not paying rent and, as indicated previously, have not paid anything towards rent since March 2023.
28. In an application to the Tribunal seeking a recall of the decision dated 2<sup>nd</sup> October 2023, the Second Named Respondent advised that she was willing to enter into a payment plan to resolve the issue of arrears. That, clearly, did not happen. Not only was no payment plan entered into to reduce arrears, no payments have been made in relation to ongoing rent.
29. The level of outstanding arrears is equivalent to 2 years' worth of unpaid rent. In those circumstances, the Tribunal determined that it was, indeed, reasonable that an order for eviction being granted. The Tribunal was also satisfied the pre-action protocol had been complied with.

30. With the exception of presenting an application seeking recall of the decision dated 2<sup>nd</sup> October 2023, the Respondents have not otherwise engaged meaningfully with the Tribunal. With the exception of limited information contained within the email seeking a recall of said decision, no information nor evidence has been placed before the Tribunal, on behalf of the Respondents, to suggest that it was anything other than reasonable to grant an order for eviction having regard to the substantial arrears of rent.
31. In the circumstances, despite the information provided, by the Applicants' representative in relation to the alleged unfitness of the Second Named Respondent to participate on 13<sup>th</sup> December 2024, the Tribunal did not consider it appropriate to prolong the proceedings any further. The medical information provided in relation to the unfitness of the Second Named Respondent is unvouched. Separately, any adjournment of the proceedings would, it would appear, simply prolong them and afford the Respondents a further opportunity to remain within the Property without payment of rent.
32. The Respondents have had ample opportunity to provide written submissions and to present any other evidence deemed appropriate by them to support any argument in relation to reasonableness. In the absence of having done so throughout the history of the case before the Tribunal, the Tribunal did not consider it appropriate to adjourn proceedings further.
33. In all the circumstances, it is reasonable that an order for eviction be granted.

## **DECISION**

The Tribunal granted an order against the Respondents for eviction of the Respondents from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 12A of schedule 3 of said Act.

Order not to be executed prior to 12 noon on 20<sup>th</sup> January 2025

## **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.**

# V.Crawford

**13<sup>th</sup> December 2024**

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**Legal Member/Chair**

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**Date**