



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/EV/24/1799**

**Re: Property at 11 Jarvie Crescent, Kilsyth, Glasgow, North Lanarkshire, G65 0LN (“the Property”)**

**Parties:**

**Mr James Martin, Mrs Joan Martin, 64 High Street, Pittenweem, Anstruther, KY10 2PJ (“the Applicant”)**

**Mr Gordon Speirs, 11 Jarvie Crescent, Kilsyth, Glasgow, North Lanarkshire, G65 0LN (“the Respondent”)**

**Tribunal Members:**

**Mary-Claire Kelly (Legal Member) and Gerard Darroch (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for eviction.**

**Background**

1. By application dated 19 April 2024 the applicants seek an order for eviction relying on ground 12 (rent arrears) in schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.
2. The application was conjoined with application ref: FTS/CV/24/1800 in terms of which the applicants seek an order for payment in the sum of £8330 in respect of rent arrears.
3. The applicant lodged the following documents with the application:
  - Copy tenancy agreement

- Notice to Leave with proof of service
  - Rent statement
  - Pre action requirements letter
  - Notice under section 11 of the Homelessness Etc. (Scotland) Act 2003.
4. A case management discussion “cmd” was assigned for both cases on 9 September 2024.

**Case management discussion – 9 September 2024 – teleconference**

5. The applicants were represented by Ms Mullen, solicitor, TC Young solicitors. The respondent attended on his own behalf.
6. Ms Mullen sought an order for repossession relying on ground 12. Ms Mullen set out the impact that the respondent’s conduct was having on the applicants. She explained that both applicants were 75 years old. Mrs Martin is in poor health due to a severe stroke, and Mr Martin is her primary carer. They have outgoings arising from the need for support and to carry out adjustments to their property due to Mrs Martin’s mobility issues. They have been impacted by the stress of the non-payment of rent in the tenancy. She advised that there was no outstanding mortgage over the property. She stated that the respondent’s conduct had been unreasonable in particular as he had claimed housing costs as part of his universal credit claim which he had been in receipt of since February 2024 however, he had not paid any money to the applicants.
7. The respondent opposed an order for eviction. The respondent had not lodged any written representations or evidence in advance of the cmd.
8. The respondent did not dispute the level of rent arrears. He stated that he was in receipt of housing costs payment of £320 as part of his Universal Credit payment. The respondent stated that he had been receiving the housing payment since February 2024. He stated that he had contacted the letting agents in February to arrange for payment of part of the rent to be made to them however they had refused to engage with him to discuss payments or to accept partial payment of the rent.
9. The respondent stated that he expected to secure employment as a software engineer in the near future. Once in employment he would be able to make significant payment towards the outstanding sums due.

10. As the respondent disputed the reasonableness of granting an order for eviction the Tribunal fixed a hearing. A Direction was issued to parties on 12 September 2024. The Direction required the respondent to lodge written representations setting out his defence to the application by 30 September 2024. The Direction also required both parties to lodge any documents they sought to rely on and any list of witnesses by 13 December 2024.
11. The respondent did not lodge any documents or representations after the cmd.
12. The applicant's representative lodged the following additional documents:
  - Updated rent statement to December 2024
  - Letter from Mr Martin's General Practitioner dated 23 September 2024
  - Letter from Mrs Martin's General Practitioner dated 19 November 2024
  - Email from applicants' daughter dated 8 October 2024
  - Various emails between the respondent and the applicants' letting agent
  - Correspondence from TC Young to the respondent

### **Hearing – 9 January 2025 – teleconference**

13. The applicants were both in attendance with their solicitor, Ms Brechany, TC Young. The respondent was not present or represented. The Tribunal was satisfied that the respondent had received proper notice of the cmd and proceeded with the hearing in his absence in terms of rule 29.
14. The Tribunal proceeded to hear submissions from Ms Brechany and evidence from the respondents.
15. Ms Brechany sought an order for eviction. She submitted that ground 12 had been established. The rent accounts which had had been lodged showed that arrears had stood at £8330 as at 3 December 2024. She stated that no rent had been paid since June 2023. Ms Brechany stated that as the level and duration of rent arrears fulfilled the requirements of ground 12 the only question for the Tribunal was whether it was reasonable to grant an order.
16. Ms Brechany referred to the length of time that the respondent had been in arrears and his failure to adhere to any repayment arrangement or address the issue. She stated that the respondent had been living rent free in the property since June 2023. She referred to the emails which had been lodged between

the respondent and the letting agent. These showed that the letting agent had made numerous attempts to engage with the respondent to resolve the arrears issue. She stated that the applicants had delayed taking action to recover the property as the respondent had made an offer to repay the arrears however he had not adhered to the offer.

17. Ms Brechany referred to the medical reports that had been lodged. She stated that the applicants are both elderly and retired. She stated that the respondent's failure to pay rent had an impact on their financial situation.
18. Mr Martin stated that his wife had suffered a stroke which had left her paralysed. He stated that he is her full time carer. Mr Martin stated that when the respondent first got into arrears he was keen to try and reach an agreement to resolve the issue. He stated that he had tried to reach out to the respondent and had put off raising proceedings to see if an arrangement could be put in place. Mr Martin stated that there were expenses associated with the property such as maintaining the garden which he had to cover due to the absence of rental income. He stated that he was concerned about the condition of the property. He stated that the respondent had changed the locks and was refusing to allow access for maintenance and other requirements such as gas safety inspections. He stated that the rent for the property was lower than average and that the property had a garage included. He stated that there were 3 cars on the property when he last visited.
19. Mr Martin referred to the email that had been lodged from his daughter. He confirmed that he provided financial support to his daughter as she suffered from a chronic illness which meant that she had to reduce her working hours.
20. Mr Martin stated that the respondent had been receiving universal credit housing costs. TC Young had written to him asking for information that was required to request direct payment of the benefit to the applicants. The respondent had not replied and had not provided the required information.
21. Mrs Martin stated that it had been very distressing to see the effect that the issues with the property had on Mr Martin.

### **Findings in fact and law**

22. Parties entered into a tenancy agreement with a commencement date of 3 November 2020.
23. Monthly rent due in terms of the agreement was initially £495.
24. The monthly rent increased to £515 from 3 June 2022 and to £545 from October 2024.
25. Arrears as at 3 December 2024 amounted to £8330.
26. The respondent has not made any payments towards the rent or arrears since June 2023.
27. The respondent received universal credit housing costs benefits in the amount of £320 per month since February 2024.
28. The respondent has not paid the universal credit housing costs benefits payments towards his rent.
29. The applicants' letting agent made a number of attempts to engage with the respondent to enter into a repayment agreement in respect of rent arrears.
30. The respondent has failed to engage with the applicants' agents to address the outstanding arrears.
31. The applicants' personal health and wellbeing has been impacted by the respondent's conduct.
32. The respondent refuses to allow access to the property for the purpose of carrying out essential health and safety checks.
33. The applicants complied with the pre-action requirements set out in the Rent Arrears Pre Action-Requirements (Coronavirus) (Scotland) Regulations 2020.
34. Ground 12, in schedule 3 of the 2016 Act has been established.
35. It is reasonable to grant an order for eviction.

### **Reasons for the decision**

36. The Tribunal had regard to the application and the documents lodged by the applicant. The Tribunal also took into account the oral submissions and evidence provided at the cmd on 9 September 2024 and at the hearing on 9 January 2025.
37. Ground 12 states:

12(1) *It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.*

(2) .....

(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.*

38. The Tribunal was satisfied on the basis of the rent accounts that had been lodged that the respondent had been in arrears of rent for a period in excess of three months.

39. In relation to question of reasonableness the Tribunal determined that the correspondence sent to the respondent complied with the pre-action requirements. The Tribunal had regard to the correspondence that had been lodged and accepted that the respondent had been provided with information relating to the rent arrears and guidance on how to access assistance in compliance with the pre-action requirements.

40. The Tribunal was satisfied that the arrears at the property amounted to £8330 as at the date of the hearing. The respondent had not disputed the amount of the arrears at the cmd and had not stated that the arrears were in any part due to issues with benefits.

41. The Tribunal noted the high level of arrears, which continued to rise and that no payment had been made by the respondent since June 2023. The Tribunal gave great weight to the fact that the respondent had been living in the property

without paying rent since June 2023 and that by his own admission at the cmd he had been receiving housing costs benefits. He had kept the benefits payment for himself rather than using them to pay the rent. The Tribunal accepted the evidence of the applicants that they had requested information that would allow the benefit to be paid directly to the letting agent and that the respondent had not replied.

42. The Tribunal also gave significant weight to the fact that the respondent had attended the cmd to oppose an order being granted. He had stated that he would commence payments towards the arrears and seek to enter into an arrangement. He had not done so. The Tribunal determined that the respondent had nothing to resolve the arrears issue in the 4 month period since the cmd and the arrears had risen further.
43. The Tribunal accepted the evidence of Mr and Mrs Martin in its entirety. The Tribunal found them to be sincere and honest. The Tribunal gave weight to the impact that the extended period of rent arrears had on them personally and the particular difficulties this caused given their own health and caring issues.
44. The Tribunal also gave weight to the financial implications of non-payment of rent on the applicants who had a reduced income as a result which impacted on their ability to meet their own commitments.
45. Against the information provided by the applicants and Ms Brechany the respondent had not provided any information beyond his oral submissions at the cmd. The Tribunal took into account that the property had been the respondent's home since November 2020 and that he had stated that he resided there with his partner who had some health issues.
46. Having taken the foregoing factors into account the Tribunal determined that on balance it was reasonable to grant an order for eviction.

## **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.**

Mary-Claire Kelly

9 January 2025

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Legal Member/Chair

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Date