



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 18 of the Housing (Scotland) Act  
1988**

**Chamber Ref: FTS/HPC/EV/24/2649**

**Re: Property at 45 Halidon Avenue, Greenfaulds, Cumbernauld, G67 4FB (“the  
Property”)**

**Parties:**

**Mrs Karen Colville - Walker, 26 Kirkview, Condorrat, Cumbernauld, G67 4EH (“the  
Applicant”)**

**Mr Suraj Salhotra, 45 Halidon Avenue, Greenfaulds, Cumbernauld, G67 4FB (“the  
Respondent”)**

**Tribunal Members:**

**Gillian Buchanan (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision**

At the Case Management Discussion (“CMD”), which took place by telephone conference on 9 December 2024, the Applicant was not in attendance but was represented by Ms Donna Cramb of K Property. The Respondent was present.

Prior to the CMD the Tribunal received the following additional documents:-

- i. From the Respondent an email dated 4 December 2024 with attachments.
- ii. From the Applicant’s representative two emails dated 6 December 2024 with attachments.

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

**Background**

The Tribunal noted the following background:-

- i. The Applicant is a heritable proprietor of the Property along with three other persons.
- ii. The Applicant leased the Property to the Respondent in terms of a Short Assured Tenancy (“the Tenancy”) that commenced on 9 May 2016.
- iii. The initial term of the Tenancy was for the period to 9 November 2016.
- iv. The Tenancy has continued tacitly thereafter on a 6 monthly basis.
- v. The rent payable is £500 per calendar month.

- vi. On 17 May 2024, the Applicant served on the Respondent by Sheriff Officers a Form AT6 Notice of Intention to Raise Proceedings for Possession of the Property under section 18 of the Housing (Scotland) Act 1988 ("the 1988 Act") and Grounds 11 and 12 of Schedule 5 thereto requiring the Respondent remove from the Property by 4 June 2024.
- vii. On 11 January 2024 in the absence of the Respondent, the Tribunal granted a payment order against the Respondent in favour of the Applicant in a sum of £14,000 being arrears of rent due by the Applicant as at 9 May 2023.
- viii. The Applicant has served on North Lanarkshire Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.

None of the foregoing matters were in dispute.

This application is for an eviction order against the Respondent in favour of the Applicant.

### **The CMD**

At the CMD the parties made the following oral representations:-

#### *Ms Cramb for the Applicant*

- i. The Applicant seeks an eviction order.
- ii. The current rent arrears balance as at 9 November 2023 is £22,000.
- iii. There have been no payments made by the Respondent towards the rent arrears of £14,000 ordered to be paid by the Tribunal by virtue of its decision dated 11 January 2024 (reference FTS/HPC/CV/23/3166).
- iv. No steps have been taken to enforce the existing payment Order which is on hold. It is the Applicant's intention to make another payment application to the Tribunal for the balance of the rent arrears now due.
- v. The last payment received from the Respondent was on 16 August 2022.
- vi. The Respondent has offered to purchase the Property. The Applicant has declined that offer. She does not wish to sell the Property.
- vii. Pre-action protocol letters were sent on 31 May 2022 when the rent arrears were £7000 and on 14 November 2022 when the rent arrears had increased to £9500.
- viii. The Respondent remains in occupation of the Property.
- ix. The Respondent has not formally indicated that he is withholding payment of rent on account of outstanding repairs.
- x. The environmental health department of the local authority got in touch in around 2021 as result of a complaint made by the Respondent. It was determined that no further action was required.
- xi. Whilst the shower screen was previously leaking and the Applicant intended to replace the shower screen, instead a shower curtain was installed. The Respondent has been able to use of the shower and on contacting the Scottish Association of Landlords Ms Cramb was advised that no replacement of the shower screen was necessary.

#### *The Respondent*

- i. The Respondent lives in the Property alone.
- ii. He is not in employment. He ceased working after Covid due to an injury to his leg. He has not worked since.
- iii. He is in receipt of Employment Support Allowance.
- iv. He has no assistance with housing costs.

- v. He applied for Housing Benefit approximately 4 months ago. That application is pending and he has not chased for it to be progressed.
- vi. In response to a question from the Tribunal as to why a Respondent did not previously apply for financial help with his housing costs he stated that he never knew that to be an option, that he was "a bit confused" and he did not know who to turn to.
- vii. He referred to the arrangements with the Applicant and the Applicant's Letting Agent as being stressful.
- viii. The Respondent accepted that he could not live in the Property rent free.
- ix. He also accepted that the Applicant did not require to sell the Property to him.
- x. He accepted rent to be payable for his occupation of the Property provided the Property is in a liveable state.
- xi. The Tribunal stated to the Respondent that no evidence had been presented that the Property is not habitable. The Respondent referred to a letter from Mr McCulloch of the local authority but on checking he accepted no such letter had been lodged with the Tribunal.
- xii. He stated the shower has not been used since 2022.
- xiii. With regard to the previous payment Order granted by the Tribunal on 11 January 2024 the Respondent accepted he had not attended the Case Management Discussion that day as he was not feeling well.
- xiv. He accepted that he had not made any payments towards the debt due in terms of that payment Order.
- xv. He has more recently spoken to the Citizens Advice Bureau and a moratorium had been put in place so that the payment Order could not be enforced meantime. That took place in August 2024 and he accepted the moratorium would expire 6 months thereafter.
- xvi. With regard to the total rent arrears of £22,000 said to be due, the Respondent said he did not accept that figure but he did not give the Tribunal details of any payments that he had made that had not been taken into account nor articulate any errors in the rent calculation. He said he would need to check his records.
- xvii. The Respondent said there had been no problem with the tenancy until Covid. Thereafter any time he contacted the Letting Agent for repairs he was always ignored.
- xviii. He maintained there was a personal issue between the Letting Agent and his sister. He was warned not to allow his sister into the Property. The Applicant and Letting Agent have tried to control who is allowed and who is not allowed into the Property.
- xix. The Respondent sought to make representations as to why he lost his job. However, the Tribunal did not consider such representations to be relevant to the issues in the application.
- xx. He said the Applicant had inspected the Property herself and said she would see what she could do with regard to the shower screen. He said that she had come to "attack" him and talk about the rent arrears. The Tribunal questioned why there was an issue in the Applicant discussing outstanding rent whilst carrying out an inspection.
- xxi. With regard to the bath, the Respondent said it is not functional as it leaks. The Letting Agent is aware of the position whereby water leaks out from underneath and into another room. He does not want to turn the water on in the bath in case it causes damage to the Property. That issue has been ongoing since 2022.
- xxii. He said the shower curtain is not fitted properly and accordingly he cannot turn it on or there will be water leaking into the bedroom.

- xxiii. The Tribunal asked whether the Respondent had raised any Tribunal proceedings for breach of the Repairing Standard. The Respondent confirmed he had not done so.
- xxiv. He said if he had been told that his offer to buy the Property was unacceptable he would have looked at other options. He needs more time.
- xxv. He would like to lodge applications for a breach of the Repairing Standard.
- xxvi. He would intend to pay the arrears but repairs need to be carried out.
- xxvii. He is also looking to move out of the Property as relationships have broken down.
- xxviii. The Tribunal asked whether there was a realistic prospect of him making a definitive proposal to pay the arrears. He said he had no savings and was not working but would discuss the position with his family.
- xxix. The Respondent was asked whether he remembered getting the pre-action protocol letters from the Letting Agent which point to sources of financial help and support with housing costs. He said he couldn't remember these letters. He had only contacted the Citizens Advice Bureau recently with regard to the payment Order.
- xxx. He said he was suffering mentally as a consequence of living without a shower.
- xxxi. He said that there is no property available for him to move to.
- xxxii. The Respondent said he had not spoken to the local authority about housing.

*Further Submissions for the Applicant in reply*

- i. Ms Cramb said she was not aware of any issue with the bath. A contractor had repaired previously and no further reports had been made.
- ii. The shower screen and shower curtain are both in place relative to the shower.
- iii. The Respondent should not be afforded any further time. He has already had around 8 weeks notification of the CMD.
- iv. Ms Cramb told the Respondent orally during a telephone call that the Applicant did not want to sell the Property.

The Tribunal adjourned to consider the parties' written and oral submissions.

**Findings in Fact**

The Tribunal made the following findings in fact :-

- i. The Applicant is a heritable proprietor of the Property along with three other persons.
- ii. The Applicant leased the Property to the Respondent in terms of the Tenancy that commenced on 9 May 2016.
- iii. The initial term of the Tenancy was for the period to 9 November 2016.
- iv. The Tenancy has continued tacitly thereafter on a 6 monthly basis.
- v. The rent payable is £500 per calendar month.
- vi. On 17 May 2024, the Applicant served on the Respondent by Sheriff Officers a Form AT6 Notice of Intention to Raise Proceedings for Possession of the Property under section 18 of the Housing (Scotland) Act 1988 ("the 1988 Act") and Grounds 11 and 12 of Schedule 5 thereto requiring the Respondent remove from the Property by 4 June 2024.
- vii. On 11 January 2024 in the absence of the Respondent, the Tribunal granted a payment order against the Respondent in favour of the Applicant in a sum of £14,000 being arrears of rent due by the Applicant as at 9 May 2023, reference FTS/HPC/CV/23/3166.
- viii. The current rent arrears balance as at 9 November 2023 is £22,000.

- ix. There have been no payments made by the Respondent towards the rent arrears of £14,000 ordered to be paid by the Tribunal by virtue of its decision dated 11 January 2024.
- x. The last payment received from the Respondent was on 16 August 2022.
- xi. Pre-action protocol letters were sent on 31 May 2022 when the rent arrears were £7000 and on 14 November 2022 when the rent arrears had increased to £9500.
- xii. The Respondent remains in occupation of the Property.
- xiii. The Respondent lives in the Property alone.
- xiv. He is not in employment.
- xv. He is in receipt of Employment Support Allowance.
- xvi. He currently has no assistance with housing costs having made no application for available financial assistance until August 2024.
- xvii. He has no savings.

### **Reasons for Decision**

The application proceeds upon Section 18 of the 1988 Act and Grounds 11 and 12 of Schedule 5 thereof.

Section 18 states:-

*"18.— Orders for possession.*

*(1) The First-tier Tribunal shall not make an order for possession of a house let on an assured tenancy except on one or more of the grounds set out in Schedule 5 to this Act.*

*(2) The following provisions of this section have effect, subject to section 19 below, in relation to proceedings for the recovery of possession of a house let on an assured tenancy.*

*(4) If the First-tier Tribunal is satisfied that any of the grounds in Part I or II of Schedule 5 to this Act is established, the Tribunal shall not make an order for possession unless the Tribunal considers it reasonable to do so.*

*(4A) In considering for the purposes of subsection (4) above whether it is reasonable to make an order for possession on Ground 11 or 12 in Part II of Schedule 5 to this Act, the First-tier Tribunal shall have regard, in particular, to -*

*(a) the extent to which any delay or failure to pay rent taken into account by the Tribunal in determining that the Ground is established is or was a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit, and*

*(b) the extent to which the landlord has complied with the pre-action protocol specified by the Scottish Ministers in regulations.*

*(5) Part III of Schedule 5 to this Act shall have effect for supplementing Ground 9 in that Schedule and Part IV of that Schedule shall have effect in relation to notices given as mentioned in Grounds 1 to 5 of that Schedule.*

*(6) The First-tier Tribunal shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless—*

*(a) the ground for possession is Ground 2 in Part I of Schedule 5 to this Act or any of the grounds in Part II of that Schedule, other than Ground 9, Ground 10, Ground 15 or Ground 17; and*

*(b) the terms of the tenancy make provision for it to be brought to an end on the ground in question.*

*(6A) Nothing in subsection (6) above affects the First-tier Tribunal's power to make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, where the ground for possession is Ground 15 in Part II of Schedule 5 to this Act.*

*(7) Subject to the preceding provisions of this section, the First-tier Tribunal may make an order for possession of a house on grounds relating to a contractual tenancy which has been terminated; and where an order is made in such circumstances, any statutory assured tenancy which has arisen on that termination shall, without any notice, end on the day on which the order takes effect.*

*(8) In subsection (4A) above—*

*(a) "relevant housing benefit" means—*

*(i) any rent allowance or rent rebate to which the tenant was entitled in respect of the rent under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971); or*

*(ii) any payment on account of any such entitlement awarded under Regulation 91 of those Regulations;*

*(aa) "relevant universal credit" means universal credit to which the tenant was entitled which includes an amount under section 11 of the Welfare Reform Act 2012 in respect of the rent;*

*(b) references to delay or failure in the payment of relevant housing benefit or relevant universal credit do not include such delay or failure so far as referable to any act or omission of the tenant.*

*(9) Regulations under subsection (4A)(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.*

*(10) Regulations under subsection (4A)(b) are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10))."*

Schedule 5 Grounds 11 states:-

*"Whether or not any rent is in arrears on the date on which proceedings for possession are begun, the tenant has persistently delayed paying rent which has become lawfully due."*

Schedule 5 Ground 12 states:-

*"Some rent lawfully due from the tenant—*

*(a) is unpaid on the date on which the proceedings for possession are begun; and*

*(b) except where subsection (1)(b) of section 19 of this Act applies, was in arrears at the date of the service of the notice under that section relating to those proceedings."*

A Payment Order exists against the Respondent in a sum of £14,000, granted by the Tribunal on 11 January 2024, reference FTS/HPC/CV/23/3166. The decision of the Tribunal relative to that Payment Order refers to those sums being due as at 9 May 2023. The Respondent did not oppose the grant of that Payment Order and admits the entire sum due in terms thereof to be outstanding.

On that basis alone Grounds 11 and 12 of Schedule 5 are met. The debt due in terms of the Payment Order is very substantial and amounts to in excess of 2 years of rent. On any view it is reasonable to grant an eviction order having regard to the extent of those arrears. The Tribunal therefore grants an eviction order against the Respondent in favour of the Applicant.

For completeness and with regard to other issues raised during the course of the CMD, the Respondent disputes the total arrears balance of £22,000 stated to be due but offered no evidence of payments made but missed from the calculation or of errors in the calculation.

No evidence has been produced by the Respondent to support his contention that the Property does not meet the Repairing Standard and he has made no application to the Tribunal for a Repairing Standard Enforcement Order.

He has made no effort to pursue sources of financial help to support him with his housing costs until August 2024 when he stated a Housing Benefit application was made which is yet undetermined.

The Tribunal was not at all satisfied that the Respondent had any tangible explanation to justify his continuing non-payment of rent. By his own admission he is only in receipt of ESA and has no savings.

Having reached the decision to grant an eviction order the Tribunal carefully considered whether to delay the execution of the eviction order in terms of Rule 16A(d) of the First-tier Tribunal Housing and Property Chamber Rules of Procedure 2017. The Tribunal concluded that it is reasonable to provide the Respondent with an extended period of time to secure

alternative accommodation given the intervening festive period. Accordingly, the Tribunal determined that enforcement of the eviction order should be suspended to 9 February 2025.

**Decision**

An eviction order is granted by the Tribunal against the respondent in favour of the Applicant suspended to 9 February 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.**

**Gillian Buchanan  
Legal Member/Chair**

**9 December 2024  
Date**