

**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/24/2192**

**Re: Property at 81 Bloomfield, Edinburgh Road, Dumfries, DG1 1SF (“the  
Property”)**

**Parties:**

**Mr Peter Best, Dalscone Farm, Edinburgh Road, Dumfries, DG1 1SE (“the  
Applicant”)**

**Miss Leanne Graham, 81 Bloomfield, Edinburgh Road, Dumfries, DG1 1SF  
 (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Angus Lamont (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
tribunal”) determined to make an eviction order with execution of the order  
suspended for a period of eight weeks from the date of this decision**

**Background**

1. By application to the tribunal dated 10 May 2024 the Applicant sought an eviction order against the Respondent in respect of the Property under Rule 65 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”) and section 18 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Applicant relied upon grounds 11 and 12 of Schedule 5 of the 1988 Act. In support of the application the Applicant provided the following documentation:-
  - (i) Lease between the parties and Form AT5;
  - (ii) Notice to quit dated 19 March 2024;
  - (iii) Form AT6 dated 19 March 2024;

- (iv) Proof of delivery of notice to quit and form AT6 by recorded delivery on 20 March 2024;
  - (v) Section 11 notice to Dumfries and Galloway Council together with proof of delivery by recorded mail; and
  - (vi) Rent Statement.
2. By Notice of Acceptance of Application a Legal Member of the Tribunal with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. The application was therefore referred to a Case Management Discussion ("CMD") on 13 November 2024, to take place by teleconference. Notification was sent to the parties in accordance with Rule 17(2) of the Rules of Procedure. Said notification together with a copy of the application paperwork was served upon the Respondent by Sheriff Officers on 10 October 2024. Both parties were invited to make written representations in advance of the CMD.
  3. On 1 November 2024 the Tribunal received an email from DW Shaw Solicitors ("the Applicant's representative") confirming that the Applicant would be represented at the CMD by Morven Howell, Solicitor. On 6 November 2024 the Tribunal received a further email from Miss Howell with an updated rent statement. No written representations were received from the Respondent in advance of the CMD.

### **Case Management Discussion**

4. The CMD took place on 12 November 2024 by teleconference. Miss Howell represented the Applicant who was also present. The Respondent was in attendance. The Tribunal heard submissions from the parties on their respective positions regarding the application. The Respondent outlined various matters that had impacted her ability to manage her rent, including medical diagnoses, family matters, and her benefit entitlements. The Respondent advised that she had sought advice from the local authority and could offer payments of £650 per month to the rent and arrears. The Tribunal therefore noted that the arrears were not in dispute but the issue to be resolved was whether it was reasonable in the particular circumstances of this case to grant an eviction order. The Tribunal therefore assigned a full evidential hearing in the matter.
5. The Respondent was advised to seek advice from an advice agency or solicitor in light of the submissions she had put forward in order to ensure that she could fully participate in the hearing. A Direction was issued to parties regarding the arrangements for the hearing. The Respondent was directed to provide evidence of her benefit entitlements, her medical diagnoses, legal proceedings relating to her children, her prospects of rehousing, and of any other circumstances that had impacted on her ability to make payment of rent. The Applicant was directed to provide evidence of any financial detriment suffered as a result of the arrears, mortgage payments in respect of the property, and an updated rent statement. Both parties were directed to provide any other documents they wished to rely

upon together with a list of witnesses. The Tribunal directed that the information be provided at least fourteen days prior to the hearing.

6. On 21 January 2025 the Tribunal received responses to the direction from both parties. The Applicant provided an inventory of productions, which included a copy of the tribunal application, a rent statement, mortgage statements, details of costs arising from the tenancy, an invoice pertaining to said costs, and the CMD note and direction issued by the Tribunal. The Respondent provided a personal statement together with correspondence from Dumfries and Galloway Council confirming she had been assessed as unintentionally homeless. Neither party identified any witnesses other than themselves.

### **The Hearing**

7. The hearing took place by videoconference on 4 February 2025. The Applicant attended and was represented by Ms Howell. The Respondent was also present. The Tribunal noted that she had not provided all of the evidence requested by the Tribunal in its direction following the CMD. The Tribunal asked if she was content to proceed with the hearing. The Respondent confirmed that she was.
8. The Tribunal proceeded to hear evidence from both parties. For the avoidance of doubt the following is a summary of those matters relevant to the determination of the application and does not constitute a verbatim account of the proceedings. Both parties were given the opportunity to cross examine the other.

### **The Applicant**

9. The Applicant explained that the property had been his marital home, having been gifted to him and his wife by their parents. He had lived there before moving to his current home. His parents had then resided in the property until his father passed away and his mother returned to Northern Ireland. The Applicant and his wife did not wish to sell the property and decided to rent it out. The Respondent had taken up the tenancy in 2007. Her parents resided in the adjoining property and her mother had assisted in the creation of the tenancy. The rent was agreed at £450 per month. It was then increased to £525 per month in November 2020 following some upgrades to the property that had been requested by the Respondent. The rent had generally been kept up to date with some exceptions and there were no other issues with the tenancy.
10. The Applicant explained that the Respondent had missed rent payments in October 2023 and November 2023. She had then paid in December 2023 and January 2024 before payments stopped completely. There was no explanation from the Respondent. The Applicant had contacted the Respondent by telephone when she missed the first payment. The Respondent advised that there was a problem with her bank. The Applicant confirmed that there had been no payments since January 2024 and the arrears currently stood at £7350. He had communicated with the Respondent by text message and by telephone on occasion. He had not sent her any correspondence regarding the arrears. There had been no discussion about benefits. He did not know why the rent had

stopped and did not want to ask the Respondent about her personal circumstances. He did not think that would be respectful.

11. The Applicant explained that he had taken out a mortgage over the property during the pandemic to assist with his business. He and his wife ran their farm as a visitor and tourist attraction therefore it was severely impacted. He referred to the mortgage statement that had been produced. The mortgage payments were £152.30 per month. The mortgage was due to renew in July 2025 and it was likely that payments would rise due to the increase in mortgage rates. He could not give an indication of what the increased payments would be as he was waiting for the outcome of the tribunal proceedings before deciding whether to sell the property or continue to rent it out. In addition to the mortgage payments, the Applicant had incurred costs pertaining to the repair and maintenance of the property. He referred to the documents that had been produced in support of this. The Applicant gave the example of a new kitchen that had been installed following a request from the Respondent at a cost of approximately £5200.
12. The Applicant advised that he considered himself to be a good landlord. He and his wife had one other rental property that his wife owned. His income was primarily from the farm business and the two rental properties.

#### The Respondent

13. The Respondent confirmed that she had taken on the tenancy in 2007. The Applicant had been a good landlord. Her parents lived next door however her relationship with them had broken down in around 2011 and there was no communication. She did not have much family support. She had been in several relationships which had been unsuccessful. Her last relationship was with a man who took her money. In addition she had experienced serious health issues and court proceedings involving her children. Her former partner had sought full custody as a result of concerns about her ability to care for the children. He had been awarded full custody on or around August 2023. The Respondent's benefits had been reduced significantly shortly thereafter. The Respondent explained that she had gone through a hard time which had resulted in a decline in her mental health. It had been difficult to get back on her feet.
14. The Respondent explained that she had sought advice from the local authority and from other agencies. She now had support in place. Her benefits had been halved after her children went to live with their father. It had taken time to sort this out but she had worked out a budget with support and could afford payments of £650 per month to rent and arrears. The Respondent explained that her financial difficulties had been out of her control. She had been unable to pay the rent due to other bills and payments to her childrens' father. There had been ongoing inconsistencies with her benefits, which had taken time to be resolved. The Respondent confirmed that she was in receipt of universal credit with a housing element of £450, and she was also due to receive employment support allowance.

15. The Respondent explained that there was a lack of housing in Dumfries and Galloway. If an eviction order was granted she would have to go into emergency accommodation for up to 12 weeks, likely a bed and breakfast. This terrified her. There was a court order in place whereby she had her children every week. A bed and breakfast would not be suitable and there would be no place for them. Her children attended local schools close to the property. Once she was moved on by the council into temporary accommodation there would be no guarantee that she would have enough bedrooms to continue contact with her children. The Respondent confirmed that her children were aged 12 and 6 and stayed with her every Monday and Wednesday, and alternate weekends. She had been working with the housing and social work departments of the local authority to put a plan in place for ongoing contact if an eviction order was granted. Her support workers were all aware that the hearing was taking place.
16. The Respondent gave further details regarding her chronic health issues. Stress was a trigger and her health had deteriorated as a result of her potential eviction from the property. The Respondent confirmed that she had previously been in employment but had to give this up due to a lack of childcare initially and latterly the decline in her health.
17. During cross examination the Respondent accepted that she had not paid anything to the rent account since the CMD. Her support worker had advised her not to pay anything until the outcome of the hearing was known. She didn't have any savings that she could pay towards the arrears. The Respondent explained that she had previously been paying debts that she did not have to pay. She had now received help with budgeting her money and would be able to pay rent as well as food and utilities. The Respondent confirmed that she had been receiving assistance from the local authority since March 2024 when she received the eviction notice.

#### Closing submissions

18. Both parties were given the opportunity to make closing submissions. Ms Howell noted that the arrears were not in dispute. It was a considerable sum, amounting to approximately 14 months rent. The Respondent had been in receipt of advice since March last year and had made no payments. The position regarding the Respondent's benefit entitlements was unclear and no vouching had been submitted in relation to this. The arrears continued to accrue. To continue the situation would be unreasonable, notwithstanding the Respondent's position. The Respondent had been assessed as unintentionally homeless therefore accommodation would be provided to her. Ms Howell explained that the Applicant would not pursue the Respondent for the arrears were an eviction order to be granted. Ms Howell was not instructed to seek any suspension of the execution of the order but did not think the Applicant would be averse to a short period being given to her to allow her to obtain a property. Ms Howell moved the tribunal to make an eviction order.
19. The Respondent advised that she would like to stay in the property. It had been a happy family home for herself and her children. They were happy in the area. If she were to move it would disrupt their education. They would have to move

schools as their father's home was not in the same catchment area. The Respondent had worked out her benefits and was now in a better situation financially. The situation had been outwith her control in terms of her benefits, the court proceedings involved her children and the problems with her former partner. She had been a good tenant. She was comfortable she would be able to pay £650 per month. That was the limit of what she could offer at this time. She would ask the tribunal to consider allowing her more time if an eviction order was granted to find a suitable property given the challenges faced by the local authority in sourcing accommodation. She did not want to go to a bed and breakfast and the situation was concerning for her.

20. The Tribunal adjourned the hearing and adjourned to deliberate, at which point parties left the call, before resuming proceedings and confirming its decision.

### **Findings in Fact**

21. The Applicant and Respondent entered into a tenancy agreement in respect of the property, which commenced on 8 September 2007.
22. The tenancy was a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.
23. In terms of clause 3 of the said tenancy agreement the Respondent undertook to make payments of rent at the rate of £450 per month.
24. The rent was increased by agreement between the parties to £525 per month in November 2020.
25. The Respondent did not pay the contractual rent in October 2023 or November 2023.
26. The Respondent paid the contractual rent in December 2023 and January 2024.
27. The Respondent has made no payments to the rent account since January 2024.
28. The Applicant communicated with the Respondent regarding the arrears by text message and by telephone.
29. On 19 March 2024 the Applicant sent a notice to quit and notice under section 19 of the Housing (Scotland) Act of intention to raise proceedings for possession ("Form AT6") to the Respondent. The notices were sent by recorded delivery mail and delivered on 20 March 2024.
30. As at the date of service of the Form AT6 arrears in the sum of £2100 were outstanding.
31. As at the date of raising the application before the Tribunal arrears in the sum of £3150 were outstanding.

32. As at the date of this decision arrears in the sum of £7350 are outstanding.
33. The Respondent suffers from chronic health conditions.
34. The Respondent is in receipt of universal credit and is due to receive employment support allowance due to her health conditions.
35. The Respondent had two children aged 12 and 6. The Respondent's former partner has full custody of the children.
36. The Respondent's benefits were reduced after her children moved out to live with their father.
37. The Respondent has contact with her children every Monday, Wednesday and alternate weekends.
38. The Respondent experienced issues with a former partner who took money from her.
39. The Respondent has been receiving advice and support from the local authority since March 2024. The Respondent has been given money advice and assistance with her benefits. The Respondent also has support in place from the local authority social work department and the housing team.
40. The Respondent has applied for housing with the local authority and has been assessed as unintentionally homeless.
41. The Applicant has a mortgage over the property. The Applicant's mortgage term is due to renew in July 2025. The Applicant's mortgage payments are likely to increase.
42. The Applicant has incurred costs in carrying out repairs and maintenance to the property.

### **Reasons for Decision**

43. The Tribunal took into account the application paperwork and written representations from the parties, and the evidence from the hearing, in its determination of the application. The Tribunal was satisfied that it had sufficient information upon which to reach a decision.
44. The Tribunal was satisfied that it could entertain the application under section 18 of the Housing (Scotland) Act 1988. It therefore considered whether ground 12 had been met in this case.
45. It was clear that the arrears were not disputed by the Respondent. Accordingly, the issue for the Tribunal to determine was whether it was reasonable in the

particular circumstances of this case to make an eviction order. This required the Tribunal to identify the relevant factors pertaining to that issue and determine what weight to give to these.

46. The Tribunal took into account the Respondent's personal circumstances. The Tribunal noted that she suffered from chronic health conditions and had experienced difficulties with her relationships in the past, sometimes to her financial detriment. She had not however provided any medical evidence or anything else in support of this, despite the terms of the Tribunal's direction.
47. The Tribunal also had regard to the impact of the eviction order on the Respondent's children in terms of the potential disruption to their education. The Tribunal did note however that they would not be at risk of homelessness as their father had full custody and his home was their primary residence.
48. The Tribunal also took into account the problems the Respondent had faced with her benefits following the change in custody arrangements pertaining to her children. The Tribunal found it difficult to follow the timeline in this regard. The Tribunal did accept that she was in receipt of universal credit and due to receive employment support allowance based on her evidence during the hearing. However, it was not clear what her benefits entitlement had been over the period the arrears had accrued. Despite being directed to do so, she had failed to submit any documentary evidence in this regard. There was nothing before the Tribunal therefore to establish any failure or delay in the payment of a relevant benefit. The Tribunal also noted that the Respondent had failed to make any payments since the CMD, despite stating that she was in a position to offer £650 per month. The Tribunal found it difficult to believe that she would have received advice not to make any payments whatsoever towards her rent given the gravity of the proceedings.
49. Accordingly, whilst the Tribunal identified the above factors as relevant to the question of reasonableness, it was unable to give significant weight to these factors given the lack of supporting evidence before it and lack of clarity regarding the Respondent's benefits entitlement.
50. The Tribunal did have regard to the Respondent's application to the local authority for housing which had progressed to a decision, as confirmed by the letter she had produced. The local authority had assessed her as unintentionally homeless, which meant she would be entitled to rehousing, were an eviction order to be granted. Whilst this may be on an emergency basis in the short term, ultimately she would be offered permanent accommodation once available. This was a factor to which the Tribunal gave significant weight. The Tribunal also gave weight to the fact that she had a significant support network in place, including assistance from the local authority's housing and social work team.
51. The Tribunal accepted that the rent arrears in this case were significant, amounting to fourteen months rent. They had more than tripled since the Form AT6 was served. The Applicant had ongoing mortgage payments that were likely to increase, and had spent significant funds in repairing and maintaining the



property, often at the Respondent's request. Whilst he had not complied in full with the rent arrears pre-action protocol, he appeared to be a responsible and responsive landlord. The Respondent had confirmed this. The Tribunal also noted that the Respondent had been receiving support for a prolonged period of time from the local authority. Accordingly the Tribunal concluded that it could give minimal weight to the Applicant's failure to fully adhere to the protocol. Instead, the Tribunal considered the arrears to be the factor to which it could apply the greatest weight in this case.

52. Accordingly the Tribunal determined that ground 12 had been met and it would be reasonable to make an eviction order in the particular circumstances of this case. However, in order to give the Respondent the opportunity to obtain suitable alternative accommodation the Tribunal determined to suspend execution of said order for a period of eight weeks.

53. The decision of the Tribunal was unanimous.

### **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.**

# Ruth O'Hare

**11 February 2025**

---

**Legal Member/Chair**

---

**Date**