



**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/24/2185

Re: Property at 5 1/1 Barbadoes Road, Kilmarnock, KA1 1ST ("the Property")

Parties:

**Mrs Lillian Nisbet Baldwin, 71 London Road, Kilmarnock, KA3 7BP
("the Applicant")**

**Mr William Thomson, 5 1/1 Barbadoes Road, Kilmarnock, KA1 1ST
("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 18 February 2025, the Applicant was in attendance and was represented by Mr John McKeown of Jackson Boyd, Solicitors, Glasgow. The Respondent was also present.

The CMD was also in respect of the related case bearing reference FTS/HPC/CV/24/3216.

Prior to the CMD the Tribunal received from the Respondent written representations by email dated 28 January 2025. The Applicant's representative also lodged an updated rent statement by email dated 11 February 2025.

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

Background

The Tribunal noted the following background:-

- i. The Applicant leased the Property to the Respondent in terms of a Short Assured Tenancy ("the SAT") that commenced on 8 April 2017.
- ii. The initial term of the SAT was 6 months and thereafter continued on a month to month basis.
- iii. On 23 February 2024, the Applicant's agent served on the Respondent a Notice to Quit and a Notice under Section 18 and Grounds 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988 ("the 1988 Act") requiring the Respondent remove

from the Property by 23 April 2024. The rent arrears then due were stated to be £7,025.

- iv. The Applicant's agent served on the Respondent pre action protocol letters dated 8 and 15 August 2023 and 7 September 2023.
- v. The Applicant has served on East Ayrshire Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.

The CMD

At the CMD, Mr McKeown for the Applicant made the following oral submissions:-

- i. The outstanding rent arrears as at 25 January 2020 are £11,975.
- ii. There has been no payment from the Respondent since October 2023, a period of some 15 months.
- iii. A further payment of rent is due on 25 February 2025.
- iv. The rent increased to £450 per month from 25 August 2022. That increase was agreed by telephone call between the Applicant and the Respondent around that time. It is not clear if text messages were exchanged following that call but the Respondent has subsequently made payments consistently at that value.
- v. The application proceeds on the basis of Grounds 11 and 12 of Schedule 5 of the 1988 Act.
- vi. The Respondent has made no proposals to settle the debt and there has been no correspondence from him.
- vii. The Applicant owns nine flats all of which are let out.
- viii. She is in the process of selling six of those flats with a further two being sold directly to tenants.
- ix. The Applicant's only income is rent from the properties and her pension.
- x. Due to lack of payment from the Respondent the Applicant has required to use her pension to pay the mortgage.
- xi. Due to increases in interest rates the Applicant has decided to sell all of the flats.
- xii. Due to her age she is unable to remortgage.
- xiii. The situation is very stressful for the Applicant.
- xiv. In a number of the sales the properties are in a negative equity situation and are therefore being sold at a loss.
- xv. The Applicant seeks an eviction order.

The Respondent made the following oral submissions in response to questions from the Tribunal: –

- i. The Respondent accepted the rent arrears to be £11,975 as at the CMD.
- ii. He also accepted that he had made no payments since October 2023 when he said relations broke down between him and the Applicant.
- iii. The Respondent lives in the property alone.
- iv. He is 47 years of age.
- v. He is working full time as an energy adviser.
- vi. He works from home.
- vii. He was recently awarded the Adult Disability Payment which is paid monthly in the sum of £270.
- viii. He also has net income from his employment of £1500 per month.
- ix. The Tribunal asked why the Respondent was not paying his rent. He referred to there being a lot going on with his physical health. He had an operation 18 months ago on his vertebrae. He had lost the use of his legs and hands. He has been in rehabilitation since then.

- x. The situation between him and the Applicant had been escalating. He had tried to come to some arrangement with the Applicant. He had sent a letter to her. However when he was advised of the eviction proceedings he panicked. He couldn't find somewhere else to stay.
- xi. He responded to letters from the Applicant's lawyers but got nothing back. He was admitted into hospital in August 2023. He was in rapid decline. It was thought he had a localised stroke. At that point his mental health really dipped. He knew he had messed up with his rental payments.
- xii. He had a lot of time off work.
- xiii. Due to his financial situation he was helped to engage with Trusts Scotland.
- xiv. He was housebound for a time.
- xv. This situation affected his work in the security of his job.
- xvi. He did not know how to reopen any dialogue with the Applicant.
- xvii. He does not have that many savings.
- xviii. He pays maintenance of £200 per month at least for his 10-year-old daughter and buys additional items for school etc.
- xix. He would accept any opportunity to pay anything towards the debt and would maintain the payments to the best of his ability.
- xx. The Tribunal asked what he could afford to pay on top of the ongoing rent and he referred to a sum of around 200 - £300. He accepted that, at the rate of £300 per month, the arrears would take in excess of three years to pay.
- xxi. He has not looked for alternative accommodation. He said that there is not a lot available in the area.
- xxii. He has not approached the local authority with regard to accommodation.
- xxiii. The tribunal asked whether the Property had been adapted for him. He said the occupational health team had installed equipment on his bed and in his shower which he still uses to some extent but he has made a significant recovery.
- xxiv. His daughter stays with him at weekends.
- xxv. When he returned to work he did not start on a full-time basis.
- xxvi. When he was on sick leave he received sick pay for a period but had been paid before that.
- xxvii. He spent an enormous amount on food as he was unable to cook.
- xxviii. He didn't drive so took taxis to appointments and had very many hospital appointments, occupational health appointments etc.
- xxix. He now finds himself in a mess.
- xxx. He apologised for the situation and indicated he would do everything he could to resolve it.

Mr McKeown for the Applicant made further submissions as follows: –

- i. There is no scope for any agreement now. Monthly payments of £200-£300 would be insufficient for any payment plan.
- ii. A substantial lump sum would be needed to reduce the arrears.

The Tribunal adjourned to consider the position.

Findings in Fact

- i. The Applicant leased the Property to the Respondent in terms of the SAT that commenced on 8 April 2017.
- ii. The initial term of the SAT was 6 months and thereafter continued on a month to month basis.

- iii. On 23 February 2024, the Applicant's agent served on the Respondent a Notice to Quit and a Notice under Section 18 and Grounds 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988 ("the 1988 Act") requiring the Respondent remove from the Property by 23 April 2024. The rent arrears then due were stated to be £7,025.
- iv. The Applicant's agent served on the Respondent pre action protocol letters dated 8 and 15 August 2023 and 7 September 2023.
- v. The outstanding rent arrears as at 25 January 2020 are £11,975.
- vi. There has been no payment from the Respondent since October 2023, a period of some 15 months.
- vii. A further payment of rent is due on 25 February 2025.
- viii. The rent increased to £450 per month from 25 August 2022. That increase was agreed by telephone call between the Applicant and the Respondent around that time. The Respondent has subsequently made payments consistently at that value.
- ix. The Applicant owns nine flats all of which are let out.
- x. Due to increases in interest rates the Applicant is in the process of selling six of those flats with a further two being sold directly to tenants.
- xi. The Applicant's only income is rent from the properties and her pension.
- xii. Due to lack of payment from the Respondent the Applicant has required to use her pension to pay the mortgage.
- xiii. Due to her age the Applicant is unable to remortgage.
- xiv. In a number of the sales the properties are in a negative equity situation and are therefore being sold at a loss.
- xv. The Respondent lives in the property alone.
- xvi. He is 47 years of age and works full time from home as an energy adviser.
- xvii. The Respondent is in receipt of the Adult Disability Payment in the sum of £270 per month.
- xviii. He also has net income from his employment of £1500 per month.
- xix. He has no savings.
- xx. The Respondent has previously had significant health issues. He has made a significant recovery from those health issues.
- xxi. He pays maintenance of £200 per month at least for his 10-year-old daughter and buys additional items for school etc. She stays with him at weekends.
- xxii. The Respondent is and has been for some time able to afford the rent due to the Applicant and additional sums towards the rent arrears. He has made no effort to make payment.
- xxiii. The Respondent has not looked for alternative accommodation.
- xxiv. The Applicant has served on East Ayrshire Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.

Reasons for Decision

The rent arrears are substantial and are admitted to be due. The Respondent has made no effort to pay any amounts since October 2023 – a period of around 15 months. He has been in full-time employment for some time. He made an offer of payment during the CMD. Quite why he didn't therefore pay rent and extra sums on top as he could afford subsequent to his return to work remains unexplained. He was asked a number of times by the Tribunal as to why he was continuing not to pay his rent. His answers to those questions were not clear. Whilst the Respondent has had ill-health previously he admitted having made a significant recovery.

The Respondent did not challenge the financial effect his failure to make payment of rent over a prolonged period was having on the Applicant.

His offer of an additional £300 per month was too little too late and would have required more than 3 years for the arrears to be fully cleared. That is not a reasonable proposal in the circumstances.

The Respondent has not sought to find any alternative accommodation either.

In the circumstances the Tribunal determined that Grounds 11 and 12 of Schedule 5 of the 1988 Act are established and that it is reasonable to grant an eviction order in favour of the Applicant.

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 a short, extended period of time to secure alternative accommodation. Accordingly, the Tribunal determined that the order cannot be enforced for a period of 2 weeks beyond the usual period of 30 days.

Decision

The Tribunal granted an eviction order against the Respondent in favour of the Applicant with execution of that order delayed until 3 April 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

18 February 2025
Date