



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)

Chamber Ref: FTS/HPC/EV/24/2790

Re: Property at 47 Morar Drive, Condorrat, Cumbernauld, G67 4LQ (“the Property”)

Parties:

Miss Rachael Colville-Walker, 17 Craigend Road, Condorrat, Cumbernauld, G67 4LQ (“the Applicant”)

Mr Paul Currans, 47 Morar Drive, Condorrat, Cumbernauld, G67 4LQ (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Mary Lyden (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession of the property be granted.

Background

1. By application received on 19 June 2024, the Applicant applied to the Tribunal for an order for recovery of possession of the property in terms of Grounds 12 (rent arrears over 3 consecutive months of Schedule 3 to the 2016 Act. Supporting documentation was submitted in respect of the application, including a copy of the Notice to Leave/proof of service of same, the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003/proof of service of same, a Rent Statement showing the balance of rent arrears owing at the time of the Notice to Leave being served of £3,765 and evidence regarding the ‘pre-action protocol’.

2. Following initial procedure, on 19 September 2024, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. A Case Management Discussion ("CMD") was fixed for 24 March 2025. The application and details of the CMD fixed were served on the Respondent by Sheriff Officer on 11 February 2025. In terms of said notification, the Respondent was given an opportunity to lodge written representations. No representations were lodged prior to the CMD.
4. On the morning of the CMD, at the Tribunal's request, a copy of the tenancy agreement was lodged on behalf of the Applicant, together with an updated rent statement, showing the current balance of the rent arrears amounting to £10,695.

Case Management Discussion

5. The CMD took place by telephone conference call on 24 March 2025 at 2pm. It was attended by the Applicant's representative, Ms Donna Cramb of K Property, who manage the Property on behalf of the Applicant. The Respondent did not attend. The Tribunal delayed the commencement of the CMD for 5 minutes to allow an opportunity for the Respondent to join late but he did not do so.
6. Following introductions and introductory remarks by the Legal Member, Ms Cramb was thanked for lodging a copy of the tenancy agreement, which had been missing from the Tribunal Members' papers. She was asked to explain the background to the application and any recent contact with the Respondent. It was explained that, in addition to being satisfied that the ground for eviction is met, the Tribunal also has to be satisfied in respect of the reasonableness of granting an eviction order in the circumstances of the case.
7. Ms Cramb confirmed that they are aware that the Respondent is still residing in the Property, as lights have been seen on, etc. However, they have had no recent contact or engagement from the Respondent whatsoever since January 2024 when the last payment of £100 towards rent was received. Ms Cramb said that she had visited the Property for routine inspection around then and was told by the Respondent that he had some issues with depression, had been unwell and had time off work. She said that they tried to support him as best they could and advised him to seek assistance with any benefits claims or in relation to his health. He had indicated that he would do so, but they never heard back from him and he has completely ignored any communications since. Nor have they been able to access the Property for routine inspection. Ms Cramb is not aware if the Respondent is now back at work or has ever applied for benefits as they have not received any communication from him, nor from the local authority regarding him seeking any help with housing. North Lanarkshire Council were notified in April 2024 of these proceedings being brought but there has been no contact from them and it is unknown whether the Respondent is intending to seek social housing. It was noted that the rent

payments were sporadic before stopping completely, which Ms Cramb thought was due to the Respondent being unable to work for a period, getting back to work, but then going off again. Ms Cramb confirmed that the Respondent is in his 40s and lives alone in the Property, which is a two-bedroom top floor flat.

8. As to the Applicant's circumstances, Ms Cramb confirmed that she has her own family and young children and has been having to meet the mortgage payments in respect of the Property on an ongoing basis throughout the lengthy period of the rent arrears. The level of arrears is now in excess of £10,000 and Ms Cramb stated that this was clearly a significant debt for her to bear on top of her own outgoings. She lets out one other property and Ms Cramb does not know what the Applicant's intention is regarding this Property, if she recovers possession. She may let it out again or may decide to sell it given the difficulties she has had with this tenancy and the extent of the arrears.
9. Ms Cramb asked the Tribunal to grant the eviction order sought, in the circumstances.
10. The Tribunal considered the application and confirmed that they were satisfied that the ground for eviction was met and also that it was reasonable to grant the order in all the circumstances. There was some brief discussion regarding the issuing of the decision documentation to parties and the applicable appeal period. Ms Cramb was thanked for her attendance at the CMD.

Findings in Fact

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy which commenced on 3 February 2021.
3. The rent due in respect of the tenancy was £495 per calendar month.
4. There was a background of sporadic payments and rent arrears started to accrue in December 2022.
5. The arrears continued to increase and rent payments stopped altogether.
6. The last payment towards rent was £100 on 8 January 2024.
7. Arrears amounted to £3,765 by the time the Notice to Leave was served in February 2024, amounted to £6,240 when this application was lodged, and now amount to £10,695.
8. The Applicant's letting agent have sought to engage with the Respondent throughout concerning the rent arrears and issued communications to him in terms of the 'pre-action protocol'.

9. The Respondent has not engaged with the Applicant's representatives regarding the arrears situation since January 2024, nor sought to resolve it.
10. A Notice to Leave in proper form and giving the requisite period of notice was served on the Respondent by email on 5 February 2024, in terms of the tenancy agreement.
11. The date specified in the Notice to Leave as the earliest date an eviction application could be lodged with the Tribunal was specified as 7 March 2024.
12. The Tribunal Application was submitted on 19 June 2024.
13. The Respondent has remained in occupation.
14. The Respondent has been called upon to make payment of the rental arrears or enter into a satisfactory payment arrangement but has failed to do so.
15. The Respondent has been in arrears of rent for three or more consecutive months.
16. There is no indication that the arrears have arisen wholly or partly as a result of a failure or delay in the payment of relevant benefits.
17. The Respondent did not submit any representations nor attend the CMD.

Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation and to the oral representations at the CMD by Ms Cramb on behalf of the Applicant.
2. The Tribunal found that the application was in order, that a Notice to Leave in proper form and giving the correct period of notice had been served on the Respondent and that the application was made timeously to the Tribunal, all in terms of the tenancy agreement and the relevant provisions of the 2016 Act.
3. The Tribunal considered the ground of eviction relied upon in this application, namely Ground 12 and was satisfied that all requisite elements of that ground had been met. The Tribunal was satisfied that the Respondent was still occupying the let Property, that there were substantial rent arrears amounting to in excess of £10,000 and that the rent had been continuously in arrears for a lengthy period of time.
4. As to reasonableness, all the factors mentioned above satisfied the Tribunal that it was also reasonable to grant an order in these circumstances and given the circumstances of both parties, and to do so at this stage. The Respondent had not entered into the Tribunal process and the Tribunal therefore had no material before it either to contradict the Applicant's position nor to advance any

reasonableness arguments on behalf of the Respondent. The Tribunal accordingly determined that an order for recovery of possession of the Property could properly be granted at the CMD as, in the circumstances, there was no need for an Evidential Hearing.

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.

Nicola Weir

24 March 2025

Legal Member/Chair

Date