



**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/24/3340**

**Re: Property at 63 Bournemouth Road, Gourock, PA19 1HN (“the Property”)**

**Parties:**

**Mrs Rosalind Keogh, 4 Annetyard Drive, Skelmorlie, PA17 5BN (“the Applicant”)**

**Ms Jenna Kane, 63 Bournemouth Road, Gourock, PA19 1HN (“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 July 2024 the applicant seeks an order for eviction, relying on ground 12 (rent arrears for three or more consecutive months) in Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.
2. The application was conjoined with application reference FTS/HPC/CV/24/3326 seeking an order for payment of arrears.
3. The applicant lodged the following documents with the application:
  - Copy tenancy agreement
  - Deed of Guarantee dated 11 March 2023
  - Notice to Leave with proof of delivery
  - Rent statements

- Pre action correspondence
  - Notice under section 11 of the Homelessness Etc. (Scotland) Act 2003
  - Correspondence between the parties
4. A case management discussion (“cmd”) was scheduled for 20 February 2025 via teleconference.
  5. Prior to the cmd the respondent had emailed the Tribunal on 19 February 2025 stating that she wished to repay the arrears at a rate of £300 per month and confirming that she resided with her 3 children aged 10, 4 and 1.
  6. At the cmd the applicant was represented by Mr Caldwell, solicitor, Patten & Prentice LLP. The respondent, Ms Kane attempted to join the teleconference however was unable to do so. The cmd was adjourned as due to technical issues it was not able to proceed.
  7. Following the cmd a Direction was issued to parties. The respondent was requested to lodge a time to pay direction in relation to the conjoined payment action if she so wished. The respondent made no further contact with the Tribunal following the cmd in relation to either application.

#### **Case management discussion (“cmd”) – 23 June 2025**

8. The applicant was present and represented by Mr Caldwell. The respondent was not present. The Tribunal was satisfied that that the respondent had been properly notified of the cmd and proceeded in her absence in terms of rule 29.
9. Mr Caldwell sought an order for eviction. An updated rent account had been submitted which showed that rent arrears as at 11 June 2025 had increased to £9110. There had been 3 payments of £475 since April 2025 however these were direct payments from the DWP after the applicant had requested payment be made to her.
10. Mr Caldwell stated that it was not known if the respondent was still residing in the property. She had not formally terminated the tenancy or returned the keys and benefits were still in payment however it was thought that she may have moved out. He stated that the applicant and her husband are retired and rely on rental income from the property. The respondent’s conduct had a financial impact on them due to the extremely high arrears. Mr Caldwell also referred to the impact the respondent’s impact had on her grandmother who was her

Guarantor and was therefore liable for any arrears. If an eviction order was granted this would end the Guarantor's liability. The Tribunal had heard evidence from Ms Stewart, the Guarantor in the conjoined case. Ms Stewart had stated that as far as she was aware the respondent had moved out of the property in April with her 3 children and was living elsewhere. Ms Stewart had regular contact with her grandchildren.

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

11. The applicant and second respondent entered into a private residential tenancy agreement with a commencement date of 11 March 2019.
12. Monthly rent due in terms of the agreement is currently £630.
13. Arrears as at 23 June 2025 amounted to £9110.
14. In term of a Deed of Guarantee signed by the first respondent on 11 March 2019 the respondent's grandmother, Anne Stewart is guarantor in respect of any outstanding rent or arrears due to the respondent defaulting in her obligations under the tenancy agreement.
15. The respondent has not made any payments to the arrears since the application was submitted. 3 payments of partial rent of £475 have been received from the DWP since April 2025 however the rent arrears continue to increase.
16. The respondent moved out of the property in April 2025 however she has not given notice to terminate the tenancy or returned the keys to the applicant.
17. The applicant complied with the pre-action requirements set out in the Rent Arrears Pre Action-Requirements (Coronavirus) (Scotland) Regulations 2020.
18. The respondent has not submitted a written defence or opposed an order being granted.
19. Ground 12, in schedule 3 of the 2016 Act has been established.

### **Reasons for the decision**

20. Rule 18 states:

*Power to determine the proceedings without a hearing*

**18.—(1) Subject to paragraph (2), the First-tier Tribunal—**

*(a) may make a decision without a hearing if the First-tier Tribunal considers that—*

*(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and*

*(ii) to do so will not be contrary to the interests of the parties; and*

*(b) must make a decision without a hearing where the decision relates to—*

*(i) correcting; or*

*(ii) reviewing on a point of law,*

*a decision made by the First-tier Tribunal.*

*(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.*

21. The Tribunal was satisfied that having regard to the undisputed facts of the case it was able to make a determination and that it was not contrary to parties' interest to do so at the cmd without the need for a further hearing.

22. The Tribunal had regard to the application and the documents lodged by the applicant. The Tribunal also took into account Mr Caldwell's submissions at the cmd and the information provided by Ms Stewart, the Guarantor in relation to the conjoined application.

23. 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.*

24. 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.
25. In relation to question of reasonableness the Tribunal determined that the correspondence sent to the respondent complied with the pre-action requirements.
26. The Tribunal was satisfied that the arrears at the property amounted to £9110 as at the date of the cmd. The respondent had not lodged any information which sought to demonstrate that the arrears were in any part due to issues with benefits.
27. The Tribunal took into account the information provided by Mr Caldwell. The Tribunal noted the high level of arrears, which continued to rise and that no contact or payment had been made by the respondent for a considerable period of time. The Tribunal also gave weight that the Guarantor was impacted by the increasing arrears as she was liable for any default by the tenant. Any continuation of the tenancy would have an impact on her financial circumstances.
28. The Tribunal gave particular weight to the fact that the respondent had not taken any steps to oppose the application or lodge a defence. The Tribunal also gave significant weight to the information from Ms Stewart that the respondent had moved out of the property into alternative accommodation. She continued to claim benefits and had not notified the applicant that she had vacated the property however she was not at risk of homelessness if an order was granted.
29. The Tribunal gave weight to the fact that the respondent had resided in the property with her 3 children but in the absence of any opposition to the application and taking into account the high level of arrears the Tribunal considered that this factor did not outweigh the factors in favour of granting an order.

30. The Tribunal considered whether an order was necessary given the information provided by Ms Stewart that the respondent had moved out. Taking into account the lack of any formal notice to terminate the tenancy from the respondent, her failure to return the keys and that benefits continued to be paid to cover the rent the Tribunal considered that an order was necessary. In the foregoing circumstances the Tribunal determined that 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.**

# M-C Kelly

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Legal Member/Chair

23 June 2025

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Date