



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”)

Chamber Ref: FTS/HPC/EV/24/2326

Re: Property at 229 Ash Road, Abronhill, Cumbernauld, G67 3EA (“the Property”)

Parties:

Mrs Gail MacDonald, 11 Roseburn Court, Whitelees, Cumbernauld, G67 3PS (“the Applicant”)

Mr Gerry McIntosh, 229 Ash Road, Abronhill, Cumbernauld, G67 3EA (“the Respondent”)

Tribunal Members:

Sarah O'Neill (Legal Member) and David Fotheringham (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) refused the application.

Background

1. An application was received on 21 May 2024 from the Applicant's representative under Rule 109 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 ('the 2017 rules') seeking recovery of the property under Ground 12 (rent arrears) as set out in Schedule 3 of the 2016 Act. The Applicant also made a civil proceedings application (reference no: FTS/HPC/CV/24/2323) for a payment order under rule 111 of the 2017 rules in respect of the outstanding rent arrears.
2. Attached to the application form were:

- (i) Copy Private Residential Tenancy Agreement between the parties which commenced on 1 October 2022.
 - (ii) Copy Notice to Leave dated 18 April 2024 citing ground 12, and stating the date before which proceedings could not be raised to be 19 May 2024, together with covering email addressed to the Respondent dated 18 April 2024.
 - (iii) Rent statement showing the Respondent's outstanding rent arrears to be £2090 as at 7 May 2024.
 - (iv) Copy notice to North Lanarkshire Council under section 11 of the Homelessness etc. (Scotland) Act 2003 with proof of sending by email.
3. In response to a request from the Tribunal administration, further information was received from the Applicant's representative on 21 and 28 May and 7 June 2024.
4. The application was accepted on 5 July 2024.
5. The Tribunal issued a direction to the Applicant on 30 October 2024 requiring her to provide an updated rent statement and evidence of compliance with the pre-action requirements. No response was received from the Applicant prior to the case management discussion (CMD) on 19 November 2024.
6. No written representations were received from the Respondent prior to the CMD.

The first case management discussion

7. A CMD took place by teleconference call on 19 November 2024 to consider both the present application and the accompanying civil proceedings application. Ms Sharon Cooke and Ms Diane Kelly of Coda Estates were present on the teleconference call and represented the Applicant. The Respondent was not present or represented on the teleconference call. The Tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules had been duly complied with. The Tribunal therefore proceeded with the CMD in the absence of the Respondent.
8. The Tribunal decided to adjourn both applications to another CMD, to allow the Applicant's representatives to locate all of the information which the Tribunal had requested from them in its direction of 30 October 2024 and to allow both the Tribunal and the Respondent to read this.

9. The Tribunal issued a further direction to the Applicant on 19 November 2024, requiring her to provide further information regarding compliance with the pre-action requirements and the rent increase notice sent to the Respondent.
10. A response to the direction was received from the Applicant's representative on 6 January 2025. This included copies of pre-action requirements letters sent to the Respondent on 24 and 31 January, 18 February and 18 March 2024.
11. An updated rent statement was received from the Applicant's representative on 5 February 2025, showing the outstanding rent arrears to be £4177.85.

The second case management discussion

12. The adjourned CMD was held by teleconference call on 25 February 2025, again to consider both applications. Ms Cooke represented the Applicant on the teleconference call. The Respondent was not present on the call. The Tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date and time of a CMD had been duly complied with. It therefore proceeded with the CMD in the absence of the Respondent.
13. The Tribunal noted that the various rent statements received from the Applicant's representative appeared to be inconsistent. It was unclear from these when rent payments had been made and what the current level of outstanding arrears was. Ms Cooke sent an up to date rent statement to the Tribunal by email during the CMD. This showed that, having paid nothing towards the rent between January and October 2024, the Respondent had paid his rent in full for four consecutive months between November 2024 and February 2025. Nothing had been paid towards the arrears, however. The outstanding sum due as at 17 February 2025 was £4177.11.
14. The Tribunal noted that while the Respondent had not paid anything towards the outstanding arrears, those arrears had remained stable in recent months. The reason why he had fallen into arrears was unclear in the absence of any submissions having been received from him. The Tribunal considered that in the circumstances, it would be reasonable to adjourn the matter to another CMD to allow the Respondent to continue paying the rent, and for the Respondent to engage with the Applicant's representatives regarding a repayment plan for the outstanding arrears.
15. The Tribunal suggested in its note of the CMD, which was sent to both parties, that the Respondent may wish to seek advice and/or representation from a

citizen advice bureau, Shelter, a law centre or other advice agency prior to the adjourned CMD.

16. Regarding the civil proceedings application, the Tribunal granted a payment order in favour of the Applicant against the Respondent for £4177.11 in respect of the outstanding arrears.
17. No written representations were received from either party prior to the third CMD.

The third case management discussion

18. A third CMD was held by teleconference call on 24 June 2025. Miss Kelly and Ms Cooke represented the Applicant on the teleconference call. There was also an observer present on the call. The Respondent was not present or represented on the teleconference call. The Tribunal delayed the start of the CMD by 10 minutes, in case the Respondent had been detained. He did not join the teleconference call, however, and no telephone calls, messages or emails had been received from him.
19. The Tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date and time of a case management discussion had been duly complied with. It therefore proceeded with the CMD in the absence of the Respondent.

Submissions on behalf of the Applicant

20. Miss Kelly asked the Tribunal to grant an eviction order against the Respondent under ground 12. As at the date of the CMD, the Respondent owed the Applicant £4174.31 in rent arrears. The Respondent had paid his rent for the past four months since the last CMD, but had made no payments towards the outstanding arrears.
21. Miss Kelly said that Coda Estates had been trying very hard to contact the Respondent, both by email and telephone to discuss the arrears and to agree a payment plan. They had also been trying to contact him with regard to obtaining access to inspect the property and obtain the legally required safety certificates. There had been no response from the Respondent for some months, however.
22. The Tribunal asked the Applicant's representative to submit an up to date rent statement during the CMD, which they sent through by email. They confirmed that the rent is currently £418 per month, and that the Respondent has been

paying £418.70 per month. This accounts for the slight decrease in the arrears since the previous CMD, but 70p per month was not sufficient payment towards the arrears.

23. Miss Kelly said that the Applicant had been hopeful following the previous CMD that it might be possible to reach a payment arrangement with the Respondent. Given the lack of communication from the Respondent, however, this had not happened.
24. The Applicant rents out five other properties. She is struggling financially as a result of the Respondent's rent arrears, and the mortgage on the property was in arrears as a result.
25. When asked about the Respondent's circumstances, Miss Kelly said that she had little information about this, aside from what the Respondent had previously said when he had been in communication with Coda Estates. It was her understanding that the Respondent lives alone in the property. She believed that he had been unemployed throughout his tenancy and was in receipt of benefits due to his mental health issues. He had previously told Coda Estates that he had personal problems, but they had little information about these.
26. She said that the rent is paid via housing benefit directly to the Respondent and he then pays it to Coda Estates. So far as she was aware there had been no interruption to his housing benefit at any point during the tenancy. The only information she had was that the Respondent said when he had stopped paying his rent during 2024 that this was because he was helping his terminally ill father.

Findings in fact

27. The Tribunal made the following findings in fact:

- The Applicant owns the property jointly with Lynne Burns, who confirmed on 6 June 2024 that she was content for the application to proceed in the Applicant's sole name.
- The Applicant and Ms Burns are the registered landlords for the property.
- There is a private residential tenancy in place between the parties, which commenced on or around 1 October 2022.
- The rent payable under the tenancy is currently £418 per calendar month, payable in advance on the first of each month.
- The Notice to Leave was validly served on the Respondent by email on 18 April 2024.

- The Respondent has been in rent arrears continuously since January 2024.
- The Applicant has complied with the pre-action requirements.
- The Respondent is in receipt of housing benefit, which is paid to him directly.
- The Respondent has paid his rent in full every month since November 2024.
- As at the date of the third CMD, the Respondent owed £4174.31 in rent arrears.

Reasons for decision

28. The Tribunal considered that in the circumstances, it was able to make a decision at the CMD without a hearing as: 1) having regard to such facts as were not disputed by the parties, it was able to make sufficient findings to determine the case and 2) to do so would not be contrary to the interests of the parties.

29. The Tribunal considered whether Ground 12 (rent arrears) had been met. Ground 12 states:

Rent arrears

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.

20. The Tribunal noted that the Respondent had been continuously in arrears since January 2024. He had therefore been in rent arrears for three or more consecutive months.

21. The Tribunal then considered whether it was reasonable to issue an eviction order in all the circumstances of the case. In doing so, it took into account all of the evidence before it.
22. The Tribunal was satisfied that the Applicant had complied with the pre-action requirements. While the Tribunal noted that the Respondent was in receipt of housing benefit, it was also satisfied on the basis of the evidence before it that the arrears were not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
31. The Tribunal noted that the Applicant was owed £4174.31 in rent arrears, which had resulted in her being in arrears with the mortgage over the property. It also noted that the Applicant's representatives had made considerable efforts to contact the Respondent regarding the arrears and a possible payment plan, but that he had failed to engage with them about this. It noted that the Applicant's representatives were having difficulty contacting the Respondent to obtain access to the property in order to obtain legally required safety certificates.
32. The Tribunal had little evidence about the Respondent's circumstances, as he had not submitted written representations at any point during the Tribunal process. It appeared, however that he is unemployed, lives alone in the property and is on benefits. He may have mental health issues and may be caring for a terminally ill father.
33. The Tribunal took into account the fact that while the Respondent is still in arrears, these have reduced significantly from their highest level of £8775 in December 2024.
34. The Tribunal gave particular weight to the fact that the Respondent has now paid his rent in full over the past 8 months, establishing a clear pattern of payment. If this continues on an ongoing basis, the arrears will not continue to accrue further.
35. While the Tribunal appreciates the difficulties which the arrears have caused for the Applicant, it has already granted a payment order in respect of those arrears. The Applicant can pursue the arrears through enforcement of the payment order. Were the Tribunal to make an eviction order, that would have no impact on the level of outstanding arrears or on the repayment of these.
36. The Tribunal also appreciates that the Applicant is having difficulty in obtaining access to the property to have safety inspections carried out. The Applicant has a right in terms of the Housing (Scotland) Act 2006 to enter the property for the purpose of: a) viewing its state and condition for the purpose of determining whether the house meets the repairing standard, or (b) carrying out any work necessary to comply with the repairing standard duty or a repairing standard enforcement order.

37. The Tribunal observes that it would be helpful to the Applicant if the Respondent were to allow access for these works to be carried out. Otherwise, it would be open to the Applicant to pursue a separate application to the Tribunal to exercise the landlord's right of entry, should this prove to be necessary.

38. The Tribunal decided that in light of all the above considerations, it would not be reasonable in all the circumstances to grant an eviction order in favour of the Applicant against the Respondent. The Tribunal therefore refused the application.

Decision

The Tribunal refused the application.

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.

Sarah O'Neill

24 June 2025

Legal Member/Chair

Date