



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

**Chamber Ref: FTS/HPC/EV/21/0258**

**Re: Property at 83 Sound of Kintyre, Machrihanish, Campbeltown, PA28 6GA  
 (“the Property”)**

**Parties:**

**Mr Stephen McEwan, 12 Broomhall Road, South Croydon, Surrey, CR2 0PX (“the  
Applicant”)**

**Ms Pauline Connelly also known as Hunter, 83 Sound of Kintyre,  
Machrihanish, Campbeltown, PA28 6GA (“the Respondent”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member)  
Elizabeth Williams (Ordinary Member)**

**Decision in absence of the Respondent**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that an eviction order should be granted against the  
Respondent in favour of the Applicant.**

**Background**

1. By application dated 2 February 2021, the Applicant seeks an eviction order in terms of section 51 Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). A copy tenancy agreement, Notice to Leave, rent statement and Notice in terms of Section 11 Homelessness etc (Scotland) Act 2003 were lodged in support of the application. The application is based on ground 12 of schedule 3, rent arrears over three consecutive months.
2. A copy of the application and supporting documents were served on the Respondent by Sheriff Officer on 16 March 2021. Both parties were advised that a Case Management Discussion (“CMD”) would take place on 15 April

2021 by telephone case conference and that they were required to participate.

3. The CMD took place at 2pm on 15 April 2021. The Applicant was represented by Ms McMillan. The Respondent participated. The Respondent advised the Tribunal that she was seeking a postponement of the CMD due to mental health problems. She said that she was getting treatment and would be better placed to deal with the CMD if it was postponed. She also indicated that she intended to seek advice and possibly representation. Ms McMillan advised the Tribunal that she had no objection to a short postponement of two or three weeks. The Tribunal adjourned to consider the request and thereafter advised parties that the postponement request was granted. The Respondent was advised that any future requests should be submitted in advance and supported by medical evidence. Ms McMillan was advised that an updated rent statement should be submitted prior to the next CMD.
4. The parties were notified that a further CMD would take place by telephone conference call on the 5 May 2021 at 10am. Prior to the CMD the Applicant lodged an updated rent statement. On 4 May 2021, the Respondent submitted a request for postponement for the same reasons as had been stated at the previous CMD. No medical evidence was provided in support of the request.
5. The CMD took place on 5 May 2021. The Applicant was represented by Ms McMillan. The Respondent participated. The Tribunal firstly discussed the postponement request. Ms Connelly said that she had not yet managed to consult the CAB but had an appointment. She also advised that her mental health issues were ongoing. She stated that the rent arrears were due to problems with her benefits and that the CAB would also be assisting her with this matter. Ms McMillan advised the Tribunal that the Applicant wished the CMD to proceed. The Tribunal adjourned to consider the request and thereafter advised parties that the CMD would proceed.
6. Ms Connelly advised the Tribunal that she did not dispute that the current figure outstanding on her rent account was £5373.30. She confirmed that she had no issues to raise with the documents lodged with the application, including the Notice to leave, but qualified this by saying that she has not yet taken advice on the matter and reserved the right to challenge these later. Ms Connelly also advised that her rent arrears started when her benefits changed in January 2020. Prior to this she had been in receipt of income support and housing benefit was paid direct to the letting agent for her rent. The changeover to ESA took several weeks. She has been on this benefit since and should also be in receipt of housing benefit, as she applied for this at the same time. She confirmed that she had been told that her housing costs should be covered by housing benefit and not universal credit. She does not know why this has not been paid. She confirmed that the payment of £207 made to the rent account in February 2020, had been from the DWP. The only other payment (£650 in December 2020) had been made by her. In response to questions from the Tribunal, Ms Connelly advised that she had lived temporarily with her uncle at 16 Sound of Kintyre when she had been ill, but that she is currently in occupation of the property and has arranged for the letting agent to carry out an inspection. She stated that she resides at the property with her 6 year old

son, who has autism and ADHD. She has recently applied to the local authority to be re-housed.

7. Ms McMillan advised the Tribunal that until February 2020, the Respondent's rent had been paid by Housing Benefit. This stopped and the DWP advised her that the Respondent had to apply for universal credit for housing costs. No payments either from the DWP or the Respondent have been received since that time, except for the sum of £650 paid in December 2020. There has also been concern about whether Ms Connelly is staying at the property as information was previously received that she was not. A property inspection has been arranged.
8. The Tribunal noted that it was not disputed that the Respondent is in arrears of rent over three consecutive months. However, it was disputed that it would be reasonable to grant the eviction order because of the Respondent's personal circumstances and because the arrears are due to a delay or failure in the payment of a relevant benefit. The Tribunal determined that the matter should proceed to a hearing and issued a direction for both parties to provide further information and documents.
9. The parties were notified that a hearing would take place by telephone conference call on 17 June 2021. Prior to the hearing the Applicant's representative lodged an updated rent statement showing a total due on 11 May 2021 of £5788, a rent statement for the period 21 June 2018 to 21 February 2020, correspondence, and emails with the Respondent regarding the rent arrears and copies of emails between the Benefits Section of the Local Authority, the Respondent and the letting agent. The Respondent did not lodge any documents in response to the direction and did not contact the Tribunal. The hearing took place on 17 June 2021 by telephone conference call. The Applicant was again represented by Ms McMillan. The Respondent did not participate and was not represented.

## **The Hearing**

10. Ms McMillan advised the Tribunal that she has had no recent contact with the Respondent regarding the arrears or the eviction application although there has been access to the property on two occasions. One of these visits was an arranged inspection which was carried out by herself. Access was provided by the Respondent. She advised that the property looked as though the tenant was in the process of moving in or moving out. There was little furniture. There was a double bed with bedding. There were several unpacked boxes. There was no evidence of a child living there and the only other bed had no bedding and had boxes sitting on top of it. There was no evidence of the kitchen being recently used but there were toiletries in the bathroom. She had last visited the property in December 2020 when the property also appeared to be unoccupied, with no evidence of a child's presence. Ms McMillan advised the Tribunal that the guarantor named in the tenancy agreement recently came to see her about the arrears. He advised that he was not a relative, as had been indicated by the Respondent. He said that he had been away from his home at 16 Sound of Kintyre for several months. He had returned two months ago to find the

Respondent residing there and the property damaged and in a terrible condition. He had told the Respondent to leave and had changed the locks. He also informed Ms McMillan that the Respondent's child had been in the care of Social Services for several months following a report from a neighbour about neglect.

11. Ms McMillan advised the Tribunal that she has had no contact from the CAB so does not know whether the Respondent has obtained advice from them. She confirmed that the sum specified on the rent statement of £5788 is still outstanding. Since the statement was lodged a further rent charge of £415.40 has become due. No payments have been made and there has been no recent offer of repayment. Ms McMillan referred the Tribunal to the letters and emails lodged. She said that these are some of the communications sent to the Respondent in connection with the arrears of rent. They include two letters sent in June and July 2020 and one on 1 February 2021, in terms of the pre action requirements. However, Ms Millan said that throughout the period of the arrears there has been regular contact with the Respondent. She did respond and advise she was taking steps to resolve matters but did not do so. The Tribunal also noted that copies of emails with the benefits section of the local authority have also been lodged. One of these is addressed to Ms McMillan dated 8 May 2020. It confirms that the Respondents housing benefit had been cancelled in February 2020 and that she would require to apply for universal credit for her housing costs. The second email is from Ms McMillan to the Respondent dated 15 July 2020. In the email Ms McMillan forwards to the Respondent emails dated 8 May 2020 between the Respondent and the benefits section of the local authority. Ms McMillan advised that the Respondent had previously sent these emails to her. The email from the benefits section states that the housing benefit claim was cancelled in 3 February 2020 and that she would need to make an application for universal credit for her housing costs. Ms McMillan confirmed that no further information about the Respondent's benefits has been received and that she does not know what benefits are currently in payment. She confirmed that the Applicant seeks and eviction order.

## **Findings in Fact**

12. The Applicant is the owner and landlord of the property.
13. The Respondent is the tenant of the property in terms of a tenancy agreement dated 21 June 2018.
14. The Respondent is due to pay rent at the rate of £450 per month in terms of the tenancy agreement. The Applicant agreed to accept the reduced figure of £415.40 per month from 11 February 2020.
15. The Respondent has been in arrears of rent since 11 February 2020.

16. The Respondent owes the sum of £5788.70 in unpaid rent to the Applicant.
17. The Applicant served a Notice to leave on the Respondent on 17 July 2020.
18. The rent arrears are not the result of a failure or delay in the payment of a relevant benefit.

### **Reasons for Decision**

19. The application was submitted with a Notice to Leave, together with a copy of an email which establishes that the Notice was served on the Respondent on 17 July 2020. The Notice states that an application to the Tribunal is to be made on ground 12, rent arrears over three consecutive months. Part 4 of the notice indicates that the earliest date that an application to the Tribunal can be made is 20 January 2021. The application to the Tribunal was made after expiry of the notice period. The Tribunal is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a copy of the Section 11 Notice which was sent to the Local Authority. The Tribunal is satisfied that the Applicant has complied with Section 56 of the 2016 Act.
20. Section 51(1) of the 2016 Act states, “The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.” Ground 12 of Schedule 3 (as amended by Schedule 1 of the Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) (No 2) Act 2020) states “(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. (3) The First-tier Tribunal may find that the ground named in 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.”
21. Paragraph 3B states that, when considering whether it is reasonable to issue an eviction order, the Tribunal “is to consider the extent to which the landlord has complied with pre-action requirements before applying for the eviction order.” This provision applies where “all or part of the rent on respect of which the tenant is in arrears as mentioned in that eviction ground relates to the period during which paragraph 5 of schedule 1 of the Coronavirus (Scotland) (No 2) Act 2020 is in force”. This Act came into force on 7 May 2020. Regulation 4 of the Rent Arrears Pre-Action Requirements (Coronavirus) Scotland Regulations 2020 specifies the pre-action requirements which apply to the 2016 Act. These include the provision of clear information relating to the terms of the tenancy agreement, the level of the arrears, the tenant’s rights in relation to eviction proceedings and how the tenant can access information and advice.
22. Sub-Paragraph (4) states, “In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenants 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.” These are defined in sub-paragraph (5) and include housing benefit and universal credit.

23. The Tribunal is satisfied that the Respondent currently owes the sum of £5788 in unpaid rent and that no payments have been made to the rent account since December 2020. She has therefore been in arrears for three or more consecutive months, both at the date of service of the Notice to leave (when the arrears were £2284.70) and the date of the hearing.
24. The Tribunal proceeded to consider whether it would be reasonable to grant the order.
25. At the CMD the Respondent advised the Tribunal that she did not dispute that the sum of £5373 was outstanding. She said that she was in receipt of ESA and was entitled to housing benefit. She said that she was obtaining help from the CAB in relation to her benefits and could provide evidence of her benefit entitlement. She also advised that, although she had been living away from the property during a period of illness, she and her child had returned to reside at the property. The Respondent did not provide any documents to support her position although a direction had been issued by the Tribunal requiring her to do so. She failed to attend the hearing or to provide the Tribunal with any further information or evidence.
26. The Tribunal is satisfied that the Respondent has not always occupied the property during the tenancy. The Sheriff Officers served the application on her on 16 March 2021 at the home address of the guarantor, which they established to be her “current dwelling place”. Ms McMillan gave evidence to the Tribunal that the property did not appear to be occupied when it was checked in December 2020 and that a recent inspection of the property suggested that she was in the process of moving out or had just returned to reside there. This inspection also appeared to establish that, even if she is now residing at the property, her child is not there with her. Ms McMillan also gave evidence that she has been told by the guarantor that the child is currently accommodated by Social Services. Although the available evidence tends to suggest this is the case, it has not been verified with the Local Authority.
27. The Tribunal is satisfied that the Applicant has complied with the pre action requirements which apply to eviction applications based on rent arrears. The Applicant’s representative has provided copies of various letters and emails to the Respondent regarding the arrears, including a letter issued prior to the application being lodged which provides full details of the rent due, the arrears and information about how the Respondent may access help and advice. The Tribunal concludes that the Applicant has complied with Regulation 4 of the Rent Arrears Pre-Action Requirements (Coronavirus) Scotland Regulations 2020.
28. From the documents lodged by the Applicant, the Tribunal is satisfied that the information provided by the Respondent at the CMD about her benefit entitlement was inaccurate. She claimed that she was and had been entitled to

housing benefit throughout the period of the arrears and had been told that she did not require to apply for universal credit. The copy emails submitted by the Applicant clearly demonstrate that this is not the case and that she was notified by the Local Authority in May 2020 that an application for universal credit was required for her housing costs. The information provided by the Respondent at the CMD clearly established that she has not (at any time between February 2020 and May 2021) made an application for universal credit. The Tribunal is therefore satisfied that the non-payment of rent is not attributable to a delay or failure in the payment of a relevant benefit.

29. The Tribunal had regard to the fact that the Respondent has a young child, although noted that the child may currently be accommodated elsewhere. The Tribunal also noted that the Respondent has chosen not to occupy the property for a number of months during the term of the tenancy, although she may no longer have access to alternative accommodation at the home of the guarantor. Although the Respondent stated at the CMD that she had mental health problems, and that the child suffers from autism and ADHD, no evidence of these have been produced and the Tribunal concluded that these could not be considered.
30. The Tribunal is satisfied that the arrears are substantial and increasing monthly. The Tribunal is also satisfied that these are not related to problems with benefits and that the Respondent has made no effort to address the arrears or make payments towards her current rent. In the circumstances, the Tribunal is satisfied that it would be reasonable to grant the order for eviction.
31. The Tribunal concludes that the Applicants have complied with the requirements of the 2016 Act and that the eviction ground has been established. The Tribunal is also satisfied that it is reasonable that an eviction order is granted.

## **Decision**

32. The Tribunal determines that an eviction order should be granted against the Respondent.

## **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.**

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**17 June 2021**

**Josephine Bonnar, Legal Member**