



**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/20/2511

**Re: Property at 11 Marquis Court, The Stables, Perthshire, PH1 2TW (“the
Property”)**

Parties:

**Ms Karen Young, C/O 13-15 St Leonard's Bridge, Perth, PH2 0DR (“the
Applicant”)**

**Mr Mark Laing, 11 Marquis Court, The Stables, Perthshire, PH1 2TW (“the
Respondent”)**

Tribunal Members:

Valerie Bremner (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that it is reasonable to make an eviction order in relation
to the property in terms of Ground 12 of Schedule 3 of the 2016 Act (rent
arrears).**

Background

1.This is an application for an eviction order in terms of section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 and in terms of Rule 109 of the Tribunal rules of procedure. The application was first lodged with the Tribunal on 2 December 2020 and was accepted by the Tribunal on 15 January 2021. The Tribunal was considering the application alongside a related payment order application HPC/CV/20/2512. Both applications initially called for case management discussion on 26 February 2021 at 2 pm and were continued until 19th March 2021 at 10am for the Tribunal to be provided with further information regarding the Respondent’s position as regards universal credit and rent payment for the property.

Case Management Discussions

2. Miss Matheson of Bannatyne Kirkwood France and Co Solicitors appeared on behalf of the Applicant at both of the case management discussions. The Respondent did not attend the case management discussions and was not represented. Miss Matheson moved to proceed in his absence at the case management discussion on 26 February 2021. The Tribunal had sight of a certificate of service by sheriff officer of the application, supporting papers and date of the case management discussion and these had been served personally on the Respondent on 25 January 2021. The Tribunal was satisfied that the Respondent had been given reasonable notice of the proceedings and was prepared to proceed in his absence. At the case management discussion of 19th March 2021 the Respondent again did not attend and was not represented. The continued case management discussion had been intimated to him by post and this letter had not been returned by the post office. The Tribunal was satisfied that the notice requirements in terms of the rules of procedure had been met and proceeded in the absence of the Respondent.

2. The Tribunal had sight of the application, a lease agreement, a Notice to Leave, an email intimating a notice to leave, a notice in terms of section 11 of the Homelessness et cetera Scotland Act 2003 and an email intimating this notice to the relevant local authority. The Tribunal had also received an updated rent statement, a letter regarding rent arrears, a screenshot of attempts to contact the Respondent and covering email in relation to these additional documents. Between the two case management discussions the Applicant's representative had lodged an updated rent arrears spreadsheet, an email giving additional information on two payments made towards rent arrears between July 2020 and January 2021, an email received by letting agents from DWP regarding the payment of universal credit, a letter to the Respondent and an income and expenditure sheet.

3. The additional information received by the Tribunal from the Applicant's representative between the two case management discussions had been intimated to the Respondent by the Tribunal via recorded delivery post, but this had been returned marked "not called for". The Tribunal considered whether it was appropriate to continue when the Respondent had not received all of the documentation before the Tribunal. After consideration the Tribunal took the view that it was appropriate to proceed given that all of the information had been intimated to the Respondent previously by either the Applicant's representative or the Department of Work and Pensions and he had not called to uplift the recorded delivery mail. The view of the Tribunal was that the Respondent appeared to have chosen not to engage with the Tribunal proceedings.

4. The Applicant's position at both the first and second case management discussions was that parties had entered into a private residential tenancy on 20 February 2019 and a Notice to Leave had been served on 18 May 2020 due to rent arrears. In terms of the agreement monthly rent was £575 and the Respondent had first fallen into arrears in January 2020. The rent for that month had ultimately been paid but no rent had been received since early in February 2020 from the Respondent other than two payments paid direct by universal credit on his behalf, in the sum of £81.73 on 6 July 2020 and £6.84 in January 2021. Rent arrears as at the date of the first case management discussion on 26 February 2021 stood at £7386.43 .

5. Miss Matheson's position was that there had been a failure to engage by the Respondent in relation to the rent arrears. A number of attempts had been made to communicate with him about the arrears. There had only been two successful communications regarding rent arrears. The first of these which had happened prior to the Notice to Leave being served in May 2020 had been met with an indication that repairs were required and rent would not be paid at that time. Miss Matheson's position was that the Applicant had carried out all necessary repairs at the property. In February 2021 letting agents acting on behalf of the Applicant had attempted to telephone the Respondent on a number they held for him. A person answered the phone and said that he was not the Respondent and declined to discuss the issue of rent arrears.

6. At the case management discussion on 19 March 2021 Miss Matheson advised that letting agents understood that the Respondent was working at premises called the Caledonia bar. No other information was available as to how long he had worked there, in what capacity, where the premises are located and indeed if he was in receipt of income from that occupation currently, given the Coronavirus restrictions in place. The Applicant's position was that on the face of the two payments made by universal credit towards the rent, it appeared that the entitlement was adjusting and being recalculated in relation to the Respondent's financial situation. There was nothing, it was suggested in any of the information before the Tribunal to indicate that there had been any delay or failure in the payment of a relevant benefit which had contributed to the rent arrears. The Respondent had been quite aggressive with letting agents and others who tried to engage him in conversation regarding rent arrears. Miss Matheson indicated that the matter could possibly have been resolved or at least a payment plan discussed but that he would not engage. The Applicant was being prejudiced on an ongoing basis by the failure to pay the ongoing rent or the arrears.

7. In relation to the pre-action protocol for rent arrears cases in relation to applications made to the Tribunal after 6 October 2020, Miss Matheson's position was that two stages of the protocol had been complied with albeit after the lodging of the application with the Tribunal. Two letters had been sent in January and March 2021. The first correspondence had met with no response. The income and expenditure schedule had not been returned completed. A second letter was issued but again had not been answered. The Applicant's representatives had given debt advice, up-to-date information on rent arrears and provided additional copies of the tenancy agreement. The first letter dated 5 January 2021 had been issued before the Tribunal considered the issues at a Case Management discussion. It was reiterated that as far back as February 2020 the Respondent had refused to discuss the matter of arrears. The amount of rent arrears had been made known the Respondent regularly, before and after the application had been lodged.

Findings in Fact

8. The applicant and the Respondent entered into a private residential tenancy at the property with effect from 20th February 2019.

9. The monthly rent payable at the property is £575 per month. Rent arrears started at the property in January 2020. Rent for January 2020 was ultimately paid but no rent has been received direct from the Respondent since February 2020.

10. Two payments towards the rent have been made since February 2020 both direct from universal credit. These two payments made in July 2020 and January 2021 totalled £88.57.

11. The rent arrears as at February 2021 stand at £7386.43.

12. No information before the Tribunal suggests that rent arrears have accrued due to a delay or failure in payment of a relevant benefit.

13. The Respondent has not engaged with the Applicant in relation to the payment of rent arrears and has not engaged with the tribunal proceedings or stated a defence.

14. A notice to leave in proper form was served on the Respondent by representatives of the Applicant on 18 May 2020 and the appropriate notice period was given in terms of the 2016 Act.

15. A notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 was intimated to the local authority in respect of this application on 30 November 2020.

16. The application to the Tribunal was made on 2 December 2020.

Reasons for Decision

17. This is an application for an eviction order in respect of Ground 12 of Schedule 3 of the 2016 Act, that is on the grounds that the tenant has been in rent arrears for three or more consecutive months. There was no difficulty in this application in determining that rent arrears of some magnitude have accrued at the property since no rent payments have been made since the start of February 2020 other than two small payments made on behalf of the Respondent by universal credit payments.

This is an application to which Ground 12 (3)(b) of the 2016 Act applies namely that the Tribunal has to be satisfied that it is reasonable to issue an eviction order if the level of rent arrears as required by Ground 12 are established.

18. In addition this was an application to which the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 applied, in that the eviction ground related to rent arrears partly accrued during the period when the Coronavirus (Scotland) Act 2020 Nos 1 and 2 are in force and the application was lodged with the Tribunal after 6 October 2020. In terms of Ground 12 (3B) of the 2016 Act as part of its consideration of whether it is reasonable to grant the eviction order the Tribunal is required to consider the extent to which the landlord has complied with the pre-action protocol.

19. In considering its decision as to whether it is reasonable to grant the order the Tribunal took account of all of the circumstances before it, the approach set out in **Barclay v Hannah 1947 SC 245**. It noted that before the lodging of the application in early December 2020 the Applicant's representatives had not complied with all of the formal requirements of the pre-action protocol other than to give updates on the rent arrears and to request contact on the matter, but this amounted to a number of attempts to engage with the Respondent on the question of rent arrears and these had been unsuccessful. Further after the application was raised and before consideration of it at a Case Management discussion one of the pre-action protocol

template letters had been sent to the Respondent which had met with no response. A second letter had been sent prior to the case management discussion on 19th March but again this had been met with no response. Whilst some of the formal requirements of the protocol had not been actioned prior to the lodging of the application, there was a clear history of failure by the Respondent to engage regarding rent arrears and even when formal letters were sent after the instigation of proceedings, no response was elicited. All this was a factor weighed by the tribunal in its consideration of the full circumstances as to whether it was reasonable to grant the order.

20. The Tribunal took the view that the failure to comply with all aspects of the pre action protocol was not of itself a factor which outweighed the other circumstances before it. There was no information before the Tribunal to suggest that there was delay or failure in the payment of a relevant benefit which had affected the payment of the rent. Indeed the Respondent had failed to engage with or appear at the Tribunal having been given proper notice of the proceedings nor had he presented his position on what was a prima facie case showing substantial rent arrears accruing at the property. This was a case where arrears had commenced prior to the Covid 19 restrictions being in place. At no stage had the Respondent engaged with the Applicant or her representatives in order to discuss the issue of outstanding rent or to explain his financial position although this had been attempted on a number of occasions. In the meantime the Applicant was left unable to obtain rent in terms of the agreement for the property. In the overall circumstances of the application it appeared reasonable to grant the eviction order.

Decision

The Tribunal determined that it is appropriate to make an eviction order against the Respondent in relation to the property in terms of Ground 12 of Schedule 3 of the 2016 Act (rent arrears).

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.

V. Bremner

Legal Member/Chair

Date 19.3.21