



**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.**

**Chamber Ref: FTS/HPC/EV/22/3696**

**Re: Property at 9 Whitfield Terrace, Dundee, DD4 0BS (“the Property”)**

**Parties:**

**Ms Jill Pearson, 117A Carnamuff Road, Ballykelly, Co Derry, BT49 9JF (“the Applicant”)**

**Ms Sharon Campbell, 9 Whitfield Terrace, Dundee, DD4 0BS (“the Respondent”)**

**Tribunal Member:**

**Karen Kirk (Legal Member) and Janine Green (Ordinary Member)**

**Decision (in absence of the Respondent)**

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

**Introduction**

This Case Management Discussion (CMD) concerned an Application for an Eviction order in relation to a Private Residential Tenancy under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The CMD took place by teleconference.

## **1. Attendance and Representation**

The Applicant was represented by Logan Ballantine, Rockford Properties, 50 Castle Street, Dundee, DD1 3AQ

The Respondent was not present. She had been served by Sheriff Officer on the 10<sup>th</sup> February 2023. Further intimation of the Case Management Discussions and invites were sent to her by post. No written representations had been received from the Respondent.

## **2. Preliminary Matters/Background**

- a) This application called before the Tribunal as a Case Management Discussion on 1<sup>st</sup> March 2023. At that CMD the Applicant's representative set out that the Applicant sought an order for Eviction on the basis of rent arrears. The Applicant's representative explained further that the Respondent struggled with correspondence but has been aware of the intention to evict since the Notice to Leave was sent to her in 2021. The Applicant's representative said that when the Notice to Leave expired in May 2022 the Applicant did not raise proceedings seeking to give the Respondent another opportunity.
- b) The Applicant's representative said that his colleague reviews arrears daily and once a week contact would have been made with the Respondent. He said the Applicant or the Applicant's representative did not send any pre-action protocol correspondence to the Respondent and did not signpost her to sources of help.
- c) The Applicant's representative said that on behalf of the Applicant the letting agent applied for universal credit directly and this has been in place since 2021. He had to reapply for same in September 2022. No payments to arrears are made but the benefit covers ongoing rent.
- d) The Applicant's representative said that this is the Applicant's only rental property and she used to live in it. She cannot afford for the Respondent to live in the property and not pay rent. He said he was not sure if there was a mortgage and he said the Applicant was in employment.
- e) The Applicant's representative said he was not aware of the Respondent's circumstances. He said he knew there was children but was not aware of the age and of any illness or disability present.
- f) The Tribunal made the following Directions for further information;
  1. *Information showing compliance with the pre-action protocol on rent arrears.*
  2. *Information or evidence of weekly contact on rent arrears with the Respondent.*
  3. *Information on any mortgage on the property.*
  4. *information on the relevant financial circumstances of the Applicant (redacted of personal information)*

5. *Information on the family composition of the Respondent and in particular the children in the property.*
6. *Rent statement or information showing the full periods when full rent from Universal Credit was received for the property.*

- g) The Tribunal at the time of the last Case Management Discussion had also in a payment application granted a Payment Order against the Respondent in favour of the Applicant to the amount of
- h) The Applicant's representative had complied with the following complied with the Directions before this CMD in so far as he could. In addition he had lodged a letter from the Applicant directly.

There were no preliminary matters.

### **3. Case Management Discussion**

The Applicant confirmed that the Applicant sought possession of the property as it was believed the Respondent had been given a lot of chances and he said further that she was not addressing her arrears. He conceded that the Respondents benefit income was covering her rent in full on a monthly basis. However he set out that the Respondent has had a lot of chances and they have been unsuccessful at trying to organise payment plans. He further submitted that the Respondent has been in arrears of rent consistently and whilst rent is met in full because of the arrears the payments being received now are going to the arrears first because the account remains in arrears. He referred to his accounting system for rent arrears.

The Applicant's representative said that whilst the Applicant is receiving income she has had to use savings previously due to arrears and she is aware that there is significant repairs for the property. He said he had submitted an application for access to the property to arrange arrears. The Applicant's representative explained that access to the property had been difficult and was often made through the Respondent's social work family support worker.

The Applicant's representative said that the Respondent reported to the local authority a number of repairs which were needed. The Applicant's representative said that the local authority then informed the Applicant about the repairs which included the windows being not wind and watertight, the front door not being wind and watertight and further wear and tear.

The Applicant's representative submitted that the Applicant sought an eviction order due to significant rent arrears for a long period of time. The Applicant had

made efforts to combat the arrears such as payment plans and the Respondent was given a lot of chances. The Applicant sought possession of the property to get the arrears sorted and to find a suitable tenant.

#### **4. Findings in Fact**

- 1. The Tribunal was satisfied that a decision could be made at the Case Management Discussion and to do so would be in the interests of the parties, in the interests of justice and having regard to the Overriding objective. The Respondent had been served and had not been present. The Tribunal had directed further information to be lodged and that had been received. The Tribunal had before it sufficient information to make a decision.**
- 2. The parties entered into a Private Residential Tenancy in terms of the Private Housing (Tenancies) (Scotland) Act 2016 on the 8<sup>th</sup> June 2018.**
- 3. Contractual monthly rent is £490 per month.**
- 4. The Applicants sought an Order for Eviction by application on 7<sup>th</sup> October 2022.**
- 5. The Applicant seeks an order for eviction on the ground that in terms of schedule 3 Part 3, Ground 12 that the Respondent has been in rent arrears for three or more consecutive months.**
- 6. *In terms of the Ground the Tribunal must find that Ground 12 applies if—***
- 7. *(a)at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant—***
- 8. *(i)is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day, and***
- 9. *(ii)has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, and***
- 10. *(b)the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.***
- 7. The Tribunal may find that the ground applies if—**
- 11. *(a)for three or more consecutive months the tenant has been in arrears of rent, and***
- 12. *(b)the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction***
- 8. The Tribunal must also consider *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.***
- 13. A Notice to Leave was sent to the Respondent on the 11<sup>th</sup> November 2021 stating that the grounds for eviction concerned Schedule 3, Part 3, Ground 12.**
- 14. The Tribunal was satisfied that in terms of Schedule 3, Part 3, Ground 12 the Respondent was at the beginning of the day on which the Tribunal first considered the application for an eviction order the Respondent was**

in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day, and had been in arrears of rent for a continuous period, up to and including that day, of three or more consecutive months. As at the application the Respondent was in arrears of rent to the amount of £1764.06.

15. The Tribunal was also satisfied that in terms of Section 52 of the 2016 Act a valid Notice to Leave had been given to the Respondent by valid means and the Application had been raised after the correct notice period.
16. The Tribunal noted the Local Authority under the 2016 had been notified on 7<sup>th</sup> October 2022.
17. The Applicant's agent had in terms of the relevant pre-action protocol taken steps to inform the Respondent of her arrears and to signpost.
18. The Tribunal also considered reasonableness in terms of the Coronavirus (Scotland) Act 2020. The Tribunal determined it was not reasonable to grant an Order for Eviction on the information before it. The Applicant had lodged an application in October 2022 which confirmed that the rent arrears for the property was £1764.06. The Tribunal had granted a Payment Order in favour of the Applicant in terms of the rent arrears under separate application for the sum of £1764.06 on 1<sup>st</sup> March 2023.
19. The Applicant seeks to supplement income from the property and the Respondent has paid full payment of rent since (through universal credit directly) to the Applicant since the application was lodged from October 2022 to present. The rent arrears for the property are the same as at when the application was lodged. The Applicant lodged a rent statement showing the rent arrears as at £2254.06 but this is before universal credit is applied for that month's rent and the rent arrears therefore remain at £1764.06, almost 6 months after the application was granted. The Applicant's mortgage payments including the cost of living related interest increase is £322.42.
20. The Respondent lived with her 2 children and is in receipt of universal credit. This payment meets the full rent. The Respondent has a family support worker from the local authority support worker. She has reported repairs which are required to the Local Authority including that the windows and doors are not wind and watertight. The Applicant has been informed of repairs by the Local Authority and seeks to repair the property. The Respondent has struggled to allow access to the property and the Applicant's representative has relied upon contact with her family support worker to do so.
21. The Tribunal found an Order in its discretion in all the circumstances was not reasonable in terms of the Coronavirus (Scotland) Act 2020.

## **5. Reasons for Decision**

The Tribunal noted that whilst the Respondent was in rent arrears the amount of same had been fairly stable for over 6 months. There had been no increase in rent arrears since the date of the application. There had been no increase in rent arrears since the Applicant was granted a Payment Order on 1<sup>st</sup> March 2023 against the Respondent for the amount of arrears which have remained stable. The Respondent receives universal credit and this pays the rental payment in full. The rental payment

is £490 per month and the Applicant's mortgage payment on a monthly basis including recent increases is £322.42. The Respondent has resided with her 2 children at the property since 2018. The Respondent requires the benefit of a Family Support worker from the local authority. The Tribunal was told she struggles to allow access to property and with correspondence. The property requires a number of repairs to make it wind and watertight. The Tribunal considered on the basis of the Payment Order, the fact that ongoing rent was secured and had been stable for 6 months, the fact the Respondent has children alongside social work provided support and that the rental payment provides some income for the Applicant despite recent interest increases meant that it was not reasonable in all the circumstances to grant an order.

### **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.**

# K Kirk

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Legal Member

24<sup>th</sup> April 2023  
Date