

**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18 of the Housing (Scotland) Act 1988**

**Chamber Ref: FTS/HPC/EV/22/3365**

**Re: Property at 2/2 7 Ellerslie Path, Glasgow, G14 0NZ (“the Property”)**

**Parties:**

**Lowther Homes Limited, 25 Cochrane Street, Glasgow, G1 1HL (“the Applicant”)**

**Mr Peter Swandells, 2/2 7 Ellerslie Path, Glasgow, G14 0NZ (“the Respondent”)**

**Tribunal Member:**

**Petra Hennig-McFtridge (Legal Member) and David Fotheringham (Ordinary Member)**

**Background:**

An order for possession of the property had been made on 17 January 2023 and the execution of the order sisted in terms of S 20 of the Housing (Scotland) Act 1988 for the period of 6 months on condition of payment by the tenant to the landlord of the monthly rent together with an additional payment of an amount of £100 per week towards the rent arrears. The decision of 17 January 2023 is referred to for its terms and held to be incorporated herein.

On 30 June 2023 the case was re-enrolled for further procedure by the Tribunal. Both parties had been notified of the teleconference on 18 July 2023 scheduled to monitor compliance of the Respondent with the conditions of the sist of execution of the order. The Applicant had provided an up to date rent statement on 14 July 2023.

**The teleconference on 18 July 2023:**

On 18 July 2023 the Respondent and Mr Adams as representative for the Applicant attended a teleconference call. On 17 January 2023 the rent arrears amounted to £7,854.04. On 18 July 2023 the arrears amounted to £7,988.56. The amount of arrears is not disputed by the Respondent.

Mr Adams for the Applicant set out that the landlord and Applicant had made regular attempts to contact the Respondent by telephone and text from April 2023 until the end of June 2023 but had not received any reply apart from a photograph indicating the Applicant may have been in hospital in April 2023. During the past 6 months rent had not been paid for the months of April, May and July. The agreed weekly payments of £100 had on the whole been made. However, ultimately the rent arrears had increased over the 6 months period due to the non payment of rent on three occasions.

The Respondent confirmed he was no longer receiving Universal Credit as he was now working full time. He confirmed that for the past 6 weeks he had gone back to working 40 hours per week with an income of £722 per week. He had received treatment for a bowel tumour. He had wished to receive investigations for Motor Neurone Disease, which he had paid for privately. One of his sons had attempted suicide and he arranged private psychiatric treatment for his son. He considers the NHS provision is not sufficient. He confirmed that he had not replied to any contacts from the Applicant in the time since the order had been granted after April 2023 and had shut himself off from the world again. He stated, as he had at the hearing on 17 January 2023, that he understands he should have kept in touch with the Applicant and should have answered the calls made to him. He confirmed that he had not made payment of rent in July 2023 despite having gone back to work full time as he had used the funds for payments for his son's psychiatrist and for private medical bills for investigations for his own health as he considered the waiting times for treatment offered by the NHS as too lengthy. He proffered no explanation as to why the rent in April and May 2023 had also not been paid. He confirmed that he does not dispute the amount of arrears.

**Based on the information received the Tribunal makes the following additional findings in fact to those established on 17 January 2023:**

1. The execution of the order granted on 17 January 2023 had been sisted on specific conditions of the Respondent making payment of rent and additional payments of £100 per week towards the arrears of rent.
2. The Respondent had not adhered to these conditions. He failed to make payment of the monthly rent in the months of April, May and July 2023.
3. The Respondent has an income of £722 per week.
4. This would allow him to make the rent payments and had confirmed he had "come off all benefits".
5. The non payment of rent for April, May and July 2023 was not due to non payments or delayed payments of relevant benefits.
6. The Respondent had again not taken any steps to keep the Applicant informed of any issues regarding the arrears and had not replied to any request for contact by the Applicant. He had, as he states himself, shut himself off from the world
7. The rent arrears have increased over the 6 months period to £7,988.56.
8. The Respondent has health issues and so does one of his sons. He received some treatment on the NHS. He considered that he should opt for further private medical treatment for investigations of a health condition for himself and for

psychiatric treatment for his son and had used the funds in July 2023 for said payments.

9. The Applicant had consistently tried to contact the Respondent and had provided assistance and support to the Respondent throughout the tenancy.

### **Reasons:**

The Tribunal had made it very clear to the Respondent at the hearing on 17 January 2023 that the sist of execution of the order granted on that date had been granted as an exceptional opportunity, having received assurances from the Respondent that going forward from the date of the hearing he would address the rent arrears situation. The arrears have in fact increased during the period since the execution of the order was sisted. The Tribunal finds that the conditions of the sist of execution were not complied with by the Respondent. He had prioritised other payments over his rent payments. The arrears continue to increase and the Respondent has been in arrears of rent continuously since 3 December 2020 and now the arrears exceed the amount of 13 months rent. The Respondent had persistently failed to address the rent arrears and has not taken steps to keep in contact with the Applicant to explain his reasons for non payment of rent. The Applicant had gone to extreme lengths to assist the Respondent in addressing the arrears, had assisted him to obtain Tenant Welfare Grant Fund and Here For You Fund payments and had contacted the Respondent regularly.

In all the circumstances and having given the Respondent the additional opportunity to sist the execution of the order granted on 17 January 2023, the Tribunal considers the order can now be executed as the grounds 8, 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988 remain met and the granting of the order remains reasonable taking into account the duration and level of the arrears, the financial and health situation of the Respondent and his family and the conduct of both parties over the tenancy period. There is no indication that the payment pattern will significantly improve given the lack of rental payment by the Respondent since he is no longer in receipt of benefits.

### **Outcome**

**The Tribunal removes the sist of execution in terms of S 20 of the Housing (Scotland) Act 1988 of the order for possession of for the property granted on 17 January 2023 on grounds 8, 11 and 12 of schedule 5 of the Housing (Scotland) Act 1988 and the order will now be issued and can be executed from 12 noon on 18 August 2023.**

### **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.



Legal Member

18 July 2023 \_\_\_\_\_  
Date