



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber)**

**Chamber Ref: FTS/HPC/EV/22/2171**

**Re: Property at 12 Milton Court, Milton, Dumbarton, G82 2UD (“the Property”)**

**Parties:**

**Mr Mitchell Sorbie, Clougher Cottage, Ballamodha Straight, Ballasalla, Isle of Man, IM9 3AZ (“the Applicant”)**

**Miss Dawn Howard, 12 Milton Court, Milton, Dumbarton, G82 2UD (“the Respondent”)**

**Tribunal Members:**

**Virgil Crawford (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”) determined that**

**BACKGROUND**

1. By Lease dated 11<sup>th</sup> and 13<sup>th</sup> February 2020 the Applicant let the Property to the Respondent;
2. The start date of the tenancy was 14<sup>th</sup> February 2020;
3. The rent payable was £1,195.00 per calendar month;
4. Towards the end of 2021 the Applicant fell into arrears of rent. As a result, on 1<sup>st</sup> April 2022 the Applicant served a Notice to Leave on the Respondent on the basis that the Applicant was in rent arrears over 3 consecutive months;

5. The Respondent thereafter made payment of part of the arrears and, as a result, the Applicant was of the view that it was not competent to proceed with an eviction based upon rent arrears;
6. The Applicant thereafter, however, served a Notice to Leave on the basis that he intended to sell the Property;
7. A Notice in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the local authority;
8. A letter from estate agent was provided confirming instructions to sell the property once the vacant possession had been obtained;

## **THE CASE MANAGEMENT DISCUSSION**

9. The Applicant did not participate in the Case Management Discussion personally but was represented by Mrs S Stewart of Robb Residential, Glasgow;
10. The Respondent did not participate in the Case Management Discussion. The Tribunal, however, was in receipt of a certificate of intimation by Sheriff Officers confirming that the proceedings had been intimated upon the Respondent. In the circumstances, the Tribunal was satisfied in terms of Rule 24 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the FTT Regs”) that the respondent had received intimation of the date and time of the Case Management Discussion and considered that it was appropriate to proceed with the Case Management Discussion in the absence of the Respondent in accordance with Rule 29 of the FTT regs;
11. Although the Respondent did not participate in the Case Management Discussion, the Tribunal required to be satisfied that it was reasonable to grant an order for eviction. The Tribunal, in particular, was interested to learn of the thinking behind the decision to sell following very swiftly after a Notice to Leave was served based upon rent arrears;
12. Mrs Stewart advised the Tribunal that the Applicant, in fact, initially considered the sale of the property in late 2021, his intention being to sell it in the course of 2022. That, as it happened, coincided with the Respondent falling into arrears of rent. A decision was taken at that stage to serve a Notice to Leave based upon the rent arrears;
13. Following that Notice being served the Respondent made payment of one month’s rent, bringing the arrears below 3 months with the Applicant then determining that it was no longer appropriate to proceed with an eviction on the intended ground given that the arrears of rent were then, at that time, less than 3 months;
14. The Applicant, however, was still intent on selling the Property. He and his wife had separated. He is living in a separate accommodation and paying mortgages for two different properties now. He relies upon the rent from this

property to meet his outgoings. The failure of the Respondent to pay rent is causing him financial difficulty. In the circumstances, he had determined that it was better simply to dispose of the Property;

15. The Tribunal enquired in relation to the circumstances of the Respondent. Firstly, the Tribunal was advised that the arrears now amounted to £11,366.51. There had been no full payment of any one monthly rental payment since March 2022. The only payment received since then was a payment via Universal Credit. In fact it was two payments which totalled £583.49, that money being received on 16<sup>th</sup> October 2022. The current arrears of £11,366.51 take account of that payment being received;
16. It is understood that further payments of benefits would be made on an ongoing basis but those are likely to be £550 or thereby per calendar month. That is less than one half of the monthly rental payment and, as such, even with those payments coming in, the arrears will continue to rise;
17. The agents for the Applicant advised that, at the end of 2021 and the start of 2022 they were in regular contact with the Respondent but, from early 2022, she stopped engaging with them. The only recent contact they had with her was approximately 2 weeks prior to the Case Management discussion when there was an inspection of the property following upon damage to a ceiling. The agent who attended raised the matter of rent arrears but the Respondent was not forthcoming in relation to that issue. She simply said it was a difficult situation for her just now and did not discuss the matter further;
18. In relation to the personal circumstances of the Respondent, it is understood that she resides at the property with 2 teenage children who are believed to be 15 years and 17 years. Mrs Stewart understands, from discussions with a neighbour, that two other children come to the property from time to time. It is believed that they may simply be friends of the Respondent's children. It is understood the Respondent was made redundant at the end of 2021 which coincided with the commencement of rent arrears but also, shortly thereafter, coincided with the lack of engagement with agents for the Applicant;
19. The property is a detached property with a significant area of land. It is a 4 bedroom property set over two floors;
20. The Applicant relies upon the rental income to meet his ongoing monthly commitments particularly given that he and his wife have now separated and he has financial obligations for his current residence and his former matrimonial home;

## **FINDINGS IN FACT**

21. The Tribunal found the following facts to be established:-
  - a) By Lease dated 11<sup>th</sup> and 13<sup>th</sup> February 2020 the Applicant let the Property to the Respondent;
  - b) The start date of the tenancy was 14<sup>th</sup> February 2020;
  - c) The rent payable was £1,195.00 per calendar month;

- d) Towards the end of 2021 the Applicant fell into arrears of rent. As a result, on 1<sup>st</sup> April 2022 the Applicant served a Notice to Leave on the Respondent on the basis that the Applicant was in rent arrears over 3 consecutive months;
- e) The Respondent thereafter made payment of part of the arrears and, as a result, the Applicant did not proceed with an eviction based upon rent arrears;
- f) The Applicant thereafter served a Notice to Leave on the basis that he intended to sell the Property;
- g) A Notice in terms of Section 11 of the 2003 Act was intimated to the local authority;
- h) A letter from estate agent was provided confirming instructions to sell the property once the vacant possession had been obtained;
- i) The Respondent is in arrears of rent and the arrears are long standing and significant;
- j) While the Respondent is now receiving benefits to be applied towards her rent, the benefit payments are less than one half of the monthly rent. As such arrears will continue to accrue;
- k) The Applicant has recently separated from his wife and has additional financial commitments following that. The lack of rental payments for the Property is causing him financial problems. As a result he has decided to sell the Property;
- l) It is reasonable in the circumstances that an order for eviction be granted

## **REASONS FOR DECISION**

22. The application to the Tribunal was based upon the landlord's intention to sell the property. Evidence of his intention to sell was provided to the Tribunal and the raising of the proceedings was intimated to the Local Authority in terms of Section 11 of the 2003 Act;

23. While the Tribunal was interested to learn of the circumstances behind the change from an intention to evict on the basis of rent arrears to an intention to sell, the circumstances giving rise to that decision making progress was fully explained to the Tribunal. When exploring the issue of reasonableness it became clear that, although the application before the Tribunal was no longer on the basis of rent arrears, significant arrears have now arisen. The personal circumstances of the Applicant were explained to the Tribunal, in particular the increased financial burden upon him following the separation of him and his wife and the decision to now dispose of the property was entirely understandable in the circumstances;

24. The Respondent did not participate in the proceedings but the Tribunal made enquiry as far as possible in relation to her circumstances. The Tribunal was not made aware of any vulnerabilities on the part of the Respondent nor anyone within her household. On the basis of the information available, the rent arrears will continue to rise, notwithstanding any payment of benefit given the amount of the rent and the level of benefit payments. The rent arrears are already significant and that, of course, is a factor to take into account in determining reasonableness;

25. On the basis of the information available to the Tribunal, and weighing up the competing information available in relation to both the Applicant and the Respondent, the Tribunal concluded that it was, indeed, reasonable that an Order for eviction be granted.

## **DECISION**

The Tribunal Grants order to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth and from the Property at 12 Milton Court, Milton, Dumbarton, G82 2UD and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same.

Order not to be executed prior to 12 noon on 19<sup>th</sup> December 2022

## **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.

Virgil Crawford

Legal Member/Chair

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**11 November 2022**  
Date

