



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

Chamber Ref: FTS/HPC/EV/22/2653

Re: Property at 11 Bridgend Cottages, Inverkip, PA16 0AN (“the Property”)

Parties:

Trustees of Sir Houston Mark Shaw Stewart Testamentary Trust Ardgowan Estate, Ardgowan House, Inverkip, PA16 0DW (“the Applicant”)

Mr Joseph Owens, 11 Bridgend Cottages, Inverkip, PA16 0AN (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and issued an Eviction Order against the Respondent.

Background

By application, received by the Tribunal on 2 August 2022, the Applicant sought an Order for Possession of the Property under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Ground relied on was Ground 12 of Schedule 3 to the 2016 Act, namely that the Respondent was in arrears of rent over three consecutive months.

The application was accompanied by a copy of a Private Rented Tenancy Agreement between the Parties commencing on 21 December 2021 at a monthly rent of £470, and a Notice to Leave, dated 27 June 2022, advising the Respondent that the Applicant was seeking an Eviction Order under Ground 12 of Schedule 3 to the 2016 Act and that an application to the Tribunal would not be made before 28 July 2022, together with a Rent Statement showing arrears as at 2 August 2022 of £2,320.

The Applicants' representatives, Stanley Wright Ltd, Sanquhar, also provided the Tribunal with copies of email exchanges with the Respondent. On 16 June 2022, they advised him that the arrears were £1,880 and signposted him to sources of possible advice and support, including The Scottish Welfare Fund, Shelter Scotland and Citizens Advice. On the same day, the Respondent replied that he would pay £500 in the next few days and monthly thereafter and that he would pay an additional £100 on the 21st of each month if possible. On 17 June, the Applicant's representatives stated that they were happy with his repayment plan and his proposal to pay £500 now and an additional £130 per month. On 22 June, they again emailed the Respondent to say they had not received the promised payment of £500 and warned that if he was unable to keep to an agreed payment plan, they would begin eviction proceedings. On 17 May 2022, they emailed the Respondent again, advising that the arrears were now £1,410 and again offering to discuss a payment plan, and on 16 June 2022, they emailed him, again signposting him to sources of advice and support and encouraging him to contact them towards agreeing a payment plan.

On 12 October 2022, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 2 November 2022. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the afternoon of 21 November 2022. The Applicant was represented by Caroline McMillan of Stanley Wright Ltd, Sanquhar. The Respondent was not present or represented.

The Applicant's representative told the Tribunal that the arrears in the previous week stood at £3,230, but that, on 18 November, a payment of £1,150 had been received. This was the first payment since receipt of £500 in August 2022, the payment prior to that having been £500 in July 2022. Although the most recent payment had been of a considerable sum, reducing the arrears to £2,080, the Tribunal noted that it had been made at the last minute prior to the Case Management Discussion. The arrears remained significant and, as there was no way of knowing whether the Respondent would continue to make payments towards the arrears as well as paying the ongoing rent, the Tribunal was not prepared to make a finding on reasonableness. The Tribunal decided, therefore, to continue consideration of the application to a further Case Management Discussion, by which time it would be known whether the Respondent had further reduced the arrears or entered into a payment plan, acceptable to the Applicant, to do so, and whether it would be reasonable to issue an Eviction Order.

On 15 February 2023, the Applicant's representatives advised the Tribunal that the arrears now stood at £3,490 and provided an updated Rent Ledger which confirmed this. Nothing had been paid since the sum of £1,150 in November 2022. They also advised that, on 10 January 2023, the Respondent had asked them how to request repairs. They had suggested they look at the repairs issues on 2 February, but the Respondent had not replied to this request. They had also been advised on 15

February by Police Scotland that the Respondent had been taken into custody on the previous day.

The continued Case Management Discussion was held by means of a telephone conference call on the morning of 2 March 2023. The Applicant was represented by Mr Nicholas Wright and Ms Caroline McMillan of Stanley Wright Ltd, Sanquhar. The Respondent was not present or represented. Ms MacMillan told the Tribunal that she understood the Respondent is no longer in custody. Following their email to him of 20 February 2023, in which they reminded him of the date for the continued Case Management Discussion, he had emailed them on 22 February 2023, suggesting that he would pay £800 per month, starting on 9 March 2023. Ms McMillan stated that she was not confident that the Respondent would honour any repayment arrangement, as he had failed to make even the first payment under previous payment plan arrangements. She also pointed out that in his email, the Respondent said that he was not working at present, which cast further doubt on his ability to comply with his suggested payment plan. The Applicant's representatives had told the Respondent that they intended to proceed with the Case Management Discussion to be held on 2 March. They provided the Tribunal with copies of the relevant emails and advised that they understand that the Respondent lives in the Property with his son. The arrears now stood at £3,960.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

Section 51 of the 2016 Act states that the Tribunal is to issue an Eviction Order against the tenant under a Private Residential Tenancy if, on an application by the landlord, it finds that one of the Eviction Grounds named in Schedule 3 applies.

Ground 12 of Schedule 3 to the Act states that it is an Eviction Ground that the tenant has been in rent arrears for three or more consecutive months and that the Tribunal may find that Ground 12 applies if, at the beginning of the day on which the Tribunal first considers the application for an Eviction Order on its merits, the tenant 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 has been in in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, that 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, and the Tribunal is satisfied that it is reasonable on account of that fact to issue an Eviction Order.

The Tribunal was satisfied that the Applicant had complied with The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.

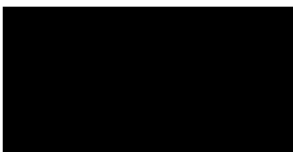
The Tribunal was also satisfied that the Respondent has been in rent arrears for three or more consecutive months and that the current arrears exceed one month's rent. No evidence had been presented to indicate that the Respondent's being in arrears might be wholly or partly a consequence of a delay or failure in the payment of a relevant benefit. Accordingly, the only matter for the Tribunal to determine was whether it was reasonable to issue an Eviction Order.

The Tribunal had continued the case on 21 November 2022 as the Respondent had, three days beforehand, made a substantial payment towards the arrears, and it was possible that he might continue to reduce the sum due, so the Tribunal had decided that it was not prepared to make a finding on reasonableness at that time, the purpose of the continuation had been to afford the Respondent the opportunity to further reduce the arrears or to enter into a payment plan that was acceptable to the Applicant. He had, however, made no payments since then and that the arrears now stand at £3,960. He had suggested a payment plan whereby he would pay £800 per month, but had confirmed to the Applicant's representatives that he is not presently working, and they had indicated that his suggested payment plan was not, therefore, acceptable to the Applicant.

Having considered carefully all the evidence before it, the Tribunal decided that it was reasonable to issue an Eviction Order 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.



**George Clark
Legal Member/Chair**

**2 March 2023
Date**