

**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/22/1554**

**Re: Property at 3 Lochay Place, Troon, KA10 7HH (“the Property”)**

**Parties:**

**Icare2 Property Ltd, 4 Lochend Road, Troon, Ayrshire, KA10 6JJ (“the Applicant”)**

**Mr Steven Bloy, 3 Lochay Place, Troon, KA10 7HH (“the Respondent”)**

**Tribunal Members:**

**Jan Todd (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction be granted.**

- **Background**

1. This was a hearing to consider the application made by the Applicant dated 23<sup>rd</sup> May 2022 for an order for eviction of the Respondent from the Property. The Applicant is the owner of the Property and Landlord in a Tenancy with the Respondent who is the tenant, which tenancy commenced on 21<sup>st</sup> March 2019.
2. The Ground of eviction relied on by the Applicant is Ground 12 that rent has been in arrears for 3 consecutive months. A Case management discussion had previously been heard on 8<sup>th</sup> December 2022 and the CMD note for that case is referred to for its terms. The Respondent had indicated he had tried to reach a settlement with the Applicant but had not been able to settle this and at the last CMD he also submitted a Time to Pay application by e-mail where he submitted an offer to pay the arrears of rent at £200 per month. A Conjoined application for payment of rent arrears had also been lodged and

the Applicant had originally sought a payment of £2,316.16 although the rent arrears had increased since the applications had been submitted.

3. The Respondent also indicated during the CMD that whilst he agreed the rent was due and owing, arrears had built up over the time of the Covid pandemic when he had his own travel agency business and it had suffered badly and he was struggling to make payments. He advised he had had an offer of a government grant which would go towards the arrears but advised that the landlord refused it and explained that as he had asked the landlord why they did this but didn't get an explanation so he started withholding the rent. He accepted he had not paid the rent since March 2022 but stated he just wanted a response although he also confirmed he had not retained the rent withheld in a separate account. The Respondent however also advised that as well as the offer to pay the arrears at £200 per month he could also pay a lump sum of £2,000 to the landlord.
4. The Tribunal agreed at the CMD that this application should be continued to allow the Applicant to consider and respond to the Respondents offer of a time to pay at £200 per month, and also to consider whether or not it would be reasonable for an order for eviction to be granted. The Tribunal wished to see if the Respondent's started to pay the arrears as offered and wished to hear from the Applicant in regard to the matter of why they had not pursued the hardship grant and generally on whether or not it would be reasonable for an eviction order to be granted.
5. The Tribunal indicated it would continue the matter to a hearing for these matters and the conjoined action for payment to be fully considered.
6. The Tribunal issued directions to both parties to facilitate the hearing as follows:-

*The Applicant is required to provide:*

1. *Details of and a copy of any offer of grant towards rent arrears and correspondence from the grant provider.*
2. *Any submissions on why they refused to accept an offer of a hardship grant to repay some of the arrears accrued by the Respondent during the Covid pandemic period*
3. *Copies of any correspondence with the Respondent regarding the grant application and offer of payment.*
4. *Any submissions regarding why the Applicant believes it would be reasonable for an order of eviction to be granted.*
5. *In respect of the civil application to confirm how much they are seeking and to provide an application for an increase in the sum sought if applicable.*
6. *Any productions should be lodged as an inventory of productions, with an index and numbered pages for ease of reference.*
7. *A list of witnesses that the Applicant wishes to bring with their name and phone number so they can be contacted on the day of the hearing.*

*The Respondent is required to provide:-*

1. *Any evidence as to how much the offer of the government grant was and when the offer was made and refused by the Applicant.*

2. *To confirm if the grant is still available and if so to provide evidence that he has re-applied for it, if he chooses to do so or confirmation he chooses not to or confirmation it has been withdrawn.*
  3. *Copies of any correspondence with the Applicant regarding the grant application and offer of payment*
  4. *Evidence of any payments made to the Applicant in respect of the arrears of rent and payment of rent from now to 7 days before the hearing.*
  5. *A list of any witnesses the respondent wishes to bring to the hearing to be fixed and to provide their name and telephone number so they can be contacted on the day of the hearing.*
7. No response was received by the Respondent to the Direction. The Applicant responded on 24<sup>th</sup> March 2023 providing a written response and an inventory of productions extending to 51 pages and consisting of a number of e-mails between the parties; letters from the Applicant to the Respondents, letter to the First named Respondent re universal credit and letter from South Ayrshire Council to the Applicant dated 26<sup>th</sup> January 2022.
  8. In addition and prior to the lodging of the response to the Direction the Applicant has lodged and the Tribunal had sight of and considered the following documents:-
    - a. Application for eviction dated 23<sup>rd</sup> May 2022
    - b. Copy Tenancy Agreement between the Applicant and Mr Bloy in respect of the Property dated 21<sup>st</sup> March 2019
    - c. Various Rent statement dated from 21<sup>st</sup> January 2020 to 23<sup>rd</sup> March 2023
    - d. Copy Notice to leave dated 9<sup>th</sup> November 2021
    - e. Certificate of execution of the notice to leave by sheriff officers dated 11<sup>th</sup> November 2021
    - f. Copy section 11 notice to South Ayrshire Council and evidence of posting
    - g. Copy what's app messages
    - h. Copy pre action letters
    - i. Copy e-mails from Holmes Mackillop solicitors
  9. The final rent statement sent from the Applicant's solicitor to the Respondents and the Tribunal is dated 21<sup>st</sup> March 2023 and asks for the sum sought to be increased to £8366.16. Previously the last rent statement lodged prior to this was on 27<sup>th</sup> March and asked for the sum sought to be increased to £7816.16.

### **The Hearing**

10. The hearing commenced at 10am on 29<sup>th</sup> March 2023 and took place by teleconference with the Applicant represented by Mr Craig Donnelly and the First named respondent was present without any representation. There was no appearance by the second named Respondent and she has not lodged any written representations. The Legal Member made introductions and explained the purpose and order of the proceedings today.
11. Mr Donnelly asked if the Tribunal would accept his inventory of productions and written response to the Direction albeit he acknowledged it was lodged late due to the fact the previous solicitor acting in this matter had left the firm

of solicitors and he had only recently joined and taken over this case when he noted the productions had not yet been lodged. Mr Bloy had no objections to this and the Tribunal confirmed it would accept the submissions and productions albeit late.

12. Mr Donnelly then asked if the Tribunal would accept the latest request to increase the sum sought as per the email of 24th March even though that did not give 14 days' notice and the Tribunal advised this would be considered and addressed later in terms of the conjoined civil application.
13. Mr Donnelly then called his first and only witness Mr John Murphy, who confirmed he is one of two directors of the Applicant company and is 66 years of age. He confirmed Mr Bloy is the tenant in the Property by virtue of a lease that started in 2019 and the rent due per month is £550. Mr Donnelly went through most of the inventory of productions with his client and Mr Murphy indicated that the various e-mails and letters sent or received from himself or received by him or his company were made. The letters and e-mails are referred to for their terms. In general he confirmed that Mr Bloy was regularly late in payment of his rent, which was £550 per month due initially on the 21<sup>st</sup> of the month and from January 2021 changed to the 23<sup>rd</sup> of each month to accommodate Mr Bloy. He advised that arrears in rent however only started in March 2020, the start of the pandemic, when Mr Bloy was struggling to pay due to being self-employed. He confirmed that no payment was made for March 2020, July 2020 and then again on June and July 2021 with other payments being made late, and between August 2021 and November 2021 the full amount of rent was not paid increasing the arrears. He also advised that Mr Bloy did agree to a repayment plan initially and started making payments of £50 a month but this did not last and only 4 payments of £50 were made at the beginning of 2021. He advised that there has been no further payments made since 23<sup>rd</sup> March 2022 and confirmed that a payment of universal credit of £1900 which was due to be paid to Mr Bloy and which he understood would have been paid to the Applicant to go towards the arrears was not in fact paid but used by Mr Bloy to pay a dissatisfied customer of his former business.
14. Mr Murphy also indicated that he had on separate occasions made an offer to Mr Bloy that if he left the Property he would waive the rent arrears against him and his guarantor. On 16<sup>th</sup> November his then solicitor Mr Symon wrote to Mr Bloy indicating that "his client would be prepared to waive all rent sums due if you agree to vacate the property within 3 weeks." Failing this the e-mail confirms "our client will continue with the eviction process in full which will include pursuing both you and the guarantor for the payment of the rent arrears." Mr Donnelly then asked Mr Murphy to confirm what was contained in an email dated 14<sup>th</sup> December 2022 addressed to Mr Bloy and he confirmed it stated that the tenant had failed to pay £1K on Friday 10<sup>th</sup> December and that after a meeting on Friday 10<sup>th</sup> December the Applicant "was not going to retract the Notice to Quit and within the meeting you agreed to continue to pay your monthly rent plus £100 against the arrears until 23<sup>rd</sup> May 2022 when your Notice to quit concludes therefore your check out date must be on or before 23<sup>rd</sup> May 2022." The E-mail goes on to say though that "We fully understand the guarantors position and therefore we are prepared to give you 1 further option and that would be to vacate the property on or before 23<sup>rd</sup>

March 2022 (where you would continue to pay rent for December 2021, January 2022 and February 2022 on 23<sup>rd</sup> of each month of £550 plus £100 towards the Arrears. In the event that you take up this option to vacate the property on or before 23<sup>rd</sup> March 2022 and adhere to the payment schedule then we will write off the debt balance and not seek recovery from you and the guarantor (and we will retain the deposit.) Mr Murphy indicated that Mr Bloy accepted this proposal on 31<sup>st</sup> December but then did not adhere to that agreement and did not leave the property on 31<sup>st</sup> March. He also indicated that e-mail went on to confirm that “if you (the tenant) stay until the end of the Notice Period your debt will still be owed to us as Landlord and we will seek to explore every avenue to recover the debt at the time from you and the guarantor.” Mr Murphy did however confirm that the Respondent had paid the £1000 on 16<sup>th</sup> December 2021 and also then paid the rent due in December to March with an extra £100 for each of those months.

- 15.** When asked about why he did not seek to pursue the Council’s potential to offer a hardship grant, which was referred to in the south Ayrshire’s letter to the Applicant of 26<sup>th</sup> January 2022, to meet some of the arrears Mr Murphy advised that the reason he did not pursue this was because by the time of December 2021 he did not trust Mr Bloy to stick to his promises and was not prepared to withdraw the Notice to leave which he had served in November 2021 and this was a condition of proceeding with the application for the grant.
- 16.** Mr Murphy confirmed the current rent outstanding is £8,366.16 including rent due on 23<sup>rd</sup> March 2023, and nothing has been paid by the Respondent or his guarantor since March 2022. He advised that this matter is causing him personally a lot of stress and that he is about to undergo a heart procedure. He did confirm it will not cause any financial distress for the company.
- 17.** Mr Bloy confirmed that he was not disputing that the rent is due. He advised that he felt that Mr Murphy should have pursued the matter of the hardship grant and this would have meant a substantial part of the arrears would have been paid, but he admitted that he had spent the arrears paid to him from universal credit on a customer of his travel agency business who was threatening to take him to court. He also indicated that he had withheld rent payments because he had not had an answer from the Applicant as to why they did not pursue the hardship grant.
- 18.** Mr Bloy confirmed however that he was still in the Property, he was in the process however of leaving and was clearing out his final possessions and would be able to leave soon. He indicated that he was no longer opposed to the eviction order and was happy to leave when required. He also indicated he had made a subsequent offer after the CMD hearing, via the Applicant’s solicitors, to pay the arrears at a rate of £250 per month, with a lump sum of £2000. He advised that this was rejected but that when he asked what offer would be acceptable he did not receive a response and so he confirmed he has not made any further payments towards the rent since the last CMD and agreed the current balance due as of 23<sup>rd</sup> March was £8,366.16. Mr Bloy confirmed he was still able to make the offer to pay in instalments at the rate of £250 and felt that was affordable as he is in regular employment but under questions admitted that to make a lump sum payment he would have to seek a loan and that would not be guaranteed.

19. After some further discussion and 2 adjournments to take his client's instructions Mr Donnelly returned to confirm that Mr Murphy was willing to accept the offer by Mr Bloy of payment of instalments of £250. That both parties agreed Mr Bloy would remove his possessions and return the keys by 31<sup>st</sup> March 2023 and this would be the end of the tenancy and the final amount therefore due up to 31<sup>st</sup> March 2023 would be £7,978.88 and that while Mr Bloy was paying the instalments of £250 the Applicant would not seek to enforce the order against the guarantor either. Mr Bloy indicated he was happy to accept an order in those terms.
20. Mr Donnelly finally asked for the Tribunal to consider the question of granting expenses to the Applicant submitting that Mr Bloy had caused extra expense to the Applicant by defending this and the conjoined application and not indicating he was unopposed to the eviction earlier.

## **Findings in Fact**

1. The Applicant is the landlord and the first named Respondent is the tenant in a lease of the Property that commenced on 21<sup>st</sup> March 2019.
2. The Rent due when the application was first submitted was £2,316.16.
3. The Rent due up to 31<sup>st</sup> March 2023 is £7,978.16.
4. The tenancy is continuing.
5. A notice to leave dated 9th November 2021 was served on the Respondent by Sheriff officers personally on 11<sup>th</sup> November confirming that no proceedings would be raised before 12th May 2022
6. The Notice to Leave gives 6 months notice as required at that time for an application based on Ground 12.
7. These proceedings were raised on 23<sup>rd</sup> May 2022 and the application included a copy of the Notice to Leave.
8. Rent had been in arrears for a consecutive period of 3 months when the Notice to leave was served.
9. The Applicant served pre action letters on the Respondent offering advice and signposting where to seek assistance.
10. The Respondent made an offer to pay the rent arrears by instalments of £200 per month at the CMD held on 8<sup>th</sup> December 2022.
11. This offer was not accepted by the Applicant and no further payments of rent have been made by the Respondent.
12. The Respondent admits he owes rent arrears and has increased his offer to pay in instalments to £250 per month.
13. The Applicant and Respondent have agreed the Respondent will leave by 31<sup>st</sup> March 2023 and that the rent due up until that date is £7,978.88.
14. The Applicant has accepted the offer to pay the arrears in instalments of £250 per month.
15. A Section 11 notice has been served on South Ayrshire Council
16. The Tribunal finds it reasonable that an order for eviction is granted for the reasons stated below.

- **Reasons for Decision**

1. The Tribunal was satisfied that the Respondents had been served with a valid Notice to Leave under S52 (3) of the 2016 Act specifying Ground 11 and 12 of Schedule 3 of the Act as the relevant grounds of eviction.
2. The Notice to Leave was accompanied by evidence of how ground 12 was met namely a rent statement, various e-mails to the Respondent regarding the rent arrears.
3. Grounds 12 require 6 months' notice under the rules which applied at the time of the service of the Notice in terms of the Coronavirus (Scotland) Act 2020. The Notice sets out the notice period as expiring on 12<sup>th</sup> May 2022. This Application is therefore timeous.
4. The Applicant withdrew his reliance on Ground 11 during the course of the discussion and so the Tribunal only considered whether the terms of Ground 12 were met namely that the Respondent is in arrears of rent by an amount equal to or greater than the amount which would be payable as one months' rent under the tenancy on the day the Tribunal considers the application and has been in arrears of rent for any amount for a continuous period up to and including that day, of three or more consecutive months. The Tribunal notes from the rent statement lodged that the Respondent failed to make payment of rent on March and July 2020 and June and July 2021, paid £200 towards arrears between February and May 2021 and underpaid in August 2021 although he paid extra in September, December and was therefore in arrears for over 3 months at the date the Notice to Leave was served and there have been continuous arrears since. The current arrears outstanding are £7978.16 due up to 31<sup>st</sup> March 2023. The Tribunal accepted that Ground 12 has been met.
5. The Tribunal went on to consider if it was reasonable to grant an order for eviction. The evidence from Mr Murphy a director of the Applicant was supported by the various written submissions and pieces of written evidence which showed he had offered to waive the rent due if the Respondent would leave the Property. The Respondent explained at the CMD that he was unable to leave the Property at that time but advised at the hearing that he is in the process of leaving now and has cleared a lot of his possessions from the Property, is planning to move in with his girlfriend temporarily and so is ready to leave now. He did however indicate that he needed a few more days to move the final possessions.
6. The Respondent when asked why he had not made any payments towards the rent arrears that he agrees are due advised that because the landlord had not replied to him regarding the revised offer to pay in instalments, he did not pay anything in principle. He also conceded he is unlikely to be able to make a lump sum payment as he would have to apply for a loan for that. Given that the rent arrears have increased substantially since the application has been made, that the Respondent is no longer contesting the eviction and the Applicant has advised that this is causing him a lot of stress the Tribunal finds it reasonable to grant the order for eviction. The Applicant is still seeking the order and the Respondent is no longer contesting it and is in the process of moving out. There is no suggestion that the failure to pay is a consequence of any delay or failure in the payment of benefit.

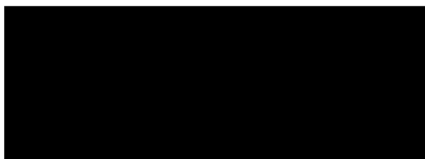
7. The Tribunal is therefore satisfied in terms of S 51 (1) of the Act that Ground 12 being an eviction ground specified in the application is met, and that it is reasonable for the Tribunal to grant the application.
8. The Applicant's solicitor moved at the end of the hearing for the expenses of the application but expenses are, in terms of Rule 40 at the discretion of the Tribunal if it can be shown that the "party though unreasonable behaviour in the conduct of a case has put the other party to unnecessary or unreasonable expense." In this application the Respondent is entitled to contest an application for eviction. He indicated previously he was not able to move out and was seeking to come to an arrangement with the Applicant. No arrangement was negotiated and the Respondent is now in the process of leaving the property. In these circumstances the Tribunal finds that it would not be appropriate for an award of expenses to be made against the respondent and does not do so.

### **Decision**

An order for eviction is granted in favour of the Applicant.

### **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/Chair**

**30<sup>th</sup> March 2023**

**Date**