



**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/23/1963**

**Re: Property at 66 Brewlands Crescent, Symington, Kilmarnock, KA1 5RL (“the Property”)**

**Parties:**

**Mr Jimmy Hugh Kennedy, Woodside, Kilgrammie, Girvan, KA26 9LD (“the Applicant”)**

**Miss Rebecca Higgins, 66 Brewlands Crescent, Symington, Kilmarnock, KA1 5RL (“the Respondent”)**

**Tribunal Members:**

**Lesley Ward (Legal Member) and Melanie Booth (Ordinary Member)**

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

**1. Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for the eviction of the Respondent from the property at 66 Brewlands Crescent Symington Kilmarnock KA1 5RL be made, on ground 12A (substantial rent arrears in excess of 6 months) and it is reasonable in all of the circumstances that the eviction be granted.**

**Background**

**2. This was a case management discussion (‘CMD’) in connection with an Application for eviction in terms of rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Procedure Regulations 2016, (‘the rules’) on ground 12A (substantial rent arrears) of schedule 3 of the Private Housing (Tenancies) (Scotland)**

Act 2016' the Act'. The Applicant was represented by Miss Jennifer Anderson trainee solicitor. The Respondent did not attend and was not represented. There was a second application before the Tribunal for rent arrears.

3. The tribunal had before it the following copy documents:

- Application dated 14 June 2023.
- Land certificate.
- Landlord registration details.
- Private Residential Tenancy Agreement with guarantee dated 30 November 2018.
- Pre-action requirements letter dated 28 November 2022.
- Notice to leave dated 20 April 2023.
- Email serving notice to leave dated 20 April 2023.
- Rent statement.
- S11 notice and proof of service.
- Execution of service by sheriff officers dated 4 August 2023.

#### **4. Preliminary matters**

The Respondent did not attend the CMD and was not represented. The Tribunal had sight of the execution of service by sheriff officers dated 4 August 2023 and was satisfied that she had received appropriate notice in terms of rule 24. The Tribunal was satisfied that it was fair to proceed in her absence.

#### **5. Discussion**

Miss Anderson had lodged an up to date rent statement on 25 August 2023 which gave the current arrears at £5726.26. The Respondent has not made any payment towards the rent or arrears since October 2022. As a result of advice given by her firm the Applicant was able to arrange for the Respondent's Universal Credit of £461.87 to be paid to him directly. He has received this payment for July and August 2023. Miss Anderson was not aware of the rental arrears being wholly or partly due to a delay in payment of a relevant benefit. It was her client's instructions that when the tenancy agreement was signed in 2018 the Respondent was in employment. He subsequently learned via neighbours that the Respondent was no longer working and this led to his inquiries regarding her entitlement to Universal Credit respect of the rent. It was Miss Anderson's instructions that the Respondent continues to reside in the property with her child who is of primary school age. The Applicant has not had any recent communication with the Respondent and attempts to come to an arrangement for the repayment on the arrears were unsuccessful.

6. Miss Anderson invited the Tribunal to award expenses of the Application. The tribunal noted that there was no reference to expenses in the Application.

## 7. Findings in fact

- The Applicant is the owner and registered landlord of the property.
- The parties entered into a private residential tenancy for let of the property on 30 November 2018 for let of the property from 1 December 2018.
- The agreed monthly rent was £500.
- Rent arrears began to accrue in December 2021.
- The Respondent was sent a pre-action notification letter on 28 November 2022.
- The Applicant served the Respondent with a valid notice to leave on 20 April 2023.
- The notice to leave expired on 22 May 2023.
- The rent arrears on 20 April 2023 were £4650.
- The rent arrears when the Application was made on 14 June 2023 were £5650.
- The rent arrears as at 1 September 2023 are £5726.26.
- The rent arrears are not due to a delay or failure in payment of a relevant benefit.

## 7. Reasons

This is an undefended eviction Application. The Tribunal was satisfied that the Respondent had received a valid notice to leave and the procedure has been fair. The Applicant had complied with the pre-action requirements. The Tribunal was satisfied that the rent arrears are not wholly or partly due to a delay in the payment of a relevant benefit. The rent arrears are substantial and in excess of the 6 months required in terms of ground 12 A of schedule 3 of the Act. The Tribunal was satisfied that it is reasonable in all of the circumstances to grant the eviction.

8. The tribunal was not minded to award expenses. The Application did not refer to expenses and fair notice had not been given. Further, standing the recent Upper Tribunal decision in Hutcheson and Russell (UTS/AP/22/0029 and 0030) expenses are not appropriate in this case.

# L Ward

**1 September 2023**

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**Legal Member**

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**Date**

## **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.**