



**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/21/0354**

**Re: Property at 2C Tern Place, Johnstone, PA5 0RR (“the Property”)**

**Parties:**

**Mr David Williams, 7 Glencart Grove, Kilbarchan, Johnstone, PA10 2DH (“the Applicant”)**

**Miss Natalie Lochery, Mr Christopher Porter, 2C Tern Place, Johnstone, PA5 0RR (“the Respondent”)**

**Tribunal Members:**

**Lesley-Anne Mulholland (Legal Member) and Jane Heppenstall (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for Eviction be granted against the Respondent**

**Introduction**

- 1. This is an application under Rule 109 and Section 51 of the Private Housing (Scotland) Act 2016 for an Eviction Order under Ground 12 of Schedule 3.**
- 2. The respondents are joint tenants. They entered into a tenancy agreement on the 20<sup>th</sup> of June 2019. The tenancy agreement specifies that £495 is due in respect of rent each calendar month payable in advance.**

- 3. The applicant asserts that the respondents have accrued rent arrears, at the date of the application, in the sum of £3,100.16. The ground for the eviction order relied upon by the applicant is ground 12 which provides the tribunal with discretion to grant the eviction order if we are satisfied that rent arrears have accrued of more than three months and it is reasonable to grant the eviction order.**
- 4. The two-member case management discussion took place at 10.00 am on 30 April 2021 by teleconference. The applicant and his representative, Miss Carrell joined the hearing.**
- 5. The respondents have failed to engage with the application. We decided to continue with the hearing in their absence after satisfying ourselves that the papers had been properly served on the respondents and that they were notified of today's CMD.**
- 6. Since the coming into force of the Coronavirus (Scotland) Act 2020, all eviction grounds are discretionary. Additionally, the notice periods have been extended by virtue of the 2020 Act. The relevant notice period is now 3 months. We were satisfied that proper notice had been given.**
- 7. Miss Carrell informed us that the respondents have not been in touch with her since August 2020 when she required to obtain a safety certificate for the property. The respondents were in receipt of Social Security benefits by way of Universal Credit. It was arranged that rent would be made payable directly to the landlord, however over the course of the tenancy, the respondents separated and then reconciled on a number of occasions which caused a change in circumstances in relation to the claim or claims for universal credit which in turn meant that the direct payment to the landlord was terminated .**
- 8. The applicant has been in touch with the Department of Work and Pensions(DWP) about this matter to see if there was a way in which a workaround could be achieved but this was not possible. We were informed by Miss Carrell that Mr Smith who is a case management manager at Dundee DWP, informed Miss Carrell by email that the respondents had been paid housing benefit for a period of five months from July 2020 to November 2020, which is a period in which the landlord did not receive any rent and still has not received any rent, despite housing benefit being paid directly to the respondents for this period.**

9. Miss Carrell informed us that in her opinion the respondents were manipulating the benefit system and committing a fraud. She relied upon a course of email correspondence between her and the DWP.
10. We were not satisfied that there was sufficient evidence or information before us to indicate that the respondents were acting manipulatively or fraudulently. There could be many innocent explanations that could account for a change in circumstances occurring within a benefit claim. It is clear that the respondents had informed the DWP that they were living together as they claimed as a couple. When they separated they made separate claims and when they reconciled they notified the DWP that the claim should be in joint names.
11. There is nothing unusual about couples separating and reconciling that would indicate that the respondents were acting manipulatively and fraudulently. It is the systems within the DWP that mean that when a couple, such as the respondents, separate and then reconcile, that the direct payment to the landlord ceases automatically and the landlord has to reapply for a direct payment in relation to the new claims made by the tenant or tenants each time a change in circumstances occurs.
12. Nevertheless, we were satisfied that the applicant is entitled to the payment of £450 per calendar month and that significant rent arrears have accrued over a significant period of time, such that it is reasonable to grant the eviction order.
13. As at the current date, the amount of rent arrears outstanding totals £4,207.04. The respondents have expressed no intention of paying that sum. Indeed, from the information provided by Miss Carrell that she received from the DWP; the respondents have deliberately withheld housing benefits payments which have been paid to them directly for the purpose of meeting their rent obligations. Their actions in this respect are unreasonable.
14. As stated before, we were satisfied that the respondents had failed to engage with the application in anyway. For that reason, we have no information before us to indicate that there are any particular such circumstances to find that the granting of the order would not be reasonable.
15. We were satisfied that the making of an Eviction Order was reasonable in all of the circumstances, having regard to all the information before us.

16. The property is situated within a designated level 3 area for the purposes of Covid-19 restrictions imposed by the Scottish Government. The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 12) Regulations 2021 as amended by the Health protection (coronavirus) restrictions and requirements (minutes miscellaneous amendments) (Scotland) (Number two) regulations 2021 apply.
17. This prevents in a level 3 or 4 area, except in specified circumstances, attendance at a dwelling house for the purpose of serving a charge for removing or executing a Decree for removing from heritable property (giving notice of or carrying out an Eviction Order in relation to a residential tenancy of a dwelling house). None of the specified circumstances apply. As things stand, any Eviction Order cannot be implemented in respect of the property. It is currently unknown as to when those restrictions will cease. The fact that, as at the date of the hearing, no eviction can be carried out does not prevent the Tribunal making the Eviction

### **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.

**Lesley-Ann Mulholland**  
Legal Member/Chair

**30 April 2021**  
Date