



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 18 of the Housing (Scotland)  
Act 1988**

**Chamber Ref: FTS/HPC/CV/22/0325**

**Re: Property at Flat 2/2 1320 Govan Road, Glasgow, G51 4RE (“the Property”)**

**Parties:**

**Home Group Limited, 2 Gosforth Park Way, Gosforth Business Park, Newcastle  
Upon Tyne, NE12 8ET (“the Applicant”)**

**Ms Sheryl Dickie, Flat 2/2 1320 Govan Road, Glasgow, G51 4RE (“the  
Respondent”)**

**Tribunal Members:**

**Valerie Bremner (Legal Member) and David MacIver (Ordinary Member)**

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

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a possession order be granted at the property in terms of Grounds 8,11, and 12 of Schedule 5 of the Housing (Scotland) Act 1988 and found that it is reasonable to make the order.

**Background**

1.This application for a possession order is made in terms of Rule 65 of the Tribunal rules of procedure and was first lodged with the Tribunal on 2<sup>nd</sup> February 2022 along with a related payment order application made in terms of Rule 70 of the Tribunal rules and with reference FTS/HPC/CV/22/0327. Both applications were accepted by the Tribunal on 21<sup>st</sup> February 2022. A case management discussion was first set down for 29<sup>th</sup> April 2022 for both applications.

2.At the first case management discussion on 29<sup>th</sup> April the Applicant did not attend but was represented by Mrs Mullen of TC Young Solicitors. The Applicant’s solicitor moved for a possession order and a payment order in respect of the two applications. The Respondent attended and represented herself. She accepted the level of rent arrears due at that time which at that time amounted to £3819.49. The Respondent

indicated that she could clear the rent arrears and make a payment for the rent due for May 2022 within 2 weeks of the case management discussion with the help of a family member. She also indicated that she could set up a direct debit for future rent payments. The Tribunal continued the case management discussion in relation to both applications to allow her to pay off the arrears and the rent due for May 2022 and to set up a direct debit for future rent payments. The Tribunal issued a Direction for the Respondent to provide confirmation that a direct debit for future rent payments had been set up.

3. A further case management discussion was set down for 20<sup>th</sup> June 2022 at 10am for both applications. The Applicant did not attend this case management discussion and was again represented by Mrs Mullen of TC Young solicitors. The Respondent attended and represented herself and was supported by her father Mr Dickie. The Applicant's solicitor again moved for a possession order and payment order as before.

4. On 20<sup>th</sup> June the Respondent explained that she had not been able to pay off the arrears as she had intended to do and had not set up a direct debit. The family member she had suggested could assist her was still on holiday, but she had access to £2000 to pay towards the arrears. During the case management discussion, the Tribunal allowed an adjournment and during that time the Respondent paid over £2000 electronically to the Applicant's bank account. By the date of this case management discussion and before this payment was made, the arrears stood at £4971.27, and the Tribunal had allowed the sum being requested by way of a payment order to be increased in terms of the Tribunal rules and the Respondent did not dispute the rent arrears figure. The Respondent indicated that her circumstances had improved and going forward that she could pay the rent and £200 each month towards the remaining rent arrears and set up a direct debit for future rent payments. The Tribunal continued the case management discussion for the Respondent to make the payments she said she could make and indicated that it would issue a direction to require her to show proof of setting up a direct debit and that payments were being made. After the case management discussion on 20<sup>th</sup> June 2022 the Tribunal issued a second direction requiring the Respondent to lodge confirmation that she had paid the full rent due on 1<sup>st</sup> July 2022 and any further rent due before the next case management discussion fixed together with the sum of £200 each month in addition to the rent toward the rent arrears and confirmation that she had set up a direct debit arrangement for the monthly rent payable and the sum of £200 per month to be paid.

5. The continued case management discussion took place on 23<sup>rd</sup> August at 10am. The Applicant did not attend and was represented by Ms Donnelly solicitor of TC Young solicitors. The Respondent did not attend and the letter advising her of the date of the case management discussion had been intimated to her by email. Miss Donnelly moved that the Tribunal proceed in her absence and the Tribunal granted this request given that fair notice of the case management discussion appeared to have been given to the Respondent.

6. As previously the Tribunal had sight of both applications, a paper apart, a head lease, a lease between the Applicant and the Respondent, an AT 6 Form, a Notice to Quit, an execution of service of these notices, a notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003, an email intimating this notice, a rent

statement, a note of attempts at contact with the Respondent and a further updated rent statement. The Tribunal also had sight of rent increase letters and letters sent to the Respondent in January and February 2022 signposting the Respondent to advice agencies in terms of the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.

7. Miss Donnelly advised that the Respondent had not complied with the Tribunal's direction regarding confirmation of payments made and the setting up of a Direct debit for rent payments although a standing order had been set up. The Respondent had made a payment of rent in July with a £200 payment towards arrears as agreed but no payment had been made in August. The Respondent had been emailed on 3<sup>rd</sup> August by the Applicant's Housing Officer and acknowledged she had not paid but gave no explanation. A text message was sent to her on 9<sup>th</sup> August 2022 but no response was received. She was given an opportunity to provide an explanation but none was received. Rent arrears remained relatively high at £3347.16.

8. The Tribunal was aware of the Respondent's circumstances which she had set out at the case management discussion on 29<sup>th</sup> April 2022. She had explained that her difficulties had started in 2021 when she was not getting extra shifts at work. She indicated that her father had assisted her in paying off previous arrears and she felt very guilty about that. She worked as a health care support worker and had not been working enough shifts to pay all the bills. Her only issue was the arrears of rent – she had no other money problems. She explained she had suffered from depression and was on anti-depressants and had not been in what she described as a “good place” mentally. She believed she had turned a corner recently and was ready to start from scratch as she put it. She had previously sought advice from Money Matters and was willing to speak to them again. She explained that she lived with her 13-year-old son who was causing some problems at this time as he did not always attend school as he should. He has his own health issues and suffers from Crohn's disease and required to have 4 weekly infusions in hospital. He had extra support when he did attend school. The Respondent was keen to retain the lease on the property where she lives with her son.

9. Miss Donnelly moved for a possession order for the property. She submitted that there was a history in the tenancy of irregular payments of rent, broken payment arrangements and substantial rent arrears. She referred to a number of sources regarding whether it was reasonable for the tribunal to grant a possession order. She referred to the case of ***Angus Housing Association v Fraser 2004 Hous.L.R. 83*** and suggested that this case involved circumstances similar to those of the current application. It involved a single parent who had a child with health issues. There was long history of rent arrears and broken payment arrangements. The Sheriff in that case had suggested that the defender was not being reasonable in her dealings with the landlord, and it had come to the stage that the order had to be granted.

10. Miss Donnelly also referred to the case of ***Grampian Housing Association v Pyper 2004 Hous.L.R 22*** where again it was submitted that the circumstances were similar and where the level of arrears was agreed. Finally, she referred to James ***Barrowman, Residential Evictions, 1<sup>st</sup> Edition Legal Services Agency 2006 page 147*** where it was suggested that in case of exceptionally high arrears and a repeated history of broken arrangements that it would only be in exceptional circumstances that an order for possession would not be made.

11. Miss Donnelly submitted that prior to the Coronavirus (Scotland) Act 2020 this would have been a mandatory ground for a possession order.

12. The tribunal noted that the AT 6 form and Notice to Quit lodged appeared to have been served giving a correct date for the ending of the tenancy and gave the required information and notice periods.

13. The Tribunal considered that it had sufficient information upon which to make a decision and that the proceedings had been fair.

## **Findings in Fact**

14. The owner of the property is Home in Scotland Ltd, and they lease the property to Home Group Ltd.

15. Home Group Limited entered into a short, assured tenancy at the property with the Respondent from 4 October 2016 to 6<sup>th</sup> April 2017.

16. The tenancy continued on a month-to-month basis after 6<sup>th</sup> April 2017 unless terminated by either party.

17. The rent at the property was initially £455.98 per month payable in advance but the rent has increased annually throughout the tenancy and with effect from April 2022 stands at £575.89 per month.

18. There is a history in the tenancy of irregular payments of rent by the Respondent, and accrual of rent arrears.

20. In May 2021 accrued rent arrears were £3352.24.

21. Rent arrears in terms of the tenancy continued to rise in 2021 and in October 2021 the Respondent made a large payment to the arrears with the assistance of family. In February 2022 when the payment order application was made the arrears stood at over £2700.

22. Payment plans were attempted during the tenancy, but these have not succeeded, and arrears continued to accrue.

23. On 20<sup>th</sup> June 2022 the Respondent made a payment of £2000 towards the rent arrears and indicated to the Tribunal that she could pay £200 per month towards the rent arrears going forward. One such payment of rent and £200 was paid in July 2022 but no payment was made for the August rent or towards the rent arrears. Rent arrears as at the date of the case management discussion on 23<sup>rd</sup> August 2022 stand at £3347.16.

24. A Form AT6 and a notice to quit in proper form were served on the Applicant giving the appropriate notice period by which she required to leave the property.

25. A notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 was intimated to the local authority in this application.

26. Two letters were sent to the Respondent in January and February 2022 in terms of the Rent Arrears Pre Action-Requirements (Coronavirus) (Scotland) Regulations 2020.

27. As at the date of service of the notices in this application in May 2021 and as at the date of the hearing at least three months' rent lawfully due from the Respondent in terms of the tenancy is in arrears.

28. The Respondent has persistently delayed paying rent which has become lawfully due in terms of the tenancy.

29. Some rent lawfully due by the Respondent is unpaid on the date when proceedings for possession began and as at the date of service of the notices in relation to these proceedings.

30. The Respondent lives at the property with her teenage son and both of them have health issues.

### **Reasons for Decision**

31. The Tribunal was satisfied that it was appropriate to make a possession order given the level of rent arrears, the history of rent arrears and the broken payment arrangements, one made as recently as June 2022. The possession order grounds were made out. The Respondent had failed to attend the case management discussion when the decision was made and did not seek to suggest it was not reasonable for an order to be made after the failed payment arrangement suggested by her at the case management discussion on 20<sup>th</sup> June 2022. Having regard to all of the circumstances and the authorities referred to by the Applicant's solicitor the tribunal found that it was reasonable to grant the order.

### **Decision**

The Tribunal determined that a possession order be granted for the property in terms of Grounds 8, 11, and 12 of Schedule 5 of the Housing (Scotland) Act 1988 and found that it is reasonable to make the order.

### **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**

**23.8.22**  
**Date**