



**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 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)**

**Chamber Ref: FTS/HPC/EV/23/0750**

**Re: Property at 5a Spateson Road, Johnstone, PA5 0SU (“the Property”)**

**Parties:**

**Homes For Sapiens Ltd, care of 63 Causeyside Street, Paisley, PA1 1YT (“the Applicant”)**

**Miss Lucy Jones, Mr Regan Sanderson, 5a Spateson Road, Johnstone, PA5 0SU (“the Respondent”)**

**Tribunal Members:**

**Nicola Weir (Legal Member) and Mike Scott (Ordinary Member)**

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

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

**Background**

1. By application received on 8 March 2023, the Applicant applied to the Tribunal for an order for recovery of possession of the property in terms of Section 51 of the 2016 Act against the Respondent. The application sought recovery in terms of Ground 12 of Schedule 3 to the 2016 Act. Supporting documentation was submitted in respect of the application, including a copy of the tenancy agreement, the Notice to Leave and proof of service of same, the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003, a Rent Ledger Account showing the balance of rent arrears owing at the time

of the application being made of £3, 075 and evidence regarding the 'pre-action requirements'.

2. On 15 May 2023, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. Notification of the application and details of the Case Management Discussion ("CMD") fixed for 10 July 2023 was served on both Respondents by way of Sheriff Officer on 7 June 2023. In terms of said notification, the Respondent was given until 27 June 2023 to lodge written representations. No representations were lodged were lodged by the Respondent prior to the CMD.

### **Case Management Discussion**

4. A Case Management Discussion ("CMD") took place by telephone conference call on 10 July 2023 at 10am, attended by Ms Jaqueline McLelland, Branch Manager and Daryl Harper, Assistant Manager, both of the Applicant's letting agents, Castle Residential, on behalf of the Applicant. The commencement of the CMD was delayed for 5 minutes to allow an opportunity for the Respondent to join late but they did not do so. The application called together with a separate application for a payment order (Chamber reference FTS/HPC/CV/23/0792).
5. After introductions and introductory remarks by the Legal Member, Ms McLelland was asked to address the Tribunal on the application. She also answered some questions from the Tribunal Members. Reference was made to the terms of the application and the supporting documentation lodged with the Tribunal. It was noted by the Tribunal that the Applicant is seeking an order for eviction in terms of the application submitted to the Tribunal on 8 March 2023 on the ground of three consecutive months' rent arrears (Ground 12). The rent arrears owing when the application was lodged amounted to £3,075 and have now increased to £5,775.
6. Ms McLelland advised that it had primarily been the first-named Respondent, Miss Lucy Jones, whom they had dealt with in connection with the rent. When the arrears first started arising in 2021, Miss Jones had said that this was due to the sporadic nature of Mr Regan Sanderson, the second-named Respondent's work on building sites. Payment plans were made in the past and payments towards rent were made, but erratically and not enough to keep up with the ongoing rent or to pay off the arrears which had accrued. Mr Sanderson has been the more recent contact with the letting agents and has advised that Miss Jones moved out of the Property a few months ago, the letting agents believe as a result of relationship breakdown. Mr Sanderson also claimed not to know anything about the rent arrears and said that he had given the money to Miss Jones for rent but that she has not then made the payments and has kept the money. Initially, when Mr Sanderson made contact with them in February 2023, he made a payment offer in respect of the arrears which were then around £3,000. He made a payment offer of £300 per week and made two payments of £300 on 3 February and 14 February 2023. No further payments

have been made since then and the arrears have risen further. Ms McLelland said that the letting agents had visited the Property recently, including two visits last week, in order to establish if Mr Sanderson was still resident as there had been no further payments nor contact from him. At the first visit, a gentleman answered the door but denied that he was Mr Sanderson. The letting agents checked the identification they had for Mr Sanderson on their file and, having verified that the gentleman at the door had been Mr Sanderson, they visited again and informed him of this. Ms McLelland stated that Mr Sanderson had two large dogs in the Property and that he essentially threatened them with the dogs. Ms McLelland considered that Mr Sanderson's demeanour towards them over the past six to eight weeks has become rather aggressive. He has not made any further payment offers nor offered any explanation for recent non-payment. She does not know if Mr Sanderson is still working or if he has made any state benefits claims. He is believed now to reside at the Property alone, but with the two dogs mentioned. He has not expressed any intention to move out.

7. Ms McLelland stated that the Notice to Leave had been served on the Respondent by Recorded Delivery post, but also a copy hand-delivered and emailed which the Respondent acknowledged by email response. Although Mr Sanderson had claimed not to know about the rent arrears, Ms McLelland referred to their robust procedures which they carry out when a rent account falls into arrears and that all notifications were issued to both Respondents to their separate emails and mobile numbers. As to the pre-action requirements carried out, Ms McLelland confirmed that, although the schedule they had produced to the Tribunal lists emails and texts to the Respondent on dates in March and April 2023, after this application was lodged, their procedures referred to are carried out from when the arrears first arise. They send weekly arrears emails and texts advising of the amount of the arrears, advice agencies and links to information sites such as that of the Scottish Government. They also try and follow-up their written information with telephone calls as some tenants prefer to speak in person and to carry out visits to the properties around once a month. They work to try and resolve the arrears with tenants and to encourage the setting up of payment plans. Ms McLelland estimates that this Respondent will have had at least 60 or 70 such communications since the arrears first arose as well as regular home visits, when they leave a contact card if they do not get a response at the door.
8. When asked about the issue of reasonableness from the perspective of the Applicant, Ms McLelland stated that she considers that the Applicant has been extremely flexible with the Respondent and has been prepared throughout to give them additional time to pay. However, the rent arrears here are substantial, no payments towards rent are now being made and this is causing the Applicant financial hardship. The Applicant is an investor and lets out five properties through them, but they all have mortgage over them which require to be paid, including this Property. Ms McLelland stated that it is reasonable for the Tribunal to grant an eviction order in these circumstances.

## Findings in Fact

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the joint tenant of the Property by virtue of a Private Residential Tenancy which commenced on 16 April 2021.
3. The rent due in respect of the tenancy is £675 per calendar month.
4. The rent was initially paid regularly but then payments began to be missed or paid erratically since around October/November 2021.
5. The last payment towards rent was £300, made on 14 February 2023 and no payments have been made since.
6. The Applicant's letting agents have contacted the Respondent throughout concerning the arrears.
7. Payment offers have been made by the Respondent at various times but arrangements have not been maintained.
8. The second-named Respondent remains in occupation of the Property.
9. The rent arrears outstanding when this Application was submitted to the Tribunal amounted to £3,075 and have now risen to £5,775.
10. A Notice to Leave in proper form and giving the requisite period of notice was sent to the Respondent by recorded delivery/signed for post on 2 February 2023 and delivered to the Respondent on 3 February 2023.
11. The date specified in the Notice to Leave as the earliest date the eviction Application could be lodged with the Tribunal was specified as 7 March 2023.
12. The Tribunal Application was submitted on 8 March 2023.
13. The rent account has been continuously in arrears since November 2021.
14. The Respondent has been called upon to make payment of the rental arrears or enter into a satisfactory payment arrangement but has failed to do so.
15. There is no indication that the arrears have arisen wholly or partly as a result of a failure or delay in the payment of relevant benefits.
16. The second-named Respondent is still occupying the Property.
17. The Respondent has not submitted any representations to the Tribunal nor attended the CMD.

## **Reasons for Decision**

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, and the oral evidence given at the CMD on behalf of the Applicant.
2. The Tribunal found that the application was in order, that a Notice to Leave in proper form and giving the correct period of notice had been served on the Respondent and that the application was made timeously to the Tribunal, all in terms of the tenancy agreement and the relevant provisions of the 2016 Act.
3. The Tribunal considered the ground of eviction that the tenant has been in rent arrears for three or more consecutive months (Ground 12 of Schedule 3 to the 2016 Act, as amended) and was satisfied that all elements of Ground 12 were met and that it was reasonable, having regard to all of the circumstances known to the Tribunal, to grant the eviction order sought. The rent account had been continuously in arrears for a significant period of time and amount to a significant sum which the Tribunal was satisfied would be having a negative impact on the Applicant's finances. There was no information before the Tribunal to indicate that any of the rent arrears were a consequence of a delay or failure in the payment of a relevant benefit. In addition, the Tribunal was satisfied that the Applicant had complied fully with the pre-action requirements, including seeking to engage with the Respondent and resolve the arrears situation.
4. The Respondent has not engaged properly with the Applicant, complied with previous payment proposals, nor proposed any recent payment plan. The Respondent did not submit any written representations to the Tribunal, nor attend the CMD of which they had been properly and timeously notified by the Tribunal by way of Sheriff Officer service. The Tribunal did not therefore have any material before it to contradict the Applicant's position. The Tribunal accordingly determined that an order for recovery of possession of the Property could properly be granted at the CMD as there were no facts in dispute nor any other requirement for an Evidential Hearing.

## **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.**

**Nicola Weir**

**Legal Member/Chair:**

**Date: 10<sup>th</sup> of July 2023**