



**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/22/0161**

**Re: Property at 7D Deedes Street, Airdrie, ML6 9AG (“the Property”)**

**Parties:**

**Mrs Theresa Leanne Brogan, 26 Hawick Drive, Carnbroe, Coatbridge, ML5 4TZ (“the Applicant”)**

**Mrs Lynn McKenzie, 7D Deedes Street, Airdrie, ML6 9AG (“the Respondent”)**

**Tribunal Members:**

**Alison Kelly (Legal Member) and Helen Barclay (Ordinary Member)**

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

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

**Background**

On 19th January 2022 the Applicants lodged an application with the Tribunal in terms of Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), seeking an order for eviction of the Respondents in terms of Ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.

Lodged with the Application were:

1. Copy Tenancy Agreement with commencement date 13<sup>th</sup> March 2020

2. Notice to Leave dated 21<sup>st</sup> July 2021 to leave on 21<sup>st</sup> January 2022
3. Section 11 Notice
4. Copy letter to the Respondent dated 18<sup>th</sup> January 2022

The Tribunal wrote to the Applicant on 7<sup>th</sup> February 2022 asking for proof that the Pre Action Requirements, brought in by the Coronavirus Scotland Act 2020, had been complied with. On 14<sup>th</sup> February 2022 the Applicant lodged a series of text messages she had had with the Respondent.

The papers were served on the Respondents by Sheriff Officer on 6<sup>th</sup> May 2022.

### **Case Management Discussion**

A Case Management Discussion (“CMD”) took place by teleconference on 13<sup>th</sup> June 2022.

The Applicant was present and represented herself. The Respondent did not join the call. The Applicant explained that she had received a text message from the Respondent the day before saying that she would not be joining the conference call as she was still waiting for an appointment with the CAB.

The Tribunal explained the purpose of a CMD in terms of Rule 17.

The Applicant confirmed that she was seeking an order for eviction in terms of the application.

The Applicant said that at the time the Notice to Leave was served the arrears were £1970. At the time the Tribunal application was lodged the arrears were £3440.

The Tribunal confirmed that it considered the ground to be established, but now needed to examine whether it was reasonable to grant the order.

The Applicant said that the arrears were currently £4875. She had received no payments direct from the Respondent but has received payments of £495 and £32 from Universal Credit on both 29<sup>th</sup> April 2022 and 1<sup>st</sup> June 2022.

The Applicant said that she believed that the Respondent resided in the property, which is a three bedroom house, with her two daughters, one in her twenties and one in her late teens, and three younger boys, who she believed to be relatives that the Respondent was looking after.

The Applicant confirmed, when asked, that she did not know if the Respondent had approached the Council for housing, the Respondent did not always reply to her texts.

The Applicant confirmed that there was a mortgage over the property and that the monthly payment was £262.81. The Applicant owned two other rental properties which were also mortgaged. She was employed in an office and her husband was a heating engineer, although he was not currently working due to having had covid.

The Applicant was asked about the effects of the rent being unpaid. She said that it had caused her a great amount of stress, particularly because the Respondent had made repeated promises to pay but had not followed up with actual payment. She said that she had been trying to get Universal Credit to pay her direct for over a year, but they could not deal with her direct, and could only make payment to her when the Respondent authorised it. She understood that Universal Credit had been making payments direct to the Respondent during that time.

## **Findings In Fact**

1. The parties entered in to a Private Residential Tenancy commencing on 13<sup>th</sup> March 2020;
2. The rent was £495 per month;
3. Notice to Leave was served on the Respondents correctly and timeously;
4. The Pre Action Requirements had been complied with;
5. When the Notice To Leave was served the arrears were £1970;
6. When the action was raised the arrears were £3440;
7. The arrears are now £4875;
8. Payment is now being made direct to the Applicant by Universal Credit;
9. The Respondent has not made payment to the Applicant of sums she has received from Universal Credit for rent payment.

## **Reasons For Decision**

The Tribunal were satisfied from the information put forward that the ground of eviction had been established.

Granting an application for eviction based on Ground 4 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 provided that the notices are correct and have been served correctly, is normally mandatory. However, in terms of Section 2 and Schedule 1, Paragraph 1 of the Coronavirus (Scotland) Act 2020 makes the ground discretionary and the Tribunal has to consider reasonableness. The section is as follows:

*1(1)The Private Housing (Tenancies) (Scotland) Act 2016 applies, in relation to a notice to leave within the meaning of section 62 of that Act served on a tenant while this paragraph is in force, in accordance with the modifications in this paragraph.*

*(2)Section 51(2) (First-tier Tribunal's power to issue an eviction order) has effect as if the words "or must" were repealed.*

*(3)Schedule 3 (eviction grounds) has effect as if—*

*(a)in paragraph 1(2) (landlord intends to sell)—*

(i) in the opening words, for the word “must” there were substituted “may”,

(ii) after paragraph (a), the word “and” were repealed,

(iii) after paragraph (b) there were inserted “, and

(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(b) in paragraph 2(2) (property to be sold by lender)—

(i) in the opening words, for the word “must” there were substituted “may”,

(ii) after paragraph (b), the word “and” were repealed,

(iii) after paragraph (c) there were inserted “, and

(d) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(c) in paragraph 3(2) (landlord intends to refurbish)—

(i) in the opening words, for the word “must” there were substituted “may”,

(ii) after paragraph (b), the word “and” were repealed,

(iii) after paragraph (c) there were inserted “, and

(d) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(d) in paragraph 4(2) (landlord intends to live in property)—

(i) for the word “must” there were substituted “may”,

(ii) the words from “the landlord” to “3 months” were paragraph (a),

(iii) after paragraph (a) there were inserted “, and

(b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(e) in paragraph 6(2) (landlord intends to use for non-residential purpose)—

(i) for the word “must” there were substituted “may”,

(ii) the words from “the landlord” to “home” were paragraph (a),

(iii) after paragraph (a) there were inserted “, and

(b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(f) in paragraph 7(2) (property required for religious purpose)—

(i) in the opening words, for the word “must” there were substituted “may”,

(ii) after paragraph (b) the word “and” were repealed,

(iii) after paragraph (c) there were inserted “, and

(d) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

*(g) in paragraph 8 (not an employee)—*

*(i) in the opening words of sub-paragraph (2), for the word “must” there were substituted “may”,*

*(ii) for paragraph (c) there were substituted—*

*“(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*

*(iii) sub-paragraph (3) were repealed,*

*(iv) in sub-paragraph (4), for the words “sub-paragraphs (2) and (3)” there were substituted “sub-paragraph (2)”,*

*(h) in paragraph 10(2) (not occupying let property)—*

*(i) in the opening words, for the word “must” there were substituted “may”,*

*(ii) after paragraph (a), the word “and” were repealed,*

*(iii) after paragraph (b) there were inserted “, and*

*(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,*

*(i) in paragraph 12 (rent arrears), sub-paragraph (2) were repealed,*

*(j) in paragraph 13(2) (criminal behaviour)—*

*(i) in the opening words, for the word “must” there were substituted “may”,*

*(ii) after paragraph (a), the word “and” were repealed,*

*(iii) after paragraph (b) there were inserted “, and*

*(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”.*

The Tribunal must consider all the circumstances relevant when deciding on reasonableness. In this case the Tribunal considered the Respondent’s personal circumstances, the Applicant’s circumstances, and the fact that the Respondent had been receiving Universal Credit payments which she had not passed on to the Applicant. The tribunal considered that it was not reasonable for the Respondent to have retained these payments and that, coupled with the level of arrears, lead the Tribunal to conclude that it was reasonable to grant the eviction 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.

**A. K**

**13th June 2022**

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**Legal Member/Chair**

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**Date**