



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) ( Scotland ) Act 2016**

**Chamber Ref: FTS/HPC/EV/22/0055**

**Re: Property at 165 Stonylee Road, Cumbernauld, G67 2LS (“the Property”)**

**Parties:**

**Mr Andrew Hunter, 2A Westmount Park, Newtonards, County Down, BT26 4BP (“the Applicant”)**

**Mr Ryan Savage, Ms Gloria Savage, 165 Stonylee Road, Cumbernauld, G67 2LS (“the Respondents”)**

**Tribunal Members:**

**Valerie Bremner (Legal Member) and Mary Lyden (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be made in terms of ground 12 of the Private Housing (Tenancies) Scotland Act 2016 in that the Respondents have been in rent arrears during the tenancy at the property for a period of three or more consecutive months and it is reasonable on account of that fact to grant an eviction order.**

1. This application for an eviction order was first lodged with the Tribunal on 7<sup>th</sup> January 2022 along with a related payment order application (HPC/CV/22/0056) 2nd. Both applications were accepted by the Tribunal on 28<sup>th</sup> February 2022. A case management discussion had initially been set down for 6<sup>th</sup> May 2022 and 15<sup>th</sup> July 2022. The first case management discussion had been postponed at the request of a solicitor from a law centre then instructed by the second Respondent. The second case management discussion was also postponed due to ill health on the part of that solicitor who had subsequently withdrawn from acting for the second Respondent. A case management discussion fixed for 16<sup>th</sup> September 2022 had been continued for the Applicant’s previous representative to provide additional information and for

service by advertisement on the Respondent Ryan Savage to take place. Neither of the Respondents had attended the case management discussion on 16<sup>th</sup> September 2022 and the Tribunal was advised by the Applicant's representative that the Respondent Ryan Savage was no longer living at the property. A further case management discussion was fixed for 2<sup>nd</sup> December 2022 at 10am.

2. The Applicant did not attend the case management discussion on 2<sup>nd</sup> December 2022 but was represented by Mr MacAulay, solicitor, of Ennova Law.

3. The Respondent Gloria Savage attended the case management discussion and was not represented. The Respondent Ryan Savage did not attend the case management discussion.

4. The case management discussion on 2<sup>nd</sup> December 2022 had been intimated to the Respondent Ryan Savage by way of service by advertisement in terms of Rule 6A of the tribunal rules of procedure. Ms Savage the second Respondent indicated that Ryan Savage, her son, still lived at the property with her and had not left the property as the tribunal had been advised at a previous case management discussion. She advised the tribunal that her son knew of the case management discussion from her. The tribunal was satisfied that the first Respondent had received fair notice of the case management discussion and was prepared to proceed in his absence.

5. At the case management discussion on 2<sup>nd</sup> December 2022 The tribunal had sight of both applications, a tenancy agreement, a Notice to Leave, an execution of service of the Notice to Leave on both Respondents by Sheriff Officer, a notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003, an execution of service of this notice by Sheriff Officer on North Lanarkshire council, a rent statement, a letter to the Respondents regarding rent arrears and an updated rent statement. The Respondent Ms Savage confirmed that she had received the papers.

6. The Applicant's representative was instructed to move for an eviction order on 2<sup>nd</sup> December 2022 and a payment order. He said that the rent arrears at that time stood at £4348.30. He accepted that full rent had been paid since early in 2022. Payments of £80 per month towards the arrears had been paid in March, April, May, and July of 2022 and had not been paid since. Some of the rent for November 2022, some £275, had not been received. He submitted that whilst the landlord had been happy to receive payments towards the arrears he was concerned that the arrears would continue to increase and was seeking eviction and payment orders.

7. Ms Savage indicated that she wanted to continue to live at the property with her son. They paid half of the rent each from Universal Credit. Universal Credit paid directly for her share of the rent, and she believed this was always paid. She had had some expenses but was now in a position to start pay £80 per month again towards the arrears with effect from 5<sup>th</sup> of December.

8. Mr MacAulay was not in a position to accept this offer towards payment of the arrears because of the amount of the arrears and the fact that payments had been offered before and had not continued. He maintained his request for an eviction order and a payment order.

9. Ms Savage explained that she lived at the property with her son, the First Respondent who was 27. Each of them receives Universal Credit and Ms Savage receives Personal Independence Payment (PIP). She advised the Tribunal that she suffers from a number of medical conditions including a mental health condition and two physical health conditions. She confirmed that the first Respondent also suffers

from the same mental health condition that she has. When the tribunal legal member explained to Ms Savage that eviction was now being sought she was asked if she wished to seek representation. The tribunal was aware that previous case management discussions had been postponed because a solicitor at a law centre who had been instructed by Ms Savage had become unwell and unable to represent her. After discussion Ms Savage confirmed that she was asking the Tribunal to adjourn the case management discussion to a later date to allow her to obtain a new representative.

10. Mr MacAulay on behalf of the Applicant opposed the motion for a continuation given the history of the matter and also the fact that he said that the Second Respondent had had time to instruct another representative.

11. Given that previous requests to postpone made on behalf of Ms Savage were due to the illness of her solicitor and had not arisen through any fault of hers, and the fact that the first case management discussion which had actually taken place had to be continued at least in part, for the Applicant's then solicitor to obtain further information, the tribunal considered it was appropriate in terms of the overriding objective to act justly to allow the case management discussion for both applications to be continued to allow Ms Savage to instruct a new representative.

12. A new case management discussion was fixed for 17<sup>th</sup> March 2023 at 10am for both applications. On that date Mr MacAuley appeared again to represent the Applicant and Ms Savage again appeared on her own behalf. There was no appearance by or on behalf of the First Respondent Ryan Savage and the Tribunal noted that a letter giving him the date of the case management discussion had been sent to him at the property address where the Tribunal has been advised he still lived. The Tribunal was satisfied it was appropriate to proceed in his absence and that he had received fair notice of the case management discussion.

13. The Tribunal had sight of the same papers as at previous case management discussions but had sight of an up-to-date rent statement received from the Applicant's representative on the morning of 17<sup>th</sup> March 2023.

14. The tribunal legal member asked the Respondent Ms Savage if she had had the opportunity to obtain new representation. She indicated that she had been unwell suffering from COVID-19 and that she had only been able to leave the house for the first time since suffering the illness on the Wednesday before the case management discussion. She said that she had not had the opportunity to seek support or assistance since the last case management discussion on the 2<sup>nd</sup> of December 2022. When asked if she was seeking to have the matter continued to obtain representation she indicated that she was not making such a request and would deal with the matter herself.

15. Ms Savage advised the tribunal that she had approached Sanctuary Scotland, a housing provider in 2022 and had been on a housing list since that date. As a result of her particular health conditions, she was restricted in the type of property she could live in and as she put it "she could not go up a close" and required a house because of her mental health condition.

16. Mr MacAuley on behalf of the Applicant advised the tribunal that the rent arrears had increased since the last case management discussion and now stood at £5139.81. Universal Credit payments made on behalf of the first Respondent Ryan Savage when they came in to the landlord were usually received around the 20th of the month and Mr MacAuley advised that if this payment was made in March the arrears would stand at £4864.81.

17. Mr MacAuley advised the tribunal that full rent had been received for the months of December 2022, January, and February 2023 and half the rent had been received in November 2022. The Applicant had entered into an agreement with Universal Credit to obtain a payment of £33.49 per month towards the arrears and the first of these payments had been received in December 2022. Mr MacAuley advised that the second Respondent had previously offered to pay £150 per month towards the rent arrears but this had not been accepted as it was understood she could not afford that sum. Ms Savage had previously agreed to pay £80 per month towards the rent arrears and payments in this sum had been made in March, April, May and July of 2022 when the payments stopped. Mr MacAuley indicated that the Applicant's agreement with Universal Credit was an informal agreement, and he was still instructed to seek eviction and a payment order.

18. Ms Savage indicated that she was aware of the level of rent arrears as she checked her Universal Credit journal on a monthly basis and the figure had come up. She explained that sometimes her payments could increase or decrease depending on other costs which could relate to such costs as council tax or water costs. She said that she wanted to stay at the property, she had good neighbours, her granddaughter could visit, and she wanted to pay the rent from her Universal Credit. When asked she accepted that she knew of no means of support available to her to assist in paying a lump sum towards the rent arrears.

19. Ms Savage said that she had not spoken to the local council for advice regarding eviction but had been phoning Sanctuary Scotland.

20. Ms Savage was asked regarding her rehousing options and the time scales for that. She said that she had requested a three-apartment home with two bedrooms.

21. Ms Savage queried how the rent arrears had risen to the sum that was being suggested. Mr MacAuley on behalf of the Applicant went through the rent statement and explained that rent arrears had started to accrue to a small extent in 2019 and had continued to accrue throughout 2020 and 2021. It appeared that a significant cause of the rent arrears was missing rent payments from the Respondent Ryan Savage.

22. Ms Savage explained to the tribunal that rent payments which had been paid had been paid direct and that this was not a new arrangement but had always been the case. She did not suggest that at any stage her son had encountered difficulty in obtaining benefit payments or that these were delayed.

23. Mr MacAuley indicated to the tribunal that the landlord Applicant appreciated Ms Savage and her son's circumstances. He also acknowledged that there had been fairly consistent payment of full rent in recent months other than in November 2022. However, this was the only property that the landlord rented out and the growing rent arrears over the period of years had had a financial impact on the Applicant, due to the amount. Mr MacAuley accepted that the financial impact had been felt more greatly over the period of 2021.

The rent arrears are still having a financial impact on the landlord and although the landlord appreciates that the tenants are now looking for another property, he said this was still being felt although to a lesser degree. He had discussed with the Applicant the question of the tribunal extending the period in which the eviction, if the order were granted, could take place and he and the Applicant had considered a period of three months although he said he was content to leave this to the Tribunal.

24. Ms Savage raised in the course of the discussion the question of a deposit she said had been paid in relation to a previous property which she had rented from the same landlord, and she said had disappeared. Mr MacAuley confirmed that no rent arrears had been carried forward from any previous tenancy and the rent arrears he had mentioned related to the tenancy under discussion.

25. Ms Savage was asked if she wanted to add anything to what she had said and the tribunal legal member explained that the tribunal had to be satisfied that the correct paperwork was in place and that it was reasonable to grant the order if an eviction order were to be granted. Ms Savage did not add anything toward she had already said to the tribunal.

26. The tribunal was satisfied that it had sufficient information upon which to make a decision and that the proceedings had been fair.

### **Findings in Fact**

27. The parties entered into a private residential tenancy at the property with effect from 4<sup>th</sup> March 2019.

28. In terms of the agreement monthly rent payable in advance on the 4<sup>th</sup> of every month is £550.

29. Rent arrears started to accrue in terms of the tenancy in 2019 and continued to rise over 2020 and 2021.

30. As of the 17<sup>th</sup> of March 2023, rent arrears in terms of the tenancy agreement amount to £5139.81.

31. During the tenancy rent has been paid direct to the landlord Applicant using Universal Credit payments.

32. When full rent was paid during the tenancy the Respondents appeared to have paid half of the rent each, some £275 per month each.

33. The majority of the rent arrears accrued appear to relate to the Respondent Ryan Savage not paying £275 per month towards the monthly rent but there was no information before the tribunal to suggest that there had been a delay or failure in the payment of any benefit to the first Respondent Mr Savage.

34. The second Respondent Ms Savage has made offers during the tenancy to pay off the rent arrears in instalments.

35. Four payments of £80 towards rent arrears were made in 2022 with the last of these being paid in July 2022.

35. With effect from December 2022 the Applicant is receiving £33.49 per month from Universal Credit towards the rent arrears.

36. A Notice to Leave in proper form and giving appropriate notice were served on both Respondents on 2nd of June 2021

37. A notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 was served on North Lanarkshire council on the 9th of December 2021.

38. A letter was sent on behalf of the Applicant to the Respondents in May 2019 setting out the level of rent arrears, the action that the Applicant may take in relation to the arrears and suggesting that they contact the Citizens Advice Bureau.

39. Both Respondents suffer from mental health conditions and the second Respondent has a number of other health concerns.

40. The second Respondent has in 2022 made contact with a Housing provider and is on a waiting list for a property with that provider.

41. Some of the second Respondent's health conditions limit the type of property she can live in, and she is unable to live in a property with a communal close.

42. The Respondents have been in continuous rent arrears over more than three consecutive months and arrears have continuously accrued in the tenancy here since April 2019.

### **Reasons for Decision**

43. The tribunal was satisfied that the statutory requirements in terms of the Notice to Leave and the notice in terms of section 11 of the Homelessness etc (Scotland) Act 2002 had been met in this application. The tribunal did not have sight of letters sent in compliance with the pre action protocol requirements which apply in relation to evictions on the grounds of rent arrears however the tribunal did have sight of a letter sent to the tenants early in the tenancy in which they were advised to contact the Citizens Advice Bureau in relation to the arrears. In addition, it was clear that had been ongoing contact in relation to the arrears and attempts to make agreements to pay the arrears as recently as 2022.

44. The first Respondent took no part in the tribunal proceedings and the second Respondent represented herself. She wanted to stay at the property which suited her and her son. Although she did in the course of the tribunal query how the level of rent arrears had been reached, she appeared to accept that these had accrued when this was explained. It appeared on the basis of the evidence before the tribunal that a significant portion of the arrears had been accrued despite her continuing to have her rent paid by Universal Credit. Arrears appeared to have accrued when the First Respondent's share of the rent was not paid. Although the arrears were increasing slightly at the time of the case management discussion full rent had been paid for three months with the last missing part of the rent in November 2022. However, the level of arrears was significant and despite an informal arrangement between the Applicant and DWP to pay a small amount in terms of rent arrears on a monthly basis, the sum of £33.49, this arrangement if continued would have taken 12 years to pay off the current level of arrears. The landlord has suffered financial hardship although this was most acute in 2021 but was still bearing the burden of the rent arrears which currently exceeds nine months' rent. Attempts by the second Respondent to pay off the arrears have been made but these do not appear to be sustainable given her level of income

and they have ceased. The tribunal was made aware of certain health conditions from which the second Respondent suffers, and a health condition suffered by the first Respondent. The second Respondent's health conditions limit the type of properties she can stay in but she is on the waiting list for the property with a housing provider. In all of the circumstances and given the level of sustained rent arrears which do not appear to be capable of being paid off in a reasonable time, the tribunal considered it was reasonable to grant an eviction order. In the light of the second Respondent's health conditions which make it more difficult for her to source alternative housing the tribunal ordered a delay in execution of the order until 17th June 2023 in terms of rule 16A (d) of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

## **Decision**

The Tribunal determined that an eviction order be made in terms of Ground 12 of the Private Housing (Tenancies) Scotland Act 2016 in that the Respondents have been in rent arrears during the tenancy at the property for a period of three or more consecutive months and it is reasonable on account of that fact to grant an 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.**

**V. Bremner**

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**Legal Member/Chair**

**17.3.23**  
**Date**

