



**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/22/2678**

**Re: Property at Flat 2-1, 293 Main Street, Alexandria, G83 0AW (“the Property”)**

**Parties:**

**Mr Steven McBride, Reivers Drymen Road, Balloch, G83 8HS (“the Applicant”)**

**Mr Scott Cowan, Flat 2-1, 293 Main Street, Alexandria, G83 0AW (“the Respondent”)**

**Tribunal Members:**

**Gillian Buchanan (Legal Member) and Frances Wood (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:-**

At the Case Management Discussion (“CMD”), which took place by telephone conference on 21 November 2022, the Applicant and Respondent were both personally present.

The CMD was in respect of this matter and the related case bearing reference FTS/HPC/CV/22/2679.

**Background**

The Tribunal noted the following background:-

The application concerns a Private Residential Tenancy Agreement (“PRT”) entered into between the parties relative to the Property that commenced on 15 November 2021 and that was signed on 11 February 2022. The rent agreed to be payable under the PRT was £525 per calendar month payable in advance on the 15<sup>th</sup> day of each month and a deposit was also paid by the Respondent to the Applicant in a sum of £525.

On 30 May 2022 the Applicant’s Letting Agent wrote to the Respondent regarding the rent arrears accrued and signposting the Respondent to sources of financial help and support.

On 16 June 2022, the Applicant's Letting Agent served on the Respondent by recorded delivery post a Notice to Leave requiring that the Respondent remove from the Property by 17 July 2022 on the basis that rent arrears had accrued over three consecutive months.

On 2 August 2022 the Applicants' agent served on West Dumbartonshire Council by email a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003

The foregoing matters were not in dispute.

## **The CMD**

### *Applicants' representations*

- i. On being questioned by the Tribunal the Applicant accepted there to be an error in the Rent Statement attached to the Notice to Leave and also produced with the applications in that the Rent Statements showed the March 2022 rent having been paid yet the running total of the arrears did not take that payment into account. The rent arrears therefore due as at the date of service of the Notice to Leave were correctly £2,100 and as at the date of lodging the applications were £3,150.
- ii. Taking the foregoing into account the rent arrears due as at the CMD totalled £5,250 with no other payment of rent having been made by the Respondent subsequent to the payment made in March 2022.
- iii. The Notice to Leave required the Respondent to vacate by 17 July 2022. The Letting Agent contacted the Respondent on 20 July 2022 and he said he would remove by 29 July 2022. He failed to do so.
- iv. The Applicant understood the pre-action letter to the Respondent dated 30 May 2022 was sent by email.
- v. The Applicant has had no discussions with the Respondent relative to the rent arrears. The Applicant did not believe the Letting Agent had heard from the Respondent either.
- vi. The Respondent continues to live in the Property.
- vii. The Applicant is "an accidental landlord" in that 8 years ago he and his wife married and as they could not sell the Property at that time they chose to rent it out. They have no other rental properties.
- viii. The situation has caused unbelievable stress. The Applicant has had to use savings to meet the mortgage and other costs associated with the Property. The mortgage is on a variable rate and is presently £575 per month. Factor's fees are £35-40 per month and he has insurance to pay too. The Applicant has effectively had to pay 2 mortgages for the last 11 months.
- ix. The Applicant seeks an order to evict the Respondent from the Property.

### *Respondent's Representations*

- i. The Respondent has lived in the Property for 6 or 7 years. He previously lived there with his partner who wanted her name removed the lease.
- ii. The Respondent lives in the Property alone but his two children, aged 4 and 5 years, live with him each week, spending 4 days with him and 4 days with his partner.
- iii. Prior to the current arrears accruing he never missed any rent payment.
- iv. The Respondent is not in employment.
- v. He was previously employed as a landscape gardener but his employment was terminated at the start of the pandemic.
- vi. The Respondent subsequently tried to work on his own account but that did not work out.

- vii. He has been in receipt of benefits, namely Universal Credit, for the last year. He receives £550 per month, £320 of which is towards his housing costs and the balance is made up of Jobseekers Allowance. The Respondent's Universal Credit is subject to the benefit cap.
- viii. His former partner claims benefits for the two children, such as Child Benefit. She buys their clothes and he pays for their food and activities when they stay with him. She has a car and does not give him any additional sums.
- ix. The Respondent has to prioritise food and utility bills over his rent and Council Tax.
- x. The Respondent has had two meetings with the local authority housing department. He will not be allocated any accommodation until an eviction order is granted.
- xi. He loves the Property where he has stayed for a number of years. He does not wish to leave but appreciates he may have to do so.
- xii. The Respondent has recently accepted a job with his father's business. He starts on 5 December 2022. He will be paid £150 per day and can work 5 or 6 days each week. He will then have enough money to pay the rent on an ongoing basis and pay £50 per week towards the arrears.
- xiii. He wants to repay the arrears and apologises for the situation.
- xiv. He is in good physical health but has struggled mentally over recent times.

### **Reasons for Decision**

The Tribunal carefully considered the parties written and oral representations.

The factual background was not in dispute. The only consideration for the Tribunal was whether it would be reasonable to grant an eviction order. The Tribunal required to balance both parties' interests.

In reaching a decision on whether it would be reasonable to grant an eviction order, the Tribunal took into account the Respondent's situation and the effect the Respondent's non-payment of rent for 10 months has had upon the Applicant.

The Respondent's proposal relative to payment of the arrears would mean that the current arrears would take in excess of 6 years to pay which is not an acceptable time-frame. He appeared not to have engaged with the Applicant or Letting Agent before now. He appeared not to have taken appropriate advice notwithstanding the signposting in the pre-action letter of 30 May 2022.

If an eviction order is granted the local authority will require to address the Respondent's housing needs.

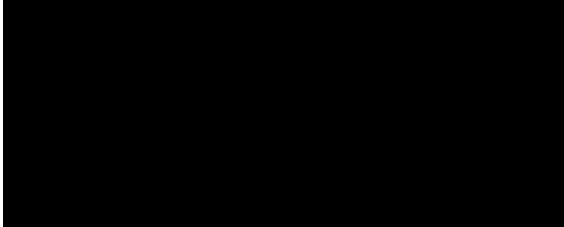
In all the circumstances, the Tribunal determined that it would be reasonable to grant an eviction order and made a determination to that effect.

### **Decision**

The Tribunal made an order for the Respondent's eviction from the Property in terms of Ground 12 of Schedule 3 of the 2016 Act.

### **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**

**21 November 2022**  
**Date**