



**Decision and 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/22/2021

**Re: Property at 2 Culloden Ave, Bellshill, North Lanarkshire, ML4 2AX (“the
Property”)**

Parties:

**Mr Thomas McDonagh, 64 Fitzwalter Rd, Flich Green, Dunmow, Essex, CM6 3FH
 (“the Applicant”)**

**Lisa Ellen Crilly, 2 Culloden Ave, Bellshill, North Lanarkshire, ML4 2AX (“the
Respondent”)**

Tribunal Member:

Valerie Bremner (Legal Member) and Helen Barclay (Ordinary Member)

Decision

**The Tribunal determined that an eviction order be granted in terms of Ground
12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 in that
the Respondent is in continuous rent arrears for over three consecutive months
and it is reasonable on account of that fact to grant an eviction order.**

The decision of the Tribunal was unanimous

Background

1.This application for an eviction order in terms of Rule 109 of the Tribunal rules of
procedure was first lodged with the Tribunal on 22nd June 2022 along with a related
application for civil proceedings (FTS/HPC/CV/22/2022).These applications were
accepted by the Tribunal on 31st October 2022. A case management discussion was
initially fixed for both applications for 10th February 2023.

Case Management Discussions

2.The Respondent's position at the first case management discussion was that she has made all rent payments required of her The case management discussion was continued initially until 5th May 2023 to allow the tribunal to consider representations lodged by the Respondent and for further information to be lodged in the form of confirmation of all rent payments received by the Letting Agent on behalf of the Applicant, the level of rent arrears currently and the Respondent's position on what rent if any was outstanding. The case management discussion was continued on 5th May 2023 until 14th July 2023 for the Respondent to lodge her bank statements with confidential information redacted to show all rent payments made by her during the tenancy. The Tribunal issued a Direction to the Respondent requiring that these documents be lodged.

Case Management Discussions

3.The Applicant attended the case management discussions and represented himself. The Respondent attended the case management discussions and represented herself.

4.The Tribunal initially had sight of the applications, a private residential tenancy agreement, emails from the Letting Agent to the Applicant, a letter giving Notice to Leave, a Notice to Leave, an execution of service of the Notice to leave by Sheriff Officer, a tenant transaction report, a Notice in terms of S11 of the Homelessness etc (Scotland) Act 2003, an email regarding the section 11 Notice, arrears letters sent to the Respondent between February and June 2022, and a rent statement up to September 2022 and a revised S11 Notice.

Additional Documents Lodged.

5.For subsequent case management discussions the Applicant lodged his banking history with the Letting Agent, a transaction history for rent payments made by the Respondent, redacted bank statements for his bank account and an example of him setting up and cancelling a standing order, together with representations made by him regarding material lodged by the Respondent and material regarding the Respondent from a Scottish newspaper.The day before the case management discussion on 14th July 2023 he lodged further representations regarding information lodged by the Respondent.

6.The Respondent lodged written representations on the morning of the first case management discussion in February 2023 which included her position regarding rent payments, an e mail said to come from Bank of Scotland, a document said to be a transaction search document, a screenshot from a phone said to show a recurring transfer of money starting in May 2022 , a list of payees, emails between the Letting Agent and a Claire Doyle regarding rent arrears at the property and a transaction search said to show payments of rent to Letting Agents in February and March 2022.

7.On 3rd May 2023 the Respondent lodged further written representations containing an email said to come from the Bank of Scotland regarding payments, a letter dated 25th May 2022 regarding a forward trace on payments said to be made said to come from Nationwide Building Society and screenshots said to show payments to "CRL

Scotland “.During the case management discussion on 5th May 2023 the Respondent lodged a transaction record which she said she had obtained from her bank and she indicated that this confirmed a payment of rent.

8.During the final case management discussion on 14th July 2023 the Respondent forwarded two emails said to come from her solicitor. One of these was intended to have attachments but none were received so the second email was sent again to the Tribunal, and this had a number of attachments. These were a letter regarding a medical appointment, emails said to be from the Respondent’s solicitor, a mandate said to give permission to the Respondent’s solicitor to obtain evidence including banking records and an email said to be sent by the Bank of Scotland to the Respondent’s solicitor regarding banking transactions. One attachment to this email, a word document called “banking statement” could not be opened as it required a password. The Respondent was advised of this by the Tribunal Legal Member and she indicated that her solicitor must have put a password on the bank statements attachment. After a break during the teleconference the Respondent said that she had called the Glasgow office of the firm of solicitors and had spoken to someone called Gemma who was going to scan the statements to the Tribunal but had not given a timescale for this to happen. In the course of the case management discussion and later on the same day no scanned bank statements were received by the Tribunal on behalf of the Respondent.

The Applicant’s Position

9.The Applicant’s position was that he had entered into a private residential tenancy at the property with the Respondent with effect from 13th January 2022 with monthly rent of £700 per month due to be paid on 13th of each month in terms of the tenancy agreement. The Applicant’s position was that the Respondent had paid the first month’s rent but had paid no rent since then despite many reminders and letters sent from a Letting Agent, Countrywide, on his behalf. At the first case management discussion the Respondent had stated that rent had been paid and the Applicant had requested that she pay the rent going forward by debit card as this might be easier to check. The Respondent at that time agreed to make payments of rent using a debit card.

10.The Applicant advised the Tribunal at the next case management discussion that the bank statements he had provided up to April 2023 showed that no rent payments had been made since the last case management discussion even though the Respondent had said at the first case management discussion that she would make card payments. He said that aside from the first month’s rent and deposit he had still received nothing from the Letting Agent in terms of rent payments. He had checked with the Letting Agents and the outstanding rent as of April 2023 was £9800.The Applicant referred to the papers lodged by the Respondent. He said that the list of faster payments set up meant nothing as these can be cancelled after they are set up. The list contained future dated payments which can be stopped. He had lodged an example from his own account showing how easy it was to cancel a standing order before it was paid. He believed that the Respondent had paid nothing. He said that

bank statements would show money going out and questioned why the Respondent had not lodged any bank statements to prove payments had been made. He said bank statements were needed. He said that what had been lodged by the Respondent proved nothing.

11. The Applicant advised the Tribunal on 5th May 2023 that during a break in the teleconference call he had called the local Countrywide office and a phone number which the Respondent said she had called to make card payments, which was in Nottingham. He had spoken to someone called Andrew who had forwarded an email direct from the accounting team in Nottingham which showed that there were no payments made recently or in the last three months in terms of the tenancy. He questioned why the Respondent would have rung that number when she was dealing with the local office. He cast doubt on other documents the Respondent had lodged including the document the Respondent had lodged during the case management discussion on 5th May 2023 and pointed to the payee reference on this document as being wrong, instead of CRL Scotland it said "CRL Sotland". The Applicant also queried the documents submitted by the Respondent to show card payments of rent made in February 2023 onwards and queried why the payment for February was said to have been made on 7th February 2023 when the Respondent had said she would make a card payment for rent at the case management discussion on 10th February. He said that things did not add up and lodged what he called a "real bank statement" of his to contrast with what the Respondent had lodged on 5th May 2023. He lodged an online report from a newspaper to show what he said was the character of the Respondent in relation to a previous unconnected matter which had resulted in a conviction. His position was that the Respondent's position was fabricated and that she had lodged fabricated documents and rent had not been paid since the first month of the tenancy. At the final case management discussion in July he confirmed that the outstanding rent was £ £12600 being 18 months' rent to cover the period from February 2022 to July 2023. He confirmed he had received the rent for the first month of the tenancy.

The Respondent's Position

12. The Respondent indicated that she had had difficulties with people taking payday loans in her name and had been in poor health for a period of around 9 months but believed her rent had been paid. She set out her health difficulties and the treatment she required and referred to having had a number of surgeries. She lodged on the morning of the first case management discussion papers amounting to 64 pages showing what she said was the history of the matter, her interaction with her bank and with the Letting Agent and a letter sent on her behalf by her daughter's stepmother who was trying to assist her when she was unwell. She said she had paid the rent although accepted sometimes this had been late. The Respondent said she had spoken to many different people in the accounts section at the Letting Agent about the rent payments she had made and referred to Natalia as someone she had spoken to. The Respondent had lodged information and letters which she said were from her bank, and what she said was proof of payment by card for the previous three months' rent, together with information regarding faster payments she said had been made. She explained how she had made these card payments and had phoned a number for Countrywide which had been on an email she had. She explained she had spoken to

staff called “Jatin” and “Shazin” who had taken payments from her by phone. She denied having stopped faster payments coming out of her bank to pay the rent and said that it was not possible to stop these payments.

13. The Respondent said she had provided a breakdown of all payments made by her from July 2022 to January 2023 as well as the payments details for the card payments made after that date. She said she had been to Citizens Advice and had been advised to take action against Countrywide as they had received the rent but were saying they had not. She said she was frustrated being called a liar. At the case management discussion on 5th May the respondent agreed to visit her bank and obtain statements during the teleconference. She produced to the Tribunal one statement which she said she had obtained from her bank. This appeared to show a debit card payment to “CRLSotland” on 6th April 2023. She said she had not been able to obtain other statements.

14. At the final case management discussion on 14th July the Respondent advised that she was in hospital but that she was in no pain and could take part in the conference call and wished to go ahead. She confirmed that she was in a private space and said that she could not be heard and that she would let the Tribunal know when a nurse came into the room. She said that she was on an IV drip as part of her regular treatment for Crohn’s disease. The Respondent wanted to take part and have the matter dealt with. The Tribunal allowed a number of breaks during this case management discussion to facilitate the Respondent’s situation as required and she was able to take a full part in the discussion. The Tribunal Legal member asked why the Respondent had not lodged all of her redacted bank statements to show rent payments during the tenancy as she had agreed to do and had been directed to do. The Respondent explained that the Tribunal should have heard from her solicitor and she would forward an email sent by him to the Tribunal with the bank statements attached.

Documents Submitted by the Respondent on 14th July 2023

15. The Respondent forwarded an email which she said came from her solicitor to the Tribunal explaining her position. The Tribunal Members received this between 10 and 11am on 14th July 2023. The Tribunal Members adjourned to consider the document which was an undated email with another email below it which purported to send an email with a mandate to the Tribunal on 14th June 2023. The Tribunal Members considered the emails and were concerned that these did not appear to be the sort of emails which a solicitor would write in terms of both grammar and content. The emails were said to come from a named individual and it was suggested in the signature area that this person was a solicitor with a large Scottish firm of solicitors. The Tribunal members were sufficiently concerned about the emails to ask the Tribunal clerk to telephone the firm concerned and check if the named individual was a solicitor in this firm. This enquiry was made and a member of staff at the firm confirmed to the Tribunal clerk that there was no solicitor by that name at the firm. In fairness to the Respondent she was made aware that this check had been carried out and the information was put to her for comment but she was adamant that she had spoken with this solicitor at the firm concerned and that this was the firm that Citizens Advice had recommended to her. It was put to her that the email purporting to send a mandate to the Tribunal could not have arrived at the tribunal as the email address

had a typographical error in the address with the word “scotcourts” being typed as “scptcourts”.The Respondent was adamant that the emails were from her solicitor and understood that bank statements and other documents were attached to the email. The Tribunal Legal member confirmed that no attachments were sent with the undated email and the Respondent forwarded the email with attachments to the Tribunal. The attachments were a medical appointment letter and two emails said to come from the Bank of Scotland addressed to the person said to be the Respondent’s solicitor confirming rent payments. There was also a document attached which was said to be a mandate authorising any representative of the firm of solicitors to obtain evidence including banking records. The last attachment sent attached to the email was called “banking statement “ and could not be opened as it required a password. The Respondent was advised of this and indicated that the solicitor had put a password on these and she would ask that the documents be sent to the Tribunal. After a break the Respondent advised that she had contacted someone called “Gemma “at the solicitors’ Glasgow office and that the bank statements would be scanned over to the Tribunal. The Applicant made his own enquiries regarding the emails said to come from a solicitor during a break in the teleconference and advised the Tribunal that he too had been told by the firm that there was no solicitor with the name given in the emails at the firm concerned.

16.In the email purporting to come from a solicitor on behalf of the Respondent it was suggested that the Respondent had done a test transaction sending money to the solicitor’s bank account and that this had been received without any issue via a faster payment. It was also suggested that one rent payment from Revolut bank could not be confirmed in the sum of £1400 and that statements could not be obtained from Nationwide as the account had been closed and to obtain these this would incur a cost. This e mail also addressed the information given by the Applicant about the Respondent from a newspaper and went into the background of the matter and the conviction which resulted.

17.The Respondent’s position was that all the rent due by her had been paid even if late and the only outstanding rent was for July 2023 which she was yet to pay. She also said that she had consulted a solicitor due to the lies that the Applicant was telling about her. She accepted that the Applicant had not been receiving her rent payments and blamed Countrywide as she said the payments had been made by her.

18.The Tribunal members considered whether to have regard to the material lodged by the Applicant regarding a previous conviction of the Respondent some years before on an entirely different matter. The Tribunal members took the view that this was irrelevant and advised the parties that this material would not be considered in the making of the decision on whether to grant an eviction order.

Reasonableness

19.Both parties were given the opportunity to make submissions on the reasonableness or otherwise of the making on an eviction order. The Applicant said that the facts spoke for themselves. He said that the Respondent’s position was based on lies which she was telling the Tribunal and asked that the Tribunal not accept the Respondent’s position and find that the rent had not been paid and that it was

appropriate to grant an eviction order. The Applicant did not give any information regarding his own personal or financial circumstances.

20. The Respondent indicated that she lived at the property with her daughter. She had chronic health conditions which she had described already and had ongoing regular appointments for treatment for these. These she said did not require her to have specially adapted accommodation in any way. She had not taken any steps to try to find anywhere else to live after a Notice to Leave was served. She had paid her rent and felt there was nothing more she could do to demonstrate the facts of her position to the tribunal.

21. The Respondent took no issue with the procedure in this application in terms of the Notice to Leave and the notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 and she did not dispute that she had received a number of emails and letters regarding rent arrears which she said had prompted her to query what was going on as she was paying the rent. She did not suggest at any stage that she had not paid the rent due to any delay or failure in the payment of a relevant benefit. The Tribunal had sight of these documents and noted that the Notice to Leave appeared to be in proper form giving notice of the eviction ground and the application to the tribunal, the Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 had been intimated to the local authority in relation to the application and a number of letters had been sent to the Respondent between February and June 2022 setting out the rent arrears and in some of these letters the Respondent was invited to contact the Letting Agent if she was having difficulties paying the rent so that her personal circumstances could be taken into account.

22. The Tribunal considered that it had sufficient information upon which to make a decision and that the proceedings had been fair. Both parties had been able to give their position in full at the various teleconferences and had lodged papers in support of their positions and had been able to respond on the position adopted by each other.

Findings in Fact

23. The parties entered into private residential tenancy at the property with effect from 13 January 2022.

24. The monthly rent payable in terms of the tenancy agreement was £700 per month to be paid in advance on 13th of each month.

25. The Applicant paid the first month's rent and a deposit at the start of tenancy.

26. Rent payments in terms of the tenancy agreement are to be paid to a Letting Agent on behalf of the Applicant and the Respondent knew where rent payments were to be made.

27.The Respondent has not paid rent due in terms of the tenancy agreement to either the Letting Agent or the landlord or anyone acting on his behalf since January 2022.

28.Rent arrears accrued in terms of the tenancy as of July 2023 are £12600.

29.The Respondent has been in continuous rent arrears in terms of the tenancy agreement for a period more than three consecutive months.

30.The failure to pay the rent is not due to any delay or failure in the payment of a relevant benefit to or on behalf of the Respondent.

31.A Notice to Leave in proper form giving notice of the eviction ground and the intention to start eviction proceedings was served on the Respondent personally on 16th May 2022 giving the required notice period of 28 days.

32.A Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 was sent to North Lanarkshire Council on 13th July 2022.

33. Several letters were sent to the Respondent by Letting Agents acting on behalf of the landlord Applicant between February and June 2022 setting out the level of rent arrears and some of these invited her to make contact with them to allow her personal circumstances to be taken into account.

Reasons for Decision

34.The Tribunal had two main issues to consider in this application: - was the rent paid or not and if this was unpaid and the eviction ground made out whether it was reasonable to grant an eviction order. The tribunal considered all the evidence and documentation before it other than that which related to a previous conviction involving the Respondent which the parties were advised was considered to be irrelevant. The Tribunal was satisfied on the balance of probabilities that the rent was not paid and that rent arrears had accrued as set out by the Applicant. The Tribunal accepted his evidence and found that this was credible and reliable and consistent with the documents he produced from the Letting Agent regarding non payment together with his own bank statements. The Tribunal noted that in emails lodged by the Respondent the Letting Agent had advised that they had carried out what they described as a forensic search regarding rent payments in 2022 and had found no evidence of these being paid.

35.The Tribunal considered that whilst the Applicant was entitled to give his impression of the documents lodged by the Respondent and give a view on what he said was a “real” bank statement and one which was not, in the absence of any evidence from bank staff as to the documents lodged by the Respondent it was not for the tribunal to engage in detective work as regards the documents lodged electronically. The approach the Tribunal has taken in making this decision is to consider the evidence given by each party along with the productions lodged by them in order to decide whether this evidence can be relied on, appears credible and consistent with the position adopted by parties having regard to the standard of proof which is on the balance of probabilities.

36. The Tribunal found the evidence of the Respondent to be lacking in credibility and the documents lodged by her at times to be inconsistent with her position. She said to the Tribunal that she would pay rent for February 2023 and other later months by debit card after the case management discussion on 10th February 2023, but later produced a document suggesting that the February rent payment was paid before the case management discussion. Information lodged by her purporting to come from banks contained grammatical and typographical errors and different font sizes were used in these documents. A letter which purported to come from a bank regarding a trace on payments had no addressee on the letter and started with the words " So our back office team have completed the forward trace ...". A bank document produced on 5th May 2023 by the Respondent which she said she had obtained directly from her bank that day appeared to show a payee with a typographical error, being " CRL Sotland" and this was different from the payee said to have received the rent on other documents, being "CRL Scotland".

37. The Respondent submitted emails purporting to come from a solicitor at a named firm whom she said she had instructed when the Applicant started to accuse her of lying. The e mail produced which was said to refer to bank statements was written in a way which did not appear to the Tribunal to suggest it was written by a professional person. It started using the words "Good afternoon, then referred to " this morning", referring to the Respondent carrying out a test financial transaction with the solicitor's firm which had been successful, referring to the Respondent's medical hospital appointment on the day of the case management discussion and saying that " she would be " in no pain ", exactly the words used by the Respondent when she entered the conference call earlier that day. The email contained grammatical errors and contained lengthy sentences which were not punctuated. The email sent with it purported to suggest that a mandate had been sent by the named solicitor to the Tribunal, but the email address referred to " scptcourts" and could not have been received by the Tribunal. Given the concerns regarding these emails the purported sender was checked by the Tribunal clerk, and it was found that there was no such solicitor at the named firm. The Respondent was adamant that she had seen this solicitor. The Tribunal considered that these emails were not genuine as they purported to come from a solicitor who did not work at the firm concerned. The Tribunal took the view that these e mails were intended to deceive the Tribunal into accepting that rent had been paid by the Respondent. This was coupled with an apparent determined effort by the Respondent not to produce bank statements which would have clearly shown whether the rent had been paid, even at the last case management discussion producing a document called "banking statement" which was said to be password protected by the solicitor and could not be opened. The Respondent suggested she had called the firm concerned and asked a staff member to scan the bank statements, but these were never received by the Tribunal.

38. The Tribunal took that view that the Respondent had produced documents which did not provide proof of her position and she had deliberately provided emails which were not genuine in order to try to deceive the Tribunal. The Tribunal rejected her evidence on the issue of rent payment entirely and found that she had paid no rent since the first month of the tenancy. Her evidence was not credible or reliable and the other documents she produced did not assist her given that they too had typographical or grammatical errors and were at times inconsistent with her own position.

39. The Tribunal considered whether the pre action protocols had been met in relation to this application. Whilst some letters from Letting Agents on the Applicant's behalf invited the Respondent to make contact to allow her personal circumstances to be considered and she was advised on a number of occasions as to the level of rent arrears which had accrued she was not signposted to source of support and the tribunal considered this in relation to whether it was reasonable to grant the application.

40. The Tribunal considered the full circumstances as known to it. The Respondent did not suggest that her health issues would impact on her and her daughter finding another property and said that she not made any enquiries about other properties. The lack of compliance with the pre action protocol requirements did not appear to have a bearing here as the Respondent was not suggesting she was struggling to pay the rent or could not pay it. In any event she advised that she had been assisted by Citizens Advice. The financial circumstances of the Applicant were not made known to the Tribunal but the Tribunal considered in the light of all the information before it that it was reasonable to grant an order, particularly given the history of non-payment and the attempts made by the Respondent to conceal this over a period of time.

41. The Tribunal noted that this application is not affected by the Cost of Living (Tenant Protection) (Scotland) Act 2022.

Decision

The Tribunal determined that an eviction order be granted in terms of Ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 in that the Respondent is in continuous rent arrears for over three 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

Legal Member

14.7.23

Date