

Housing and Property Chamber
First-tier Tribunal for Scotland



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber)**

Chamber Ref: FTS/HPC/EV/23/1955

Re: Property at 17 Easter Road, Broxburn, West Lothian, EH52 5HN (“the Property”)

Parties:

**Mr Haseeb Hassan, Mrs Nurgis Hassan, 59 Badger Park, Broxburn, EH52 5GY;
59 Badger Park, Broxburn, EH52 5GY (“the Applicants”)**

Mr Darren Henderson, Mrs Zara Henderson, Unknown, Unknown (“the Respondents”)

Tribunal Members:

Virgil Crawford (Legal Member) and Melanie Booth (Ordinary Member)

Decision (in absence of the Respondent)

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

BACKGROUND

1. By lease dated 2 March 2019 the Applicants let the Property to the Respondents.
2. The rent payable in terms of the lease is £650.00 per calendar month.
3. The Respondents fell into arrears of rent. As a result, the Applicants served a Notice to Leave upon the Respondents seeking an order for eviction on the basis of rent arrears (ground 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)) .
4. A Notice in terms of s11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the Local Authority.
5. The Applicants subsequently presented two separate Applications to the Tribunal, EV/23/1995, being an action for eviction on grounds of

rent arrears and CV/23/1958 being an action for payment. At the time the Applications were submitted the rent arrears amounted to £2,600.00.

6. A Case Management Discussion was assigned for each case for 8th September 2023. Prior to the Case Management Discussions the Applicants, in relation to case reference EV/23/1955, submitted correspondence to the Tribunal seeking to add an additional ground for Eviction, that being Ground 11 of Schedule 3 to the 2016 Act (breaching terms of the tenancy agreement). This is said to arise due to the discovery by the Applicants, after the application had been submitted, that the Respondents were not maintaining the Property, in particular garden ground. This was said to be in breach of clauses 11 and 20 of the lease.
7. Prior to the Case Management Discussions on 8th September 2023 the Applicants forwarded further correspondence to the Tribunal advising that rent remained unpaid and the arrears had now risen to £4,550.00, that being 7 months worth of rent arrears. That correspondence was forwarded to the Tribunal by email on 31 August 2023, 8 days before the Case Management Discussions. The Tribunal did not have sufficient time to intimate the correspondence to the Respondents prior to the Case Management Discussions.

CASE MANAGEMENT DISCUSSIONS ON 8TH SEPTEMBER 2023

8. Both cases called together for Case Management Discussions at 10am on 8 September 2023. Both Applicants participated in the Case Management Discussions. Neither Respondent did. The Tribunal, however, was in receipt of an execution of service of the case papers etc upon the Respondents and, in the circumstances, proceeded in the absence of the Respondents.
9. In relation to the Application for an Eviction Order (EV/23/1955) the Applicants requested that the Tribunal continue the Case Management Discussion to a later date. The purpose of doing so is to enable the Applicants to submit further correspondence to the Tribunal seeking to make a further amendment to the grounds of eviction. In particular, the Applicants intended to seek to vary the grounds upon which an eviction is sought to include a breach of ground 12A of Schedule 3 of the 2016 Act (substantial rent arrears). The amendment may be of some significance as, of course, an eviction in terms of Ground 12A is not subject to the terms of the Cost of Living (Tenant Protection) (Scotland) Act 2022.
10. The Applicants moved the Tribunal to allow that additional ground to be added on the basis of their oral application. The Tribunal refused to do so. Having regard to what has already been said about

the significance of such an amendment the Tribunal did not consider it appropriate to allow it without the Respondents being afforded an opportunity to object to the same if so advised.

11. In relation to the rent arrears action (CV/23/1958) the Applicants requested that, if the eviction action case was to be continued, the same should occur with the rent arrears action. Given the recent history of failure to pay rent and the lack of engagement by the Respondents, the Applicants anticipate that the arrears of rent will continue to increase. Prior to any adjourned Case Management Discussion the Applicants would intend to submit an updated rent statement and seek an amendment of the amount claimed by way of rent arrears.
12. The Tribunal, having regard to the information provided which, on the face of it, tends to indicate that the Respondents are not paying rent on an ongoing basis, have not been paying rent for a significant period of time and may be failing to maintain the property in a good condition, and having regard to the suggestion that the rent arrears are now what can be described as substantial in terms of Ground 12A of Schedule 3 of the 2016 Act, decided to adjourn the Case Management Discussions, as requested by the Applicants, to enable the Applicants to take steps, if so advised, to seek a variation of the grounds upon which an eviction is sought and, in due course, if so advised, to seek an amendment of the amount of rent arrears claimed in the payment action.

CASE MANAGEMENT DISCUSSIONS ON 1ST DECEMBER 2023

13. Further Case Management Discussions were assigned for 1st December 2023. Both Applicants participated in the Case Management Discussions. Neither Respondent did.
14. The Applicants, immediately after the previous Case Management Discussions, forwarded written correspondence to the Tribunal moving to add an additional ground of eviction, that being ground 12A of Schedule 3 of the 2016 Act. Prior to the Case Management Discussions on 1st December 2023 the Applicants also forwarded an updated rent statement to the Tribunal. This confirmed arrears of rent had now increased to £5,850.00, being nine months rental payments.
15. The Applicants moved the Tribunal to amend the amount sought in relation to rent arrears to £5,850.00 in case CV/23/1958, and to amend the eviction ground relied upon in case EV/23/1955 to ground 12A of Schedule 3 of the 2016 Act. Given the Respondents had made no submissions to the Tribunal prior to the Case Management Discussions, and given they chose not to participate in the Case Management Discussions, the Tribunal allowed both amendments.

16. The Tribunal, in the absence of opposition by the Respondents, thereafter granted an order for eviction and an order for payment in the amount of £5,850.00.

FINDINGS IN FACT

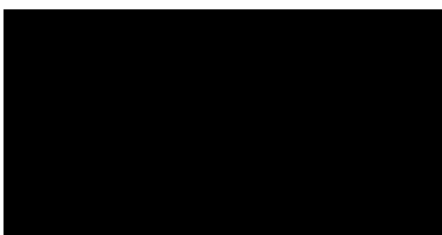
17. The Tribunal found the following facts to be established:-
- a) By lease dated 2 March 2019 the Applicants let the Property to the Respondents.
 - b) The rent payable in terms of the lease is £650.00 per calendar month.
 - c) The Respondents fell into arrears of rent. As a result, the Applicants served a Notice to Leave upon the Respondents seeking an order for eviction on the basis of rent arrears in terms of ground 12 of Schedule 3 of the 2016 Act.
 - d) A Notice in terms of s11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the Local Authority.
 - e) The Respondents are in arrears of rent in the amount of £5,850.00.
 - f) The arrears of rent amount to substantial arrears in terms of ground 12A of Schedule 3 of the 2016 Act.
 - g) The Applicants moved the Tribunal to allow an amendment to the ground relied upon for eviction. The Tribunal allowed the amendment.
 - h) It is reasonable that an order for eviction be granted.

DECISION

The Tribunal grants an order against the Respondents for eviction of the Respondents from the Property.

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

1st December 2023

Date