



**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/23/2609**

**Re: Property at 13 Finlaggan Place, Dundee, DD4 9JS (“the Property”)**

**Parties:**

**Alan Roger Finlay, Fiona Finlay, 520 Perth Road, Dundee, DD2 1PL (“the Applicants”)**

**Dale Melville, whose current address is unknown; and Louise Campbell, 22 Mauchline Terrace, Dundee, DD4 8FA (“the Respondents”)**

**Tribunal Members:**

**Joel Conn (Legal Member) and Frances Wood (Ordinary Member)**

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

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

**Background**

1. This is an application by the Applicants for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”). The PRT in question was by the Applicants to the Respondents commencing on 20 September 2018.
2. The application was dated 3 August 2023 and lodged with the Tribunal on that date. This makes the application subject to the *Cost of Living (Tenant Protection) (Scotland) Act 2022*, as shall be referred to further below.
3. The application relied upon a Notice to Leave dated 14 June 2023 in terms of section 50 of the *Private Housing (Tenancies) (Scotland) Act 2016*, intimated upon the Respondents by email (in terms of the Tenancy Agreement) on that date. The Notice relied upon Ground 12 of Schedule 3 Part 1 of the 2016 Act,

being that “the tenant has been in rent arrears for three or more consecutive months”. In regard to Ground 12, the body of the notice referred to arrears of £2,323.08 as of that date, stating that it was made up of four months of rent of £580.77 a month, from 1 March to 1 June 2023. The rent stated in the Tenancy Agreement lodged was £550 a month but we received oral submissions at the case management discussion (“CMD”) that the rent had been validly increased prior to 1 March 2023 to £580.77 a month. The Notice intimated that an application to the Tribunal would not be made before 15 July 2023.

4. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon Dundee City Council on 3 August 2023 was provided with the application. There was evidence in the application papers of the Applicants’ agent providing pre-action protocol information in standard form to the Respondents on 14 June 2023 by emailed letter.
5. Prior to the CMD we received from the Applicants’ agent an Inventory of Productions with an updated rent statement dated 11 January 2024, showing no further rent payments had been received and that monthly rent was said now to have increased to £598.19 a month. The total arrears as of 11 January 2024 was said to be £6,458.15, being eleven unpaid months since 1 March 2023. A proposed amendment was also lodged, referring to the increased arrears, submitting that the first Respondent (Mr Melville) was still in occupation, and that the Applicants sought the periods of charge in any charges for removing be dispensed with under rule 41C(3) of the Rules. Submissions accompanied the amendment and Inventory stating that the first Respondent was refusing to provide access for a gas safety inspection and had failed to provide access for a window repair. The submissions regarding the motion under rule 41C(3) referred to the desire of the Applicants to re-let as soon as possible and the Respondents receiving sufficient notice and protection under the 2022 Act, justifying dispensing with the periods of charge in consideration of the Applicants’ eagerness to take possession.

## **The Hearing**

6. The matter called for a CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 26 January 2024 at 10:00. We were addressed by Calvin Gordon, solicitor, Thorntons Law LLP and by the first Applicant. The second Applicant was also present on the call but did not address us. There was no appearance from either of the Respondents.
7. We were informed by the clerk that no contact had been received from the Respondents (or on their behalf) with the Tribunal. Intimation of an earlier (but then discharged) CMD diet was undertaken against the second Respondent by Sheriff Officer instructed by the Tribunal, and there had then been intimation of this diet by recorded delivery letter (which had been signed for). Both intimations had been made to the second Respondent’s new address. We were therefore satisfied that the second Respondent had received sufficient intimation and remained at an address other than the Property. The Sheriff Officer seeking to intimate the original CMD diet reported that the first

Respondent was not at the Property and intimation of this diet was undertaken by service by advertisement in normal form.

8. The Applicants' agent said that no communication had been received from either Respondents recently. Communication from the second Respondent in July 2023 had confirmed that she had new accommodation and that she no longer resided at the Property. The Applicants' agent stated that neighbours had reported that the first Respondent had abandoned the Property but the Applicants had not confirmed (to their satisfaction) that he was not returning from time to time.
9. We considered that the Respondents had received appropriate intimation of the CMD. In the absence of any attempt by the Respondents to make contact with the Tribunal, and having not commenced the CMD until around 10:10, we were satisfied to consider the application in the Respondents' absence. In any case, no attempt was made by either of the Respondents (nor anyone on their behalf) to dial in late to the CMD.
10. At the CMD, the Applicants' agent confirmed that the application for eviction was still insisted upon and reliance was made on the missed rent payments since 1 March 2023. The Applicants understood that the first Respondent may have lost his employment around that time, but they had received no information about any attempt to obtain benefits nor any receipt of benefits. There had been little communication with the first Respondent, and none recently. The Applicants, principally through oral submissions from the first Applicant, set out the following series of events:
  - a. Around September 2022, the second Respondent made contact to say that she had moved out of the Property due to the domestic situation with the first Respondent.
  - b. There was a protracted period where attempts were made to discuss with the first Respondent whether he wished to seek to take on a tenancy of the Property in his sole name. Due to a lack of engagement, and the arrears commencing in 1 March 2023, this did not proceed.
  - c. The Tenancy thus continued in joint names, as there was no mechanism – short of mutual agreement (which was lacking) – to arrange a new sole tenancy.
  - d. In June 2023, with arrears having reached four consecutive months of unpaid rent, a Notice to Leave was issued to both Respondents.
  - e. In early July 2023, the police reported to the Applicants that a window was broken at the Property, apparently broken by a third party. The Applicants contacted the Respondents. The second Respondent replied to confirm that she was now in new accommodation with the Respondents' young child. The first Respondent failed to reply.
  - f. The first Applicant attended at the Property on 5 July 2023 accompanied by the police and took access using a duplicate set of keys that had been retained. (The locks were found to be unchanged.) The Applicants arranged a glazier to attend at that time and the window was repaired. The first Applicant did not carry out a full inspection but noted that there was significant post behind the door, but still a sofa in the living room. Neighbours reported at that time that the Property was unoccupied but the

- Applicants were not satisfied that there was conclusive evidence, to their satisfaction, that the second Applicant was not occupying at any time.
- g. Subsequent to the expiry of the Notice to Leave, the Applicants instructed their solicitor to raise this application (and a conjoined application for payment of arrears (CV/23/2610)).
  - h. Letters to the Property requesting access for a gas safety inspection went unanswered. No application for access was separately raised with the Tribunal, however, and no attempt to take further access was made.
  - i. No further contact having been received, the first Applicant recently attended to inspect the exterior of the Property. He found that significant amounts of post could still be seen behind the front door, and that a security light was no longer working. Access to an exterior gas meter was possible, showing the gas system was now turned off and there were arrears of £75. (The Applicants were unaware when the gas was turned off.) A neighbour reported that they believed no one was occupying the Property.
11. The Applicants' agent explained that the monthly rent was now increased, by the appropriate procedures, to £598.19 a month and held that the arrears, for rent through to 31 January 2024, amounted to £6,458.15 as per the updated rent statement submitted.
  12. The Applicant's agent provided further submissions on the background for our consideration in regard to the reasonableness of the application:
    - a. The Property was a two-bedroomed property.
    - b. The Respondents had lived as a couple at the Property, with their young child, until the second Respondent had left.
    - c. The Applicant and its agent knew of nothing to suggest the Respondents had ever sought or received benefits.
  13. We sought submissions from the Applicants as to whether there was any evidence that the first Respondent had visited the Property since 5 July 2023. They had none. We noted that all evidence, or matters on which we could draw an inference (such as the post piled up and the certainty of the neighbours), suggested the first Respondent had left. We further noted that the first Respondent was intimidated by advertisement, which had occurred further to the Applicants' own agreement to service in this fashion (after the failed Sheriff Officer intimation of the earlier discharged CMD diet). We pressed the Applicants as to why they were certain they required an order for eviction under section 51 of the 2014 Act, when the circumstances suggested that section 50 may already have operated to bring the Tenancy to an end (in that a "tenancy which is a private residential tenancy comes to an end if (a) the tenant has received a notice to leave from the landlord, and (b) the tenant has ceased to occupy the let property", both of which appear to have occurred by July 2023). The Applicants' position, put at its simplest, was that they were exerting a surfeit of caution and still sought an order under section 51.
  14. The Applicants' agent confirmed that the Applicants were aware of the 2022 Act applying and no special submission was made in regard to the operation of that Act. The fact that the Act applied was however used as justification for

dispensing with the periods of charge in any eviction process, but no details were provided of any specific urgency in this application.

15. We adjourned to consider the matter and on recommencing we asked the Applicants to address us on further procedure in light of our discussions. We explained that, on the information available to us at present, we were satisfied to grant an order for eviction under section 51(1) of the 2014, as we were satisfied that there were unpaid arrears outstanding for the requisite period time, but that we also required, under section 51(4), to come to a determination as to the date the tenancy ended. On that, based on the information available us, we could only determine that this date was 15 July 2023, being the day after the expiry of the Notice to Leave as it appeared that at that date both Respondents (whether intentionally or not) had ceased to occupy and thus the date that the Tenancy ended under section 50. Further, we were not minded to dispense with any period of charge on the information currently available.
16. We thus sought the Applicants' views on whether they wished a continuation to provide further evidence of occupancy after 15 July 2023, or to support the motion under rule 41C(3). (We were conscious that the former issue had greater significance to the conjoined arrears application.) The Applicants' agent and the first Applicant discussed matters briefly and confirmed that they did not seek further time and were content with an order in the terms proposed.
17. No motion was made for expenses.

### **Findings in Fact**

18. On or about 10, 11 and 13 September 2018 the Applicants let the Property as a Private Residential Tenancy to the Respondents under a lease with commencement on 20 September 2018 ("the Tenancy").
19. In terms of clause 7 of the Tenancy Agreement, the Respondents required to pay rent of £550 a month in advance on the 1<sup>st</sup> day of each month.
20. Prior to March 2023, the Applicants increased the passing rent due each month, by appropriate procedures, to a figure of £580.77.
21. On 14 June 2023, the Applicants' agent drafted a Notice to Leave in correct form addressed to the Respondents, providing the Respondents with notice, amongst other matters, that they were in rent arrears for a period in excess of three consecutive months, and detailing arrears at that date of £2,323.08 (being four months' rent).
22. The Notice to Leave provided the Respondents with notice that no application would be raised before the Tribunal prior to 15 July 2023.
23. The Applicants' agent served a copy of the Notice to Leave on each of the Respondents by email on 14 June 2023.

24. Clause 3 of the Tenancy Agreement permits for service of notices by email to the Respondents at the email addresses provided by them.
25. The Applicants raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 12 of Schedule 3 Part 1 of the 2016 Act on 3 August 2023.
26. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon Dundee City Council by the Applicants' agent on 3 August 2023.
27. No payments have been made by the Respondents in regard to the rent arrears as at the date of the Notice to Leave and the Respondents do not claim to have paid any amount of those arrears.
28. The sum of arrears is neither wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, other than any referable to an act or omission of the Respondents.
29. The Respondents formerly occupied the Property with their young child.
30. The second Respondent and the Respondents' child vacated the Property in or around September 2022 and have not occupied the Property since that time.
31. The first Respondent is not known to have visited the Property since before 5 July 2023 and has not occupied the Property since at least the expiry of the Notice to Leave.
32. The Applicants' agent provided pre-action protocol information in standard form to the Respondents on 14 June 2023 by emailed letter.
33. The first Respondent has received intimation of the date of the CMD through service by advertisement.
34. The second Respondence has received intimation of the date of the CMD by recorded delivery letter.

### **Reasons for Decision**

35. The application was in terms of rule 109, being an order for eviction from a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been correctly drafted and served upon the Respondents.
36. Ground 12 of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:

*(1) ...the tenant has been in rent arrears for three or more consecutive months. ...*

*(3) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—*

*(a) for three or more consecutive months the tenant has been in arrears of rent, and*

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

*(4) In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider*

*(a) whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, and*

*(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations.*

37. The arrears information provided clearly showed that Ground 12 was satisfied in regard to the length of arrears and amount outstanding under the Notice, and that the arrears had not been paid. There is nothing to suggest that Respondents' failure to pay is related to an issue with benefits. Ground 12 is satisfied subject to paragraph 3(b) regarding reasonableness, and subject to our consideration as to whether an order under section 51 is competent in the circumstances.
38. We require, in terms of the Act as currently amended, to consider the reasonableness of the application even in regard to persistent arrears. We were satisfied that the Applicants' reasons for seeking eviction were reasonable given the amount of the arrears and that no payments were made. This remains the case even if the arrears are restricted to the sums due up to July 2023. There was an absence of any material engagement by the Respondents (especially the second Respondent who sought at one time to become the sole tenant) on payment of the arrears. The Respondents are no longer living as a family at the Property, and it appears no one is living there at all. The Respondents did not appear or provide submissions in regard to any issue regarding reasonableness and we are satisfied that it is reasonable to evict on the basis of the information before us subject to the competency issue.
39. The question before us is whether there was a Tenancy still in existence and, if not, whether we can grant an order for eviction. We think that the facts and inferences from the facts support a view that the Tenancy has ended under section 50, as a Notice to Leave was validly issued and the Respondents have "ceased to occupy the let property". The second Respondent certainly has ceased to occupy and there is nothing to suggest any visits by the first Respondent since before 5 July 2023. Further, section 50 does not require the cessation of occupation to be as a result of the Notice to Leave. It is a simple two-condition test. Both conditions appear met and the Applicants could point to no evidence that they had not been.
40. The Applicants were, however, concerned that the first Respondent had never confirmed that he had ceased to occupy, or agreed that the Tenancy was at an

end. He is not required to, but the Applicants felt they had no obvious way to provide themselves with confidence that they could repossess the Property. We make no comment on alternative routes that the Applicants may have adopted, though this is certainly not a unique situation.

41. What is before us is the question of whether we may grant an order for eviction under section 51 in a tenancy that appears already to be terminated by process of law under section 50. We see nothing in section 51 that precludes us from doing so. Under section 51 we are “to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies”. There has been an application, and we do find an eviction ground applies. If the landlord wants an eviction order, even if they may not need it, section 50 says we are to issue it if a ground applies.
42. A second unusual issue presents itself, however, which is how to give effect to our requirement under section 51(4) to determine the date of the end of the Tenancy (“[a]n eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order”). In usual circumstances that is the day of the order, as that is the day on which the Tribunal determines that an eviction ground applies and grants eviction. In this application, on the evidence presented, we think that the Tenancy has already ended under section 50. Accordingly, we shall specify in the order that the Tenancy ended on the day following the expiry of the Notice to Leave (15 July 2023), being the date on which we are satisfied, on the evidence presented, that there was both an expired Notice and both Respondents had ceased occupation.
43. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time under Ground 12 subject to the appropriate suspension under the 2022 Act. The order will thus be suspended so that it may not to be executed prior to 12:00 on the earlier of (a) the day following the end of a period of 6 months beginning with the day on which this order was granted (that is 26 July 2024), or (b) the expiry or suspension of Paragraph 1 of Schedule 2 of the 2022 Act, currently expected to be 31 March 2024.
44. We do not see that the circumstances merit any order under rule 41C(3). There is no special urgency in obtaining recovery except occasioned by the Applicants’ own choices and the routine speed of an application through this Tribunal.

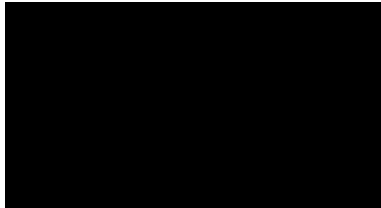
## **Decision**

45. In all the circumstances, we grant an order against the Respondents for eviction from the Property under section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* further to ground 12 of Schedule 3 of that Act, subject to the suspension under the 2022 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.



26 January 2024

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Legal Member/Chair

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Date