



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

**Chamber Ref: FTS/HPC/EV/23/2272**

**Re: Property at 45 Franklin Place, East Kilbride, G75 8LT (“the Property”)**

**Parties:**

**Ms Marlyn Campbell, 20 Wellshot Drive, Cambuslang, Glasgow, G72 8BT (“the Applicant”)**

**Mr David Galbraith, 45 Franklin Place, East Kilbride, G75 8LT (“the Respondent”)**

**Tribunal Members:**

**Virgil Crawford (Legal Member) and Ahsan Khan (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 17<sup>th</sup> June 2022 the Applicant let the Property to the Respondent.
2. The rent payable was £525.00 per calendar month. A tenancy deposit of £1,050.00 required to be paid also.
3. The Respondent fell into arrears of rent at the start of 2023. Three monthly rental payments were missed. Thereafter, payments of rent were made but not always for the full amount.
4. The Applicant served a Notice to Leave on the Respondent. This indicated eviction was being sought in terms of Grounds 11 and 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”).
5. A notice in terms of s11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the local authority.

6. The Applicant presented an application to the Tribunal seeking an eviction order. The application for an eviction order was made in terms of ground 11 (breach of tenancy agreement), ground 12 (rent arrears) and ground 14 (anti-social behaviour) of schedule 3 of the 2016 Act.

## **THE CASE MANAGEMENT DISCUSSION ON 13<sup>th</sup> NOVEMBER 2023**

7. A Case Management Discussion was held by teleconference at 10am on 13<sup>th</sup> November 2023. The Applicant was represented by Mr John McLaughlin of Sterling Consultancy Options Limited. The Respondent participated personally. He had previously submitted written submissions and supporting documentation to the Tribunal in opposition to the eviction order.
8. Mr McLaughlin advised the Tribunal that he was also the partner of the Applicant.

### **Ground 11**

#### **Pets**

9. The tenancy agreement provides that pets are not to be kept at the Property. The Applicant advised that a bird cage was within the Property. Separately, a neighbour had previously contacted the Applicant complaining about the noise of a dog barking.
10. The Respondent confirmed that he had two dogs within the Property for two nights. The dogs belonged to his mother who was away for a weekend. They have subsequently been returned and have never been within the Property since.
11. The Respondent confirmed that he does indeed have a budgerigar which is kept within a bird cage.
12. Mr McLaughlin said he had a discussion with the Respondent prior to signing the lease about the generic no pets clause in the lease and informed him that a higher rent would be payable if a tenant wanted to have pets in the Property. Mr McLaughlin confirmed that he has no further issues with dogs at the Property causing any difficulty or disturbance from neighbours. In relation to the budgerigar, while this does not appear to have caused any difficulty for neighbours nor anyone else, there was a concern if it was allowed to fly freely within the Property its droppings could result in cleaning or even deep cleaning, being required at the end of the tenancy.
13. The Respondent recalled that, prior to signing the tenancy agreement, he made an enquiry about pets not being allowed. He was advised this was a generic advertising term included when the Property was marketed. He could not recall Mr McLaughlin mentioning this affecting the rent. His mother was present at the time of that discussion. In the circumstances, he did not consider that he was breaching the tenancy agreement.
14. The Respondent advised that the budgerigar does not fly freely throughout the Property and is kept within its cage.

#### **Smoking**

15. The application suggested that the Respondent had been smoking within the Property, contrary to the terms of the tenancy agreement. At the Case

Management Discussion, however, the Applicant confirmed that, having recently secured access to the Property, there was no evidence that anyone had been smoking within it. On that basis, this particular part of this ground was no longer founded upon.

### **Failing to allow access for inspections**

16. The Respondent had failed to allow access to the Property for safety inspections contrary to the terms of the lease. Mr McLaughlin, however, advised the Tribunal that access has now been obtained, although further access is required by an electrician for further inspection and work.
17. The Respondent was candid with the Tribunal advising that he had suffered a bout of depression and, while he had not communicated with the Applicant with a viewing to allow access, he had, during that particular period of time, not communicated with anyone because of his condition. He explained however, that he has been provided with appropriate medical treatment. He is now properly medicated and his mental health has significantly improved. He does not expect any further difficulty with this. Access to the Property will be afforded as required by the Applicant.

### **Ground 12**

18. The application under ground 12 related to arrears of rent.

### **Cause of arrears**

19. Three rental payments were missed in January, February and March 2023. Since then, while rental payments have been made, they have been incomplete in some months. As at the date of the Case Management Discussion, it was suggested that arrears amount to £1,890.62.
20. The Respondent accepted there were arrears of rent but disputed the amount of arrears. He advised that during 2022 he suffered some form of seizure or collapse. The exact cause of that has not been ascertained, even at this stage. As a result, however, his medical condition required to be disclosed to the DVLA who revoked his driving licence pending further investigation. He was at the time employed in a driving job. He lost his employment which, in turn, affected his ability to make payment of rent. He is now receiving benefit payments which cover £375.00 per month of his rent. In relation to the balance, he has received some discretionary housing payments but these are no longer being paid.
21. The Respondent advised that he sought a discretionary payment to clear the arrears. That, however, was not made available to him on the basis that the Applicant had intimated that, even if rent was paid, he would be evicted anyway as there were other grounds for eviction.
22. At the Case Management Discussion Mr McLaughlin, on behalf of the Applicant, confirmed that if rent arrears were brought up to date and if there was an assurance that further rental payments would be made, the Applicant would be content to continue with the tenancy.
23. The Respondent confirmed to the Tribunal that his driving licence for driving motor vehicles has now been re-instated to him. His vocational licences, which entitle him to drive buses and heavy goods vehicles, however, have not been re-instated. The fact that he has his driving licence, however, now

improves his employment prospects. He is actively seeking employment and, should employment be secured, he would expect to be in a position to make payment of rent on an on-going basis. In the meantime, on the basis of the assurance given on behalf of the Applicant that, if rent arrears are brought up to date and if rent is paid on an ongoing basis, the eviction proceedings would be discontinued, the Respondent will make further enquiry about seeking discretionary payments to assist him in securing the tenancy on an ongoing basis.

#### **Amount of arrears**

24. In relation to the amount of arrears, the Respondent advised that a payment of £525.00 paid to the Applicant on 27<sup>th</sup> May 2022 was not included within the rent statement provided. The Respondent made payment of that as his first rental payment. He thereafter made payment of £1,050.00, that being the tenancy deposit. The rent statement provided intimated that £525.00 had been lodged with Safe Deposit Scotland. £525.00 was not accounted for. On the basis that amount had been paid the actual arrears were alleged to be £1,365.62.
25. Mr McLaughlin confirmed the position to be as outlined by the Respondent. A payment of £525.00 had been made on 27<sup>th</sup> May 2022 that being a first payment of rent. A payment of £1,050.00 was made thereafter, that being the tenancy deposit. £525.00 had been lodged with Safe Deposit Scotland. The other £525.00 was within the business account. The intention was that, after a period of 6 months, if all rental payments had been made, one half of the tenancy deposit would be returned to the Respondent. That however had not occurred on this occasion as the Respondent had fallen in to arrears of rent. The £525.00, therefore, had been paid which was not included within the rent statement on the basis that it was part of the deposit which was being held by the Applicant.
26. The Tribunal made enquiry of the Applicant in relation to the failure to comply with the obligation to lodge the tenancy deposit with an approved scheme. Mr McLaughlin advised that he was unaware of the need to lodge the entire deposit. The Tribunal advised that it might be appropriate for the Applicant to obtain advice in relation to that as it appears that there may have been a breach of the Tenancy Deposit Scheme (Scotland) Regulations 2011. Similarly, the Respondent was advised that he would be entitled to obtain advice in relation to the same matter.

#### **Ground 14**

27. The Applicant also sought an eviction order in terms of Grounds 14 of Schedule 3 of the 2016 Act. Ground 14 relates to anti-social behaviour on the part of the tenant. The anti-social behaviour complained of, however, was an alleged misrepresentation made to the Applicant, by the Respondent, prior to the lease being executed. It was claimed that the failure to disclose this information (the suggestion being that, had the information been disclosed the tenancy agreement may not have been entered into) caused upset and distress to the Applicant and to Mr McLaughlin, her partner and her representative in these proceedings.

28. It was clear from the information provided that there was no suggestion of anti-social behaviour by the Respondent in relation to any neighbours nor, indeed, anyone at all during the currency of the tenancy agreement.
29. Separately, the notice to leave served upon the Respondent did not refer to an eviction order being sought in terms of Grounds 14.
30. Upon discussing these matters with Mr McLaughlin on behalf of the Applicant, he conceded that there had been no reference to Grounds 14 in the notice to leave.
31. Separately, he accepted the legal interpretation of Grounds 14 and that a misrepresentation made to the Applicant prior to the lease being entered into did not constitute or breach Grounds 14.
32. On that basis, it was confirmed that no further reliance would be placed upon Grounds 14 and seeking an eviction order.

## **DISCUSSION IN RELATION TO CASE MANAGEMENT DISCUSSION**

33. Having regard to the discussion previously had about the rent arrears and the possibility of arrears being brought up to date, with the tenancy thereafter continuing, the Tribunal, after a brief adjournment, confirmed to Parties that it would fix a hearing to consider matters further.
34. Mr McLaughlin confirmed, for the avoidance of any doubt, that if the Respondent makes payment of rent arrears and rent is thereafter paid on an ongoing basis, the Applicant will allow the tenancy to continue. At present, however, to preserve the position of the Applicant, the application is insisted upon.
35. The Tribunal determined that the application for eviction will proceed at this stage in terms of Grounds 11 (pets within the Property and failure to allow access) and Grounds 12 (rent arrears) only.
36. On the basis that the Tribunal will require to consider issues of reasonableness if the application is being insisted upon, a hearing was assigned to enable Parties to lead witnesses and other evidence if so advised.
37. In all circumstances, the Tribunal adjourned the case to a hearing. The hearing was restricted to consideration of an eviction under Grounds 11 – breach of the tenancy agreement by having a pet within the Property and failing to allow access – and Grounds 12 – rent arrears – only.

## **THE HEARING ON 19<sup>TH</sup> FEBRUARY 2024**

38. The Applicant participated personally in the hearing. The Respondent did not participate in the Hearing.
39. Prior to the Hearing the Applicant provided further submissions to the Tribunal. In particular, these confirmed that the arrears of rent had increased since the Case Management Discussion. As at the date of the Hearing the arrears of rent amounted to £2,772.12. In the circumstances, the Applicant was seeking an order for eviction on grounds of arrears of rent.

40. The Applicant, however, was also insisting upon an eviction order ground 11, an alleged breach of the tenancy agreement by having pets within the Property and failing to allow access.

### **Rent Arrears**

41. In relation to the arrears of rent, as discussed at the Case Management Discussion, arrears of rent at that time amounted to £1,890.62. The Respondent advised the tribunal at the Case Management Discussion that it was his intention to reduce the arrears in the near future and, at that time, it appeared to be agreed between the parties that if rent was brought up to date the Applicant would not insist upon an eviction order on any ground.
42. The information available to the tribunal confirmed that, rather than rent arrears being cleared, they had increased. An updated rent statement suggested that £375.00 per month had been paid towards the rent, leaving a monthly shortfall of £150.00. The rent statement did not include a payment for February 2024. Even if that payment was made, the rent arrears had still increased since the Case Management Discussion.
43. Separately, e mail communications between the Parties were submitted to the Tribunal on behalf of the Applicant. These communications included an email from the Respondent to the Applicant's representative, said email being dated 29<sup>th</sup> November 2023, in which the Respondent stated:-

***“Currently no shortfall of rent will be coming through as I am not in a position to be able to do so. I am still in the process of looking for work and this is currently proving difficult due to my licence restrictions. However, I will continue to look, and I hope to find suitable employment soon.”***

It is clear from this communication that the arrears of rent have increased and, indeed, that the Respondent is not in a position to address them. Despite assurances given at the Case Management Discussion on 13<sup>th</sup> November 2023 that the arrears would be reduced, they have increased.

44. The Applicant advised the tribunal she lived in her current accommodation with three children aged 23 years, 20 years and 15 years. Her current accommodation is a 4 bedroomed detached property. In those circumstances her three children would each have a bedroom of their own. Despite that, given the financial pressure she is under due to rental payments not being made, she is currently downsizing by way of selling her current property and buying a smaller, 3 bedroomed, less expensive property.

### **Breach of Tenancy Agreement**

45. In relation to breach of the tenancy agreement, there were two grounds upon which the Applicant wished this to be considered.

### **Pets**

46. As discussed at the Case Management Discussion, the Respondent has a budgerigar, kept within a cage within the Property. While representations were made at the Case Management Discussion to the effect that the budgerigar was not permitted out of its cage and did not fly freely within the Property, the Applicant advised that she did not believe that.

47. The Tribunal did not consider it appropriate to grant an eviction order in relation to this matter. There appears to be no dispute that the Respondent has a budgerigar kept within the Property. The Tribunal was advised previously that the budgerigar is kept within its cage. There was no evidence to suggest otherwise. There was no evidence to suggest that the budgerigar caused any difficulties nor problems in relation to the Property nor in relation to any neighbours.
48. Separately, at the Case Management Discussion, despite the Respondent being aware of the existence of the budgerigar within the Property, her representative advised that, if rent arrears were brought up to date, the Applicant would be willing to allow the tenancy to continue. That concession was clearly made in the full knowledge of the existence of this particular pet within the Property. Against that background the tribunal determined that it was not appropriate to grant an eviction order on this basis.

### **Failing to allow access**

49. The Applicant maintained that the Respondent had failed to allowed access for a tradesman to carry out work in the Property. This, again, had been discussed at the Case Management Discussion. While there had been an issue earlier in 2023, by the time of the Case Management Discussion it had been resolved and an explanation had been provided by the Respondent as to why the difficulty arose. Since then, there has been only one failed attempt to secure access to the Property, that being by an electrician appointed by the Applicant who attended on 1<sup>st</sup> December 2023 and did not manage to gain access to the Property.
50. The Tribunal did not consider that this amounted to a breach of the tenancy agreement given that it related to an isolated occurrence. While there had been other difficulties earlier in 2023, these had previously been addressed and resolved and the Tribunal did not consider it appropriate to take those in to account at this stage in determining whether to grant an eviction order under this ground.

## **FINDINGS IN FACT**

51. The tribunal found the following facts to be established:-
- a) By lease dated 17<sup>th</sup> June 2022 the Applicant let the property to the Respondent.
  - b) The rent payable was £525.00 per calendar month.
  - c) The Respondent fell in to arrears of rent at the start of 2023. As at the Case Management Discussion on 13<sup>th</sup> November 2023 arrears of rent amounted to £1,890.62. As at the Hearing on 19<sup>th</sup> February 2024 arrears of rent amounted to £2,772.12.
  - d) A notice to leave was served upon the Respondent on 25<sup>th</sup> February 2023.
  - e) A notice in terms of s11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the local authority.
  - f) The Respondent has been in arrears of rent for 3 or more consecutive months since April 2023.

- g) The Respondent advised the Tribunal he intended to make payment of the arrears but failed to do so.
- h) The Applicant, as a result of rent not being paid in full, is being affected financially. She currently resides in a 4 bedroomed detached property. She is actively marketing this for sale with a view to purchasing a smaller 3 bedroomed property, at a lower value as she cannot continue to maintain her current level of expenditure having regard to failure in payment of rent.
- i) The Respondent has a budgerigar within the Property. This is in contravention of clause 35 of the tenancy agreement.
- j) It is not reasonable to grant an eviction order on the basis that the Respondent is keeping a budgerigar within the Property.
- k) Between the Case Management Discussion and the Hearing the Applicant instructed an electrician to attend at the Property to undertake work there. The electrician was unsuccessful in gaining entry.
- l) The failure of an electrician to gain entry on a single day does not justify the granting of an eviction order.

## **REASONS FOR DECISION**

- 52. The Tribunal considered matters in detail at the Case Management Discussion on 13<sup>th</sup> November 2023. After hearing submissions from and on behalf of both parties on that date the Tribunal, for the reasons stated, assigned a Hearing. The scope of the Hearing was restricted as indicated in the Case Management Discussion note issued at that time.
- 53. On the basis of the discussion at the Case Management Discussion it was hoped that the Hearing would not be required. The respondent suggested he would clear the arrears and, if that happened, the Applicant's representative advised the eviction action would not be insisted upon.
- 54. Unfortunately, the arrears were not cleared. They were not reduced, They increased. It is clear from the e mail forwarded by the Respondent to the Applicant's representative on 29<sup>th</sup> November 2023 that the arrears were likely to continue to increase on an ongoing basis, he advised that he was not in a position to make up any shortfall in rental payments arising from the fact his benefit payments provided to make the payment of rent were £150.00 less than the actual rent due.
- 55. In relation to the matter of reasonableness, given the arrears of rent were increasing and, obviously, would continue to increase, taken together with the fact the Respondent did not participate in the Hearing and did not advance any arguments nor submissions to the Tribunal that it was in any way unreasonable that an order for eviction be granted, the Tribunal was of the view that it was reasonable to grant an eviction on grounds of rent arrears.
- 56. The Tribunal was fortified in that view by the submissions of the Applicant. The Applicant, while addressing the Tribunal became highly emotional and distraught at the position she had found herself in.
- 57. She advised the tribunal she lived in her current accommodation with three children aged 23 years, 20 years and 15 years. Her current accommodation is



a 4 bedroom detached property. In those circumstances her three children would each have a bedroom of their own. Despite that, given the financial pressure she is under due to rental payments not being made, she is currently downsizing by way of selling her current property and buying a smaller, 3 bed roomed, less expensive property. In the circumstances, in addition to the level of arrears the fact that they will obviously be increasing on an ongoing basis, taken together with the financial difficulties this is causing for the Applicant, the tribunal considered that it was reasonable to grant an order for eviction on grounds of rent arrears.

58. In relation to the other grounds on which eviction was sought, the Tribunal did not consider the existence of a budgerigar, kept within a cage, to be of such significance that it amounted to a material breach of the tenancy agreement.
59. Similarly, the tribunal did not consider that a single failed attempt to gain entry, by an electrician, on 1<sup>st</sup> December 2023 was of such significance as to justify an order for eviction being granted on that ground.

## **DECISION**

The Tribunal granted an order against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 12 of schedule 3 of said 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.**

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**Legal Member/Chair**

19<sup>th</sup> February 2024  
**Date**