



**Decision with 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/23/3706**

**Re: Property at 27 Merryfield Avenue, Macmerry, East Lothian, EH33 1PZ (“the Property”)**

**Parties:**

**Mrs Catherine Fraser, Mr Iain Fraser, 24 Foxknowe Place, Livingston, West Lothian, EH54 6TX (“the Applicants”)**

**Miss Gemma Kilgour, Mr Conor Cowan, 27 Merryfield Avenue, Macmerry, East Lothian, EH33 1PZ; 27 Merryfield Avenue, Macmerry, East Lothian, EH33 1PZ (“the Respondents”)**

**Tribunal Members:**

**Graham Harding (Legal Member) and Helen Barclay (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicants were entitled to an order for the eviction of the Respondents from the property.**

**Background**

1. By application dated 2 October 2023 the Applicants’ representatives, Jackson Boyd Lawyers, Glasgow, applied to the Tribunal for an order for the eviction of the Respondent from the property in terms of Grounds 12 and 12A of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant submitted a copy of a tenancy agreement, Notice to Leave, Section 11 Notice, rent statement and pre-action correspondence together with other documents in support of the application.
2. By Notice of Acceptance dated 10 November 2023 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 15 January 2024.

### **The Case Management Discussion**

4. A CMD was held by teleconference on 28 February 2024. Miss Gwenan White attended on behalf of the Applicants. The Respondents did not attend nor were they represented. The Tribunal being satisfied that proper intimation of the CMD had been given to the Respondents determined to proceed in their absence.
5. Miss White advised the Tribunal that the Respondents had fallen into arrears with their rent since June 2022 and that Notices to Leave had been served on the Respondents on 4 September 2023 under grounds 12 and 12A of Schedule 3 of the 2016 Act. Miss White went on to say that the Applicants were now seeking an order for the eviction of the Respondents from the property.
6. The Tribunal noted that a Private Rented Tenancy had commenced on 29 October 2021 at a rent of £830.00 per calendar month. The Tribunal also noted that the Respondents had received pre-action letters from the Applicants' letting agents in August 2023 and that East Lothian Council had been given notice of the proceedings by way of a Section 11 Notice sent by email on 19 October 2023. The Tribunal also noted that the Applicants' representatives had advised the Tribunal by email dated 14 February 2024 that the rent arrears had increased to £11329.94.
7. In response to a query from the Tribunal Miss White said that there had been some communication between the Applicants' letting agents and Ms Kilgour up until about October or November 2023 but there had been no communication from either Respondent since that time. She said that there was an unconfirmed suggestion that there had been a breakdown in the Respondents' relationship but Miss White was unable to say if one or other of the Respondents had moved out of the property or if they were both still residing there.
8. Miss White said that the letting agents had made significant attempts to offer assistance with rent payment plans to no avail. Miss White went on to say that the very significant rent arrears had caused the Applicants considerable stress. Although there was no mortgage over the property the Applicants relied on the income from the property.
9. In response to a further query from the Tribunal Miss White said she was unaware of the outcome of any application for Universal Credit that had been made by Ms Kilgour in August 2023.

### **Findings in Fact**

10. The parties entered into a Private Residential Tenancy that commenced on 29 October 2021 at a rent of £830.00 per calendar month.
11. The Respondents fell into arrears of rent in June 2022.
12. The Respondents have paid no rent since June 2023.
13. The Respondents were served with Notices to Leave dated 4 September 2023.
14. East Lothian Council was given intimation of the proceedings by Section 11 Notice on 19 October 2023.
15. The Applicants' letting Agents FBR Seed Ltd sent pre-action letters to the Respondents in August 2023.
16. As at 1 February 2024 the Respondents owed rent of £11329.94.
17. The failure of the Respondents to pay rent has impacted on the Applicants financially and caused them stress.

### **Reasons for Decision**

18. The Tribunal was satisfied from the documents submitted and the oral submissions that the parties entered into a Private Residential tenancy that commenced on 29 October 2021. The Tribunal was also satisfied that valid Notices to Leave had been served on the Respondents under Ground 12 and 12A of Schedule 3 of the 2016 Act and that proper intimation of the proceedings had been given to East Lothian Council by way of a Section 11 Notice.
19. The Tribunal was therefore satisfied that procedurally the criteria for granting an order for the eviction of the Respondent from the property had been met subject to it being reasonable for such an order to be made. In reaching a decision on reasonableness the Tribunal took account of the fact that despite being given an opportunity to do so, neither Respondent submitted written representations or attended the CMD. The Tribunal also took account of the extremely high level of rent arrears and that no rent had been paid since June 2023. The Tribunal accepted that the Applicants were reliant upon the income from the property which was their only rental property and that the loss of income and the need to raise these proceedings had caused them substantial stress. In all the circumstances the Tribunal was satisfied that it was reasonable to grant the orders sought.

### **Decision**

20. The Tribunal being satisfied it had sufficient information before it to make a decision without the need for a hearing, finds the Applicants entitled to an order for the eviction of the Respondent 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.**

**Graham Harding  
Legal Member/Chair**

**28 February 2024  
Date**