



Decision 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/22/3612

Re: Property at 35 Cairnie Crescent, Arbroath, Angus, DD11 4DZ (“the Property”)

Parties:

Mr Neil Hill, Mrs Isabelle Hill, Fairfield, Glasterlaw, Arbroath, Angus, DD11 4TY (“the Applicants”)

Miss Leanne Livingstone, Miss Laurie-Ann Horner, 30 Townend Road, Arbroath, Angus, DD11 1SY; 51 Bellview Gardens, Arbroath, Angus, DD11 5BQ (“the Respondents”)

Tribunal Members:

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

Decision (in absence of the First Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted in terms of Ground 12 of Schedule of the Private Housing (Tenancies) (Scotland) Act 2016 in that the Respondents have been in rent arrears for three or more consecutive months, and it is reasonable on account of that fact to issue an eviction order.

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 5th October 2022 and accepted by the Tribunal on 8th February 2023.A case management discussion was fixed for 21st April 2023 at 2pm.

Case Management Discussion

2.The case management discussion was attended by the Applicants and their representative Mr Myles solicitor who attended with his colleague Ms Blazniak.The

First Respondent was not present or represented and the second Respondent Miss Horner attended and represented herself. The Tribunal was aware that sheriff officers had served the Tribunal papers on the First Respondent Miss Livingstone together with the date and time of the case management discussion by placing these through the letterbox at her current address. The Tribunal was satisfied that the first Respondent Miss Livingstone had received fair notice of the application and case management discussion and that it was appropriate to proceed in her absence.

3. The Tribunal had sight of the application, a private residential tenancy agreement, 2 Notices to Leave with executions of service by Sheriff Officers, a rent statement, and a notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 together with a letter to Angus Council intimating this notice. The Tribunal also had sight of pre action protocol letters, rent increase documentation and tracing documentation. In addition, the Tribunal had sight of correspondence from the Applicants to the Tribunal and written representations submitted by the Respondent Miss Horner.

4. The parties had entered into private residential tenancy at the property with effect from 10th of December 2018. Initially the monthly rental was £600 per calendar month payable in advance but with effect from February of 2022 this was increased to £630 pounds per month, the respondents having been given three months' notice of the rent increase.

5. Mr Myles requested an eviction order against both Respondents given that this was a joint tenancy and that the tenancy had never been terminated although it was understood that both Respondents had ceased to live at the property. It was understood that the Respondents' relationship had broken down and Miss Horner had ceased to live at the property some months before the case management discussion.. Neither Respondent had returned keys to the landlords and Miss Livingstone had left belongings at the property and had given repeated indications as to when she would uplift these and return keys for the property but had never done so. She was still in possession of keys to the property even though it was understood that since January 2023 she appeared to live elsewhere. When asked if it would be reasonable to grant an order when neither Respondent was living at the property, Mr Myles advised that the Respondent Miss Livingstone had continued to assert her rights as a tenant at the property. The Applicants had become concerned about a bulge on an exterior wall of the property and had requested access to the property but entry to the property had been refused by the first Respondent as recently as December 2022. The Applicants were seeking an order for access to the property in terms of a separate application to the Tribunal. The Applicants were concerned that if they simply took possession of the property and changed the locks it could be suggested that they were unlawfully evicting the Respondents.

6. The rent for the property had not been paid since March 2022. When the Notices to Leave were deposited in August 2022 rent arrears had reached £3150 as the rent had been increased to £630 per month with effect from February 2022. The Tribunal had sight of a rent increase notice sent by agents on behalf of the Applicants in October 2021. At the time of the case management discussion rent arrears stood at a sum in excess of £7000.

7. Mr Myles advised the tribunal that both of the Respondents had been advised of the growing rent arrears throughout and there had been e-mail communication with both of them. Pre action protocol letters signed posting them to sources of assistance had been sent to them in July and August 2022. Information received from tracing agents instructed by the Applicant 's solicitors in January of 2023 suggested that the first Respondent Miss Livingstone was unemployed as of that date and was waiting for an application for Universal Credit to be processed. There was no information before the tribunal to suggest that the rent arrears had accrued in terms of the tenancy agreement as a result of any delay or failure in the payment of a relevant benefit.

8. Mr Myles' position was that Notices to Leave had been properly served on the Respondents at the property address by Sheriff Officer. The Tribunal had queried before the case management discussion whether the method of service had allowed for the requirements of section 62 of the Private Housing (Tenancies) (Scotland) Act 2016 to be satisfied. The Applicant's solicitors had referred to **James Smith v Lynne MacDonald and Steven Munro [2021]UT 0029** in which it was said that the assumption in the legislation as to when a Notice to Leave was received could be challenged by evidence such as the depositing of a Notice to Leave by Sheriff Officer and in such circumstances the Notice to Leave could be said to have been served when deposited. In this application it was suggested that this decision was exactly in point with the Upper Tribunal decision cited.

9. Mr Myles also submitted that it would be in the interests of the second Respondent Miss Horner if an eviction order were granted in that it would bring to an end her obligations as regards the tenancy and the ongoing rent arrears.

10. The second respondent Miss Horner's position was that she had left the property in February 2022 following the breakdown of her relationship with Miss Livingstone. She had left her share of the rent for March in April 2022 and only understood later this money was not paid over and that her liability for ongoing rent arrears continued as she was still a tenant in terms of the ongoing tenancy agreement. She had informed the agents for the Applicants that she had left the property and she had understood that she was no longer a tenant. She had handed her keys over to Miss Livingstone and had had no access to the property since she left. She had not known that she required to do more than this. She had come to be aware that given this was a joint tenancy she could not bring her obligations to an end simply by ceasing to live at the property. While she was not happy with that she understood the position and did not oppose an eviction order being granted. She had taken advice after she received letters from the Applicant's solicitor. She had gone to the citizens advice bureau and showed them documents sent on behalf of the Applicants and the advice she had received was that she should submit documents to the Tribunal showing her position on the matter. Miss Horner accepted that she had received all the papers and notices served and had become aware of the rent arrears at an earlier stage.

11. The tribunal was satisfied it had sufficient information upon which to make a decision and that the proceedings had been fair.

Findings in Fact

12. The parties entered into residential tenancy at the property with effect from the 10th of December 2018 in which the Respondents are joint or co tenants.

13. The monthly rent payable in terms of the tenancy was initially £600 per calendar month payable in advance but with effect from February of 2022 this was increased to £630 per calendar month, the Respondents having been given three months ' notice of this increase.

14. No rent has been paid in relation to the tenancy since March of 2022.

15. Notices to Leave in proper form together with letters and rent statements were served on both Respondents at the property address on 17th August 2022 by being deposited there by Sheriff Officers and these gave the required notice to the Respondents of the earliest date when an application to the Tribunal for an eviction order might be made.

16. As of 17th August 2022 when notices to leave were served by sheriff officer 5 consecutive months' rent was outstanding in terms of the agreement and arrears amounted to £3150.

17. Letters sent to the Respondents at the property on 11th, 13th and 19th July 2022 and 16th August 2022 signposted the Respondents to sources of support.

18. A notice in terms of section 11 of the homelessness etc (Scotland) Act 2003 was sent to Angus Council on 23rd December 2022

19. The second Respondent ceased to live at the property early in 2022 and now resides elsewhere.

20. When the second Respondent ceased to live at the property she gave her keys for the property to the first Respondent.

21. The first Respondent remained at the property after the second Respondent stopped living there

22. Since January 2023 the first Respondent appears to be living at an address other than the rented property but has retained the keys to the property and has made several arrangements to uplift her belongings and return the keys none of which have been carried out by her.

23. In December 2022 attempts by the Applicants to gain access to the property in respect of a bulge in an outer wall were refused by the first Respondent.

24. Rent arrears at the property have continued to increase and no rent has been paid for over a year.

25. As at the case management discussion on 21st April 2023 rent arrears now exceed £7000.

26. Rent arrears have not accrued as a result of any delay or failure in payment or relevant benefit to or on behalf of the Respondents.

27. The Respondents have been in rent arrears at the property for a period in excess of three consecutive months.

Reasons for Decision

28. The tribunal was satisfied that the appropriate procedural steps had been carried out in relation to this application. Notices to Leave had been deposited at the rented

property by sheriff officers and having regard to the upper tribunal decision of Smith V McDonald and Munro [2021] UT 0029, the statutory assumption regarding receipt was successfully rebutted by the leading of evidence as to when the Notices to Leave were deposited at the property. The Notices to Leave appeared valid and the correct date appeared in part 4 of the notice.

29. This application was somewhat unusual as it was accepted that both of the Respondents appeared to be no longer living at the property, but the first Respondent at least appeared to be asserting the rights of a tenant, refusing to hand over keys for the property, refusing to uplift belongings despite repeated arrangements and in December 2022 refusing to allow access to the property for an inspection by the landlords. This is a joint tenancy and despite the fact that the second Respondent appeared to have moved out some time before and returned the keys this did not bring her legal liabilities to an end. An eviction order requires to be made against all tenants in a joint or co tenancy in terms of the 2016 Act, in order to bring the tenancy to an end where there has been no compliance with a Notice to Leave or agreement on termination of the tenancy. The tribunal considered whether it was reasonable to grant the order and noted that the rent arrears accrued were substantial and the tenancy had not been properly terminated with one tenant, the first Respondent retaining keys for the property and the right to access it and having left belongings there. The second Respondent did not object to an eviction order and was already living elsewhere and it could be said to be in her interest to have the tenancy brought to an end as soon as possible in order to limit her ongoing liability. In all of the circumstances before the tribunal it appeared reasonable to grant an eviction order.

Decision

The Tribunal determined that an eviction order be granted in terms of Ground 12 of Schedule of the Private Housing (Tenancies) (Scotland) Act 2016 be granted in that the Respondents have been in rent arrears for three or more consecutive months, and it is reasonable on account of that fact to issue 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.



21.4.23

Legal Member/Chair

Date