

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/22/2985

Re: Property at Heatheryleys Farm Cottage, Glenfarg, Perth, PH2 9QJ (“the Property”)

Parties:

The Trustees of the Adam A Gordon Trust, The Trustees of the Adam A Gordon Trust, The Trustees of the Adam A Gordon Trust, Heatheryleys, Glenfarg, Perthshire, PH2 9QT; Lindsays LLP Caledonian Exchange, 19A Canning Street, Edinburgh, EH3 8HE; 4 Coastguard Cottages, Princes Drive Sandwich Bay, Sandwich, CT13 9PZ (“the Applicant”)

Carolyn Brown, Mr Lee Karl Hunter, Heatheryleys Farm Cottage, Glenfarg, Perth, PH2 9QJ (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Elaine Munroe (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for the eviction of the Respondents from the property under ground 3 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 postponed for a period of three months.

Background

1. By application dated 22 August 2022 the Applicant’s representatives Lindsays LLP, Solicitors, Edinburgh, applied to the Tribunal for an order for the eviction of the Respondents from the property under Ground 3 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant’s representatives submitted copy tenancy agreement, copy Notices

to Leave, copy Section 11 Notice, copy Installation Agreement and copy request for access in support of the application.

2. By Notice of Acceptance dated 27 September 2022 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 Respondents by Sheriff Officers on 8 November 2022.
4. By email dated 30 November 2022 the Applicant's representatives submitted further written representations and documents.
5. A CMD was held by teleconference on 8 December 2022. After hearing from the Applicant's representative and from the First Respondent, Miss Brown the Tribunal adjourned the proceedings to a full hearing.
6. By emails dated 8 March 2023 the Applicant's representatives submitted an Inventory of Productions.

The Hearing

7. A hearing was held by teleconference on 15 March 2023. Mrs Jennifer Gordon attended on behalf of the Applicant and was represented by Mr Adam Gardiner from the Applicant's representatives. The First Respondent attended in person. The Second Respondent did not attend nor was he represented. Miss Brown confirmed that as Mr Hunter and she were separated and he had his own place she did not think he was opposing the application. Miss Brown confirmed that although she had been looking for alternative accommodation, she did still wish to oppose the application until she could find somewhere else to live.

Evidence of Mrs Jennifer Gordon

8. Mrs Gordon referred to her affidavit dated 28 November 2022 (Production 11) and confirmed that nothing in it had changed. Mrs Gordon went on to explain that the proposed works at the property consisted of removing a wall between the kitchen and bathroom and extending the kitchen and installing a new bathroom in a boxroom. She said that the kitchen had been installed 13 years ago and it was second hand at that time. She said the bathroom was of a similar age although the shower head had been replaced more recently. She said she wanted to remove the bath and replace it with a shower cubicle as that would be a more economic use of the estate's private water supply.
9. Mrs Gordon confirmed that the proposed works did not require planning permission or a building warrant and that this had been confirmed by Perth & Kinross Council (Productions 12 & 13).

10. Mrs Gordon confirmed that she had not had any further issues with gaining access to the property and commented on a series of photographs taken in July 2022 and January and February 2023. She spoke of the oven door in the kitchen being missing and that it may have been in the garden in July 2022 although Miss Brown had told her it had been broken in January 2023 and that she intended to replace it. Mrs Gordon did not think it was the Applicant's duty to replace it as it had been broken by the Respondents' daughter.
11. Mrs Gordon spoke of black mould being present throughout the property and that she had been advised this was caused by lack of ventilation and heating. She said she was aware that Miss Brown had no oil for the central heating and she did not think the property was being heated properly. Mrs Gordon confirmed that if an order was granted the property would be treated to remove the mould.
12. Mrs Gordon spoke of the Respondents removing a door to one of the bedrooms and replacing it with a curtain and another door having been damaged (Production 14 photos 19 & 20). She said she had been told that the Respondents' oldest daughter had damaged the door to the bedroom. Mrs Gordon spoke of Mr Hunter accidentally damaging a window with a stone when cutting the grass. She said he had undertaken to replace the glass but had not done so,. She said she had obtained a quote for the replacement but he had not agreed to meet the cost and had said the glass was on order but it still had not been repaired.
13. Mrs Gordon said the property had been partially repainted in 2019 and had been in good order when the Respondents moved in.
14. Mrs Gordon referred the Tribunal to Productions 15, 18 and 19 and confirmed these were in respect of the proposed works. Mrs Gordon referred to Production 16 and confirmed that she had proceeded to finalise the order for the supply and installation of the new kitchen from Wren Kitchens and that it had been paid for. She confirmed that the kitchen was due to be delivered on 18 May 2023 and installation commenced on 22 May 2023. Mrs Gordon outlined how the works would progress and indicated that it would not be possible for the Respondents to remain in the property whilst the work was carried out. She explained there would be no water and no cooking or toilet facilities. She said furniture would have to be removed as there would be a substantial amount of mess and it would be totally impracticable to remain in the property.
15. Mrs Gordon went on to explain that her son-in-law had accepted a job in the area and he and his family were moving from Stranraer and they would like to move into the property once it was refurbished. She said it was their intention to build a house on the estate and would like to be close by while it was being built.
16. Mrs Gordon said that if the order was not granted she would not proceed with the refurbishment as she had concerns about the condition the property was in since the Respondents had taken on the tenancy. She said she could not carry

out the refurbishment and then let them back in as she was concerned that the issues spoken of would re-occur.

17. Mrs Gordon said that Miss Brown still had £1100.00 of accrued rent arrears and had not been in touch with any proposals to pay these off. She said that money was an issue given that she could not afford to pay for heating oil.
18. Mrs Gordon said she had not been contacted by any potential landlords regarding a reference.
19. In response to a query from the Tribunal Mrs Gordon said that following the death of her husband 11 years ago she had always rented out the property to tenants who agreed to work one or two days a week on the farm. That had been the agreement with Mr Hunter who she said had worked on the farm until May 2021 when he had obtained a full-time job. Mrs Gordon said she had then served a Notice to Leave giving the Respondents until November 2021 to move out. During this period Mrs Gordon said she had seen the damage that had been done and that the kitchen and bathroom were dated and decided that the property required refurbishment. She said she had made plans for the refurbishment to go ahead once the Respondents moved out of the property in November 2021 however, she had been told by Mr Hunter that as there was only a verbal agreement to work on the farm it did not form part of the tenancy and therefore a further Notice to Leave was then served.
20. In response to a further query from the Tribunal Mrs Gordon thought that the refurbishment works might take four to six weeks to complete. She said she had not considered carrying out the work in phases such as installing the new bathroom first and then undertaking the kitchen renovation as she did not think it would be practical to do the work in that way.
21. Mrs Gordon confirmed that the Applicant did not have any other accommodation to offer the Respondent while the work was being carried out.
22. Mrs Gordon confirmed that the installation date provided by Wren Kitchens could be adjusted and that this was normally by three month intervals.

Evidence of Miss Carolyn Brown

23. Miss Brown explained that she had been unable to provide the Tribunal with any documentation regarding her daughter's condition as there had only recently been a meeting where it had been confirmed that her daughter was being referred to CAMHS.
24. Miss Brown explained that once she had paid her rent and bought food for her children there was no money spare to pay towards the rent arrears or to pay for heating oil. She said that her health visitor had previously arranged for a charity to provide for a delivery of oil and she was hoping that the charity might help again. She said that she did have electric heaters in all the rooms and did open

windows to ventilate the property when the children were not at home. She said she did planned to pay of the rent arrears when she could.

25. Miss Brown confirmed she now lived on her own with her five children, three boys and two girls aged 13, 11, 10, 6 and 1. She confirmed she had applied for local authority housing but because she had previous rent arrears there was a problem. She said she would be rehoused if made homeless but that this could be in a hostel or other unsuitable accommodation and she did not want that and she was looking for other accommodation.
26. In response to a question from Mr Gardiner, Miss Brown said that the properties she had applied for had been referred to her by family friends but that she had also been looking elsewhere.

Closing Submissions

27. Mr Gardiner submitted that the Applicant had demonstrated a clear intention to refurbish the property since about mid 2021 after Mrs Gordon had expected the property to be returned. He submitted that although the property was still in a liveable condition it was in need of refurbishment. Although it had not been in Mrs Gordon's mind initially it was now the intention that her family would move into the property. He submitted that there was a valid concern that the property would not be properly maintained if the Respondents were allowed back into the property after the refurbishment. Mr Gardiner went on to say that limited weight should be given to the Respondents' daughter's educational need as no documentary evidence had been produced.
28. Miss Brown explained that as the planning meeting regarding her daughter's needs had been recent there was no documents available. At present her daughter had 1:1 support and a counsellor and additional school activities. She could not be promised that if moved to another larger mainstream school. Miss Brown also spoke of her son also possibly having ADHD and also asthma.

Findings in Fact

29. The parties entered into a Private Residential tenancy that commenced on 3 August 2020 at a rent of £550.00 per calendar month.
30. The Applicant wishes to carry out refurbishment of the property including removing the existing bathroom and extending the kitchen and installing a new kitchen in a boxroom.
31. The refurbishment works are likely to take four to six weeks to complete. During that time the Respondents could not live in the property.
32. The Applicant does not wish the Respondents to return to the property once the refurbishment works are completed due to concerns over the way in which the property has been maintained during the tenancy.

33. The Applicant wishes the property to be occupied by her daughter and son-in-law and family once the refurbishment has been completed.
34. The Applicant has contracted with Wren Kitchens to install a new kitchen at the property. Although an installation date of 22 May has been confirmed this date can still be altered.
35. The Respondents 11-year-old daughter has some special educational needs and is receiving additional support at her current school.
36. The Respondent Miss Brown has limited means and has accrued rent arrears of £1100.00.
37. Miss Brown has insufficient income to pay for heating oil for the property.
38. There is black mould in several rooms in the property indicative of a lack of heating and ventilation.
39. A bedroom door has been removed by the Respondents from the property.
40. An oven door has been broken during the tenancy.
41. Another door at the property is needing to be repaired or replaced.
42. A window at the property was accidentally damaged by Mr Hunter and has not yet been repaired.
43. A valid Notice to Leave was served on the Respondents by recorded delivery post on 25 January 2022.
44. A Section 11 Notice was intimated to Perth & Kinross Council on 22 August 2022.
45. The Second Respondent Mr Lee Hunter has played no part in these proceedings.
46. Mr Hunter agreed to work for the Applicant part time from August 2020 until May 2021.
47. The Respondents are separated.

Reasons for Decision

1. The Tribunal was satisfied from the documents submitted and it was a matter of agreement between the parties that they entered into a Private Residential Tenancy that commenced on 3 August 2020 at a rent of £550.00 per calendar month. It was also a matter of agreement that the Respondents were properly

served with a Notice to Leave under Ground 3 of Schedule 3 of the 2016 Act and that the local authority were given notice of the proceedings by virtue of a Section 11 Notice. Therefore, were it not for the terms of the Coronavirus (Scotland) Act 2020 and the Coronavirus Recovery and Reform (Scotland) Act 2022 the Tribunal would have been obliged to have granted the order sought as it was previously a mandatory ground for eviction. However, that is no longer the case and the Tribunal must now consider whether it is reasonable in all the circumstances to grant the order sought. In so doing it is well settled that the Tribunal must consider the whole of the circumstances in which the application is made. It has also been said that a judge or in this case a Tribunal should “give such weight as he thinks right to the various factors in that situation. Some factors may have little or no weight, others may be decisive, but it is quite wrong for him to exclude from his consideration matters which he ought to take into account” (Lord Greene in *Cumming v Dawson* [1942] 2 All ER 653 at 655). Therefore, that is what the Tribunal has done on this occasion, it has taken account of what has been said on behalf of both parties and given what it considers is appropriate weight to each set of facts and circumstances in order to reach a determination.

48. The Tribunal was satisfied that given the age and condition of the kitchen and bathroom in the property it would certainly be reasonable for the Applicant to carry out the proposed refurbishment during a void period between tenants. To some extent that is what the Applicant anticipated doing when Mrs Gordon first considered the renovations as she thought the Respondents were going to leave the property by November 2021. When that did not happen Mrs Gordon had by that time become concerned about the condition of the property and therefore decided to proceed with the proposed refurbishment and seek to evict the Respondents. Subsequently Mrs Gordon's own family circumstances have changed and she would now like to use the property to accommodate her daughter and son-in-law as they are moving to Perth.
49. The Tribunal has heard evidence to the effect that the property is not being maintained in the way that it should by the Respondents. It has been suggested that the Respondents' daughter has damaged a door which has been removed and another door has been damaged without any explanation given and an oven door has been broken and removed. The Tribunal has also been told that due to inadequate heating and lack of ventilation the property which has never suffered from black mould in the past now has mould in several rooms. Although Miss Brown disputed that the property was inadequately heated and ventilated it was apparent to the Tribunal that she was trying to keep her family on a very limited income and there was insufficient funds available to her to purchase heating oil. It did therefore seem likely that the mould was, as had been suggested by the contractors instructed by Mrs Gordon, caused by condensation and lack of heating and ventilation. The Tribunal did therefore understand why the Applicant would have concerns about carrying out refurbishment of the property if the Respondents were to return to it.

50. Miss Brown accepted that there were rent arrears but insisted that she would in time pay these off but was unable to say how she could afford to clear the debt.
51. Miss Brown indicated at the CMD that she ought to be able to obtain some information from her daughter's school about her condition prior to the hearing. She did not do so but said at the hearing that there had only recently been a planning meeting to discuss her daughter's condition and a decision had been made to refer her to CAMHS. Whilst that may well be the case the Tribunal has some difficulty in accepting that the school could not have provided the Respondent with some information about the additional provision that had been made available and the impact if any this was having.
52. The Tribunal took account of the fact that Mr Hunter took no part in the proceedings and Miss Brown confirmed that she thought he would probably not be opposed to the order being granted as he now had his own accommodation.
53. The Tribunal accepted that it was unlikely that the Respondents could remain in the property while the refurbishment work was being carried out and of course Mrs Gordon made it clear that the works would only be done if the order was granted.
54. The Tribunal is therefore left to determine whether in all the circumstances it is reasonable to grant the order or not. In reaching its decision the Tribunal has carefully considered the issue of the Respondents' 11-year-old daughter. Whilst she may well be benefitting from additional support at her primary school just now that support will not continue indefinitely as she will be due to transition to secondary school in the not-too-distant future. It is also quite clear that Miss Brown is struggling financially and continuing to live in the property and struggle to meet the cost of heating oil is likely to not help the health of herself or her children in the longer term. There is also little prospect of clearing the rent arrears. Miss Brown herself has indicated that she is prepared to move but has had difficulty finding alternative accommodation and is hoping to avoid being forced into homeless accommodation with four children.
55. The Tribunal is satisfied that the property is in need of refurbishment and that having weighed up the pros and cons on each side and carried out what is essentially a balancing exercise the Tribunal is satisfied that an order for eviction should be granted however it is of the view that it would be reasonable to give the Respondent Miss Brown additional time to find suitable alternative accommodation for herself and the children and therefore the coming into effect of the order will be postponed for a period of three months. The Tribunal appreciates that will interfere with the timescale Mrs Gordon had planned for the installation of the new kitchen but it had noted that the date could be altered.

Decision

56. The Tribunal having carefully considered the written submissions and documents together with the oral evidence finds the Applicant entitled to an order for the eviction of the Respondents from the property under Ground 3 of Schedule 3 of the 2016 Act but subject to the enforcement of the order being postponed until 15 June 2023.

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

**Graham Harding
Legal Member/Chair**

**15 March 2023
Date**