



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/23/0734

Re: Property at East Thrave, Oyce Road, Sanday, Orkney, KW17 2AZ (“the Property”)

Parties:

Mr Barry Walsh, Mrs Michelle Walsh, Skelbister, Sanday, Orkney, KW17 2BA (“the Applicant”)

Ms Linda Mitchell, East Thrave, Oyce Road, Sanday, Orkney, KW17 2AZ (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction be granted.

Background

1. This was a hearing to consider the application made by the Applicant dated 7th March 2023 for an order for possession of the Property in terms of Rule 109 of the Tribunal Rules. A case management discussion previously took place by teleconference on 23rd August 2023 at which both parties were present and the Tribunal determined that a hearing would require to take place at which both parties were invited to lodge evidence and attend as witnesses.
2. The Applicants are the owners of the Property and Mr Walsh is the Landlord in a Tenancy with the Respondent which commenced 14th August 2020.
3. The Application was served on the Respondent by Sheriff Officers on 22nd
4. The Applicant has lodged with the application and the Tribunal had sight of and considered the following documents:-

- a. Application for eviction dated 7th March 2023
 - b. Copy Notice to leave dated 30th January 2023
 - c. Copy email serving the notice to leave dated 30th January 2023
 - d. Copy section 11 notice to Orkney Council and evidence of service
 - e. Copy tenancy agreement dated 14th August 2023.
 - f. Letter from Environmental Health dated 26th January 2023
5. The Respondent has made written submissions by email dated 2nd and 15th August 2023 which are referred to for their terms.
 6. The Applicant also lodged an inventory of productions on 12th November 2023 consisting of 17 items. The Applicant advised during the hearing that he had updated the productions and sought to lodge them earlier this week as neither the Tribunal nor the Respondent had received these at the start of the hearing, although the Tribunal was sent a copy during the hearing, the Tribunal has not considered them or referred to them in making their decision.
 7. At the CMD both parties were present and the Applicant spoke of being prevented from accessing the Property for inspection purposes and to carry out repairs; that a fire alarm had been removed by the Respondent, that pets were being kept at the Property without permission and the Property was not kept in a good condition. The Respondent advised at the CMD that the tenancy had been fine until repairs were needed then the Applicant was not interested in doing those. She advised that there were rodents in the Property but the landlord only told her to lay traps and he did not get anyone else out to look at it. She denied the property was not maintained saying she cleared the mice droppings regularly but could not eradicate them until the holes in the wall are dealt with. With regard to the smoke alarm the Respondent advised that it used to go off regularly and it was hanging down although she did not know why although she thought it might have something to do with damp. They both agreed the smoke alarms have now been replaced.
 8. Approximately 2 weeks prior to the Hearing the Respondent requested a postponement as she advised she required to attend a physiotherapy appointment on Wednesdays due to a recent injury. The Tribunal wrote back asking to see evidence of the appointment letter and also asking if it would be possible for the Respondent to call in at a different time during the day of the hearing as the Tribunal could be flexible about the timing. The Tribunal did not receive any response to this request although the Respondent wrote again on Monday 20th November demanding to know if the Tribunal was cancelled. A further response was issued to which there was no reply from the Respondent.

The Hearing

9. Both the Applicants were in attendance on the call. Mr Stephen Dunbar from CAB in Orkney was on the call attending, he explained, on behalf of and at the request of the Respondent. As the Tribunal had not seen the mandate instructing him to represent the Respondent they asked for that to be sent to the clerk which Mr Dunbar did and the Tribunal was then satisfied he was acting as the Respondent's representative.

10. The Legal Member explained the purpose and order of the proceedings today Mr Walsh spoke on behalf of the Applicants and gave evidence first and advised that they were seeking an order for eviction on the basis that the tenant has breached a condition or conditions of her tenancy.
11. Mr Dunbar advised that the Respondent did not object to the application although she was aware there were issues with the application and was leaving them with the Tribunal to make a decision. Mr Dunbar explained that his client had an issue with the Applicant's address and believed he was living in York but had not been able to trace his address. The legal member advised that this had been explored at the CMD when Mr Walsh confirmed that he travelled around but his main address where he returned to with his caravan, was Skelbister Steading. The Tribunal asked some further questions of Mr Walsh who repeated that he moves about for work; that he does not have any other permanent address and when he is at his property at Skelbister Steading he receives mail directly from the post person and when not there they hold it for him at the post office. He confirmed they do not have any other address although he admits that as he travels around they stay in different caravan sites with their camper van or caravan. He advised he used to use hotels. He advised that he is hoping to move back into the house at Skelbister and that is the subject of separate proceedings. Mrs Walsh offered to show receipts from caravan parks so show they don't live there permanently but did not want these crossed over to the other party and so the Tribunal advised it could not see them as all documents lodged would need to be crossed over. In the absence of any other evidence to the contrary the Tribunal accepted, as it had at the CMD, that the Applicant's address is Skelbister Steading and noted the application should be amended accordingly.
12. Mr Walsh advised that the Respondent has breached various conditions of the tenancy agreement. He advised that she has breached Clause 47 of the tenancy agreement by removing a smoke alarm something he advised was highly dangerous and left the Property breaching the current law on smoke alarms. He advised that the Respondent had not reported it was not working or that it was hanging down, which she had alleged at the CMD, instead he advised that he was told of this in a letter he received from Environmental Health who he assume the tenant had called regarding mice and rodents at the property. He advised and referred to productions lodged showing a similar smoke alarm that showed the original alarm should have had around 10 year life span and he confirmed that had installed the fire equipment in the property before the tenant moved in and that the batteries were fixed and guaranteed for 10 years. After receiving the letter from Environmental health he advised that he had ordered new alarms and tried to return to fit them but as the tenant refused to allow him access to the Property to install them, he hired an electrician to fit them and this was done by March 2023. Mr Walsh submitted this shows a serious breach of contract in failing to notify the Landlord of repairs needing done and also not complying with health, sanitation, fire housing and safety as required by law which is breaching Clause 43 and 47 of the lease.
13. Mr Walsh also confirmed that there is ongoing work that needs to be done at the Property but that he has been unable to get access to do it as the Respondent will not let him in. Mr Walsh advised that he gave notice last year of his daughter wishing to access the Property and the tenant only cancelled

this the night before saying it wasn't convenient. He referred to productions 3a which show text messages dated 13th July 2022 saying Becky, his daughter would be on the island and we would like her to come and see the Property and he was giving 48 hours' notice. He advised that the Respondent replied saying that was not convenient late the night before the intended visit. Thereafter when asking if there was another time that would be convenient, he advised the tenant kept advising it wasn't convenient. He referred to further productions number 3b and c.

14. Mr Walsh then advised that he understood the Respondent had a bereavement and it wasn't suitable to visit which he understood and then there was a bereavement in his family and so further time elapsed and no inspection was attempted until he received the letter from Environmental Health advising that there was work that required to be done including that the fire alarm had been removed and needed to be replaced, that there was a rodent infestation and that an electrical certificate was required. He advised that due to being continually refused access he had to raise an action with the Tribunal on 23rd February 2023 to access the property and ultimately a warrant for access was granted and he, with the ordinary member of the Tribunal attended the Property and gained access with sheriff officers last week. Mr Walsh advised this is a breach of clauses 21 and 22 of the lease which require the tenant to provide access to the landlord on reasonable notice being given. The Tenant had previously advised there had been an incident with the Applicant when she became ill and needed to attend hospital and would not then allow the Applicant to visit at her Property. When asked what the incident was that the tenant referred to in her previous statement and written correspondence with the Tribunal where she clearly does not want Mr Walsh to attend the property or carry out any inspections Mr Walsh gave a fairly detailed account of a visit he had made to his property at Skelbister Steading and alleged he spoke to the Respondent there but denied anything untoward took place. He noted the Respondent was attended to by medical professionals that day. The Tribunal is not aware of the Respondent's view of this incident and does not consider it necessary to hear further evidence on this but notes that since this incident which took place around February 2023 the Respondent is not happy for Mr Walsh to attend the Property or carry out any other work personally.
15. Mr Walsh then referred to 2 letters submitted as productions numbers 10 and 11 from Mr Victor Kerridge an employee of the Sanday Community Shop and Mr Ryan Colther an electrician. Mr Kerridge notes in his email to Mr Walsh that he works in the Sanday Shop and has to carry out deliveries as part of his job. He advises he has made two deliveries to East Thrave and both times he described it as very unpleasant. He reports "The path around the side of the Property was covered in dog faeces and made walking very difficult....As I got to the door the door opened and a foul smell came out. This happened in November 2022." The second delivery was of a 2 seater sofa and he advised the faeces outside had gone (he suspects cleared for his arrival) but again there was a foul smell inside and even though he was aware there are dogs he felt this was overwhelming and more than a normal dog smell. He reports "I did not see the source of the smell other than a large dog being kept in a cage in a room where the door stood open. I put the sofa down and quickly left. The room where I put the sofa was untidy but the smell was

overwhelming and I couldn't have stayed longer. At that point I decided I was no longer prepared to deliver anything there again. This was in May 2023."

16. The Second letter is from an electrician Mr Walsh instructed to attend and prepare an EICR certificate. Mr Colter notes that he attended both Properties (which Mr Walsh explained were the two properties he rents to Ms Mitchel and her daughter Ms Caitlin Mitchell). He reports that both "are riddled with dog droppings outside, mould damp, generally unclean and unsanitary. I wouldn't want to be touching, kneeling or working on anything within either property before it having been cleaned first. I do apologise for being so blunt with this however I must look out for me and my staff's well-being." He goes on to confirm both properties have failed the test and "to do any of this work the property would need to be completely empty and cleaned before any work could be carried out." Mr Walsh submitted this means he cannot even get contractors to attend to works that are vital for the house such as getting electrical works done without the property being fully cleaned.
17. He advised that on visiting the property as part of the Right of Entry case which he did on 15th November 2023 along with an ordinary member of the Tribunal, a sheriff officer and a locksmith he advised that he found that there was excessive dog faeces around the path and garden and lots of rubbish around the entrance to the house and garden. On going into the Property he found all the floors dirty with a lot of items around including animal feed in sacks around the house, a wooden crate with a tortoise in it and feed and bedding around the floor. He said there was food in saucepans on the cooker and noted all this would attract rodents and stops the place being sanitary. He advised that he felt the smell was so awful he had to leave the building to get some fresh air. With regard to the animals in the house he advised that he noted dogs who were in the crates, but there were 2 cats in the bathroom which he was not aware the tenant had and food had spilled on the floor with a large open can of cat food on the window ledge. He noted that there was water or some kind of fluid on the floors in different places and a fish tank in the lounge where the top was not enclosed and there was mouldy wood lying on top making the room in his view humid and spreading mould to the rest of the property. He also noted towels being dried in a room and advised that if this was how washing was being dried then this could cause contribute to the degrading of the property. Mr Walsh confirmed that he had given permission for the dogs to be there but no permission had been sought or given for the cats or tortoise and he referred to another production which referred to a horse being in the garden area at one point also in breach of the lease.
18. Mr Walsh also indicated that a brand new carpet he had fitted in a bedroom was no longer present and he could not access one bedroom as the door was blocked by a child's bed across the door and it was full of stuff and could not open it. He advised this was more nesting available for rodents. Mr Walsh advised that all of this shows the tenant was not keeping the property in a reasonable condition, that she disregarded the law on smoke alarms and was continuing to prevent access and keeping pets that were not permitted. He also commented that as the Respondent is currently using a wheelchair due to an injury the Property is not wheelchair accessible and it would be in the interests of both parties if the order was granted.
19. Under questions Mr Walsh confirmed that when the tenancy started he had a good relationship with the Respondent; that the rent was paid regularly and is

up to date and that he felt the relationship broke down when he stopped renting land to the Respondent's daughter Ms Caitlin Mitchell where she was keeping animals after that he indicated things became "toxic". He explained that a friend of his had told him about Mr Kerridge had refused to go back to the house and this is why he obtained a letter from him confirming this to lodge for today's Tribunal. When asked what he has tried to do regarding the rodent issue at the Property he advised that the Respondent won't use poison because of her animals so he has provided advice about using traps etc. but he has not been able to get a contractor to go there regularly.

20. Mrs Walsh then spoke to just confirm that although she is a joint owner and landlord she doesn't have much to do with the Property and lets her husband mostly deal with the duties of a landlord. She advised that she does help him draft emails and is aware the Respondent does not allow him to go to the Property. She also advised she had done research on how to deal with rodents without using poison as she understood the Respondent did not wish that used and had provided information on traps etc.
21. The Tribunal noted that the Respondent had previously said at the CMD that Mr Walsh just told her to lay traps and not to leave food out and that she advised she does not leave food out but when asked Mr Walsh advised that the Respondent had not wanted to use poison because of her own animals.

Facts

1. The Applicant and the Respondent entered into a lease of the Property which commenced on 14th August 2020
2. The Respondent is still occupying and in control of the Property and the tenancy is continuing.
3. A notice to leave dated was served on the Respondent by e-mail confirming that no proceedings would be raised before 2nd March 2023
4. These proceedings were raised on 7^h March 2023 and the application included a copy of the Notice to Leave.
5. A Section 11 notice has been served on Orkney Council
6. The respondent has breached one or more terms of the tenancy.
7. A smoke alarm was removed by the Respondent due to it hanging down and this was not reported to the Applicant thus causing the Property to not comply with the regulations regarding working smoke alarms.
8. The Respondent is refusing to allow the landlord to access the property.
9. An electrician the landlord hired to attend the property to conduct an electrical check is refusing to return due to the condition of the Property.
10. The Respondent is not maintaining the property in a good condition.
11. The Tenant is keeping pets there for which she has no written permission.
12. The Tribunal finds it reasonable that an order for eviction is granted for the reasons stated below.

Reasons for Decision

- The Tribunal was satisfied that the Respondents had been served with a valid Notice to Leave under S52 (3) of the 2016 Act specifying Ground 11 of Schedule 3 of the Act as the relevant grounds of eviction.

- The Notice to Leave was also accompanied by evidence of how the ground was met namely a statement that the Respondent had removed or allowed a smoke alarm to be removed so that the Property was not compliant with the legislation.
- Grounds 11 requires 28 days' notice under the rules which currently apply. The Notice sets out the notice period as expiring on 2nd March 2023. This Application is therefore timeous.
- The Tribunal heard detailed oral evidence from the landlord Mr Walsh who also lodged written evidence that the Respondent has breached several clauses of her lease agreement. The Tribunal also took account of the previous statements made by the Respondent in writing or at the previous CMD. The Respondent agreed that she had removed a smoke alarm in the property because it was hanging down and was going off a lot. While the Tribunal noted that the smoke alarm may have become annoying to the Respondent they noted that she had not sought to contact the landlord and have it replaced nor was there any suggestion that she had reported damp to him as the potential cause of it hanging down. The Respondent did say she had contacted the Applicant about mice but did not want to use poison and the Applicant had advised about traps and not leaving food out. It is noted that she did however contact Environmental Health and it was through that route that the Applicant was advised there were other issues with the Property. The lease specifically states in Clauses 43 and 47 respectively that the tenant should advise the landlord of any damage or of any situation that may significantly interfere with the normal use of the Property and to comply with standards of health, sanitation, fire housing and safety as required by law. The Tribunal found by not advising the landlord of the issue with the smoke alarm was a breach of the tenancy agreement. However the Tribunal noted this has now been fixed when a contractor put in smoke alarms which are still in place.
- The parties are also in agreement that the Respondent is not letting the landlord have access to the Property. The Respondent has advised this is because of a previous incident. The details of the incident are not known to the Tribunal and we make no comment on this but we note refusal to allow the landlord access is a breach of the tenancy agreement. However the Tribunal did note no access to the landlord's daughter was given in 2022 prior to the incident after which the Respondent refused to have any contact with the Applicant and she did not offer any alternative time for an inspection. The Tribunal also considered the impact of this refusal to allow the landlord access and considered if contractors were able to attend to the Property and whether that would mean work could get done even if the Respondent was refusing access to the landlord. Given the evidence heard that 2 independent persons working in Orkney have advised that they would not return to the Property given the condition of it the Tribunal accepted that the landlord is being prevented from not only accessing the Property for inspections but also from having remedial work carried out by other parties. Given the Property does not have an electrical certificate this is extremely concerning for the safety of the Respondent. The Landlord is obliged to do this work but appears to be prevented from doing so even through a 3rd party due to the state of the Property.

- Clause 39 of the tenancy agreement states that the Tenant will at its sole expense keep and maintain the Property and appurtenances in good and sanitary condition and repair during the term of the Agreement.” The Tribunal found the statement of Mr Walsh regarding the state and condition of the Property to be credible, it was supported by the written evidence of Mr Kerridge and the electrician who both spoke of unsanitary conditions with a foul smell such that they were not prepared to go back to work at or deliver to this Property. The Tribunal notes that the Respondent has several pets and that dog faeces was found in abundance around the Property and that because of the pets the Respondent does not want poison used to try and deal with the rodent infestation. The Tribunal accepts from the evidence heard that there is a breach of clause 39.
- Finally although not initially mentioned by the Applicant in the Application the Tribunal accepts Mr Walsh’ evidence that he did not consent to some of the pets which appear to be living at the Property which is another breach of clause 5 of the Agreement.
- Mr Dunbar for the Respondent advised at the outset she is not opposed to the Application and indicated she would not be rehoused by the Council without an order for eviction but if the Tribunal was satisfied the grounds were met and it was reasonable to evict he would be seeking further time for the Respondent to seek alternative accommodation. He did not lead any evidence on behalf of the Respondent and did not cross examine the Applicants.
- The Tribunal found for the above reasons that the ground of eviction has been met. There are several breaches of the tenancy by the tenant. The Tribunal had to then consider if it would be reasonable to evict on this ground. Given the relationship between the Applicant and the Respondent appears to have broken down irretrievably, the Applicants are being denied all access, and tradesmen do not want to attend the Property due to the state of it, that is preventing the Applicant being able to carry out electrical works to ensure it is safe, amongst other works required by Environmental health. If the status quo continues the Respondent is highly unlikely to be able to resolve these issues and this could be to the detriment of the Respondent as well. For these reasons the Tribunal is satisfied it is reasonable to grant the order of eviction in terms of S 51 (1) of the Act. The Respondent will be entitled to assistance from the council once an order is granted. The Tribunal finds that Ground 11 being an eviction ground specified in the application is met, and that it is reasonable for the Tribunal to grant the application.
- Given that the Cost of Living (Tenant Protection) (Scotland) Act 2022 applies to this application and this ground of eviction, the eviction will be delayed for up to 6 months or earlier if the Act is revoked or amended.

Decision

An order for possession is granted.

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.



Legal Member/Chair

23rd November 2023

Date