



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) Act 2016**

**Chamber Ref: FTS/HPC/EV/23/1396**

**Re: Property at 9 Roseberry Street, 2nd Floor, Dundee, DD2 2NP (“the Property”)**

**Parties:**

**Mrs Anita Halley, 86 Bell Street, India Buildings, Dundee, DD1 1HN (“the Applicant”)**

**Miss Nadia Jackson, 9 Roseberry Street, 2nd Floor, Dundee, DD2 2NP (“the Respondent”)**

**Tribunal Members:**

**Shirley Evans (Legal Member) and Frances Wood (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is not entitled to an Order of eviction.**

**Background**

1. By application dated 4 May 2023 the Applicant’s letting agent applied to the Tribunal for an order for eviction under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”). The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Applicant, the Respondent and Fraser James Gow signed on 4 June 2018 with a start date of 1 July 2018, a rent statement, a Notice to Leave dated 10 March 2023 addressed to the Respondent with a Royal Mail Track and Trace receipt dated 13 March 2023 and an email to Dundee City Council with a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 dated 10 March 2023.
2. On 31 May 2023 the Tribunal wrote to the Applicant’s agent to query the validity of the date on the Notice to Leave, seeking the ground for repossession be inserted in the application form, seeking clarification as to why there was only one Notice to Leave despite the tenancy agreement being a joint tenancy and seeking evidence of compliance with the Pre Action-Requirements (Coronavirus) (Scotland) Regulations 2020. Further the Tribunal brought to the

Applicant's agent's attention that the application was subject to the Cost of Living (Tenant Protection) (Scotland) Act 2022 setting out options as to how they may wish to proceed.

3. On 3 July 2023, the Applicant's agent replied querying whether he had to withdraw the application. On 7 July 2023 the Tribunal gave the Applicant's agent further time to answer the letter of 31 May 2023 and stated the Tribunal was not in a position to advise the Applicant's agent on whether he should withdraw the application and recommended he seek independent legal advice.
4. On 18 July 2023 the Applicant's agent responded enclosing an email to the Respondent dated 10 March 2023 with the Notice to Leave, a rent statement to 12 July 2023 showing arrears of £2941.54 and a letter dated 10 February 2023. He also explained that there were two applicants for the tenancy, that the older tenancy agreement with Mr Gow terminated on 30 June 2018 and that a new tenancy started on 1 July 2018 with the Respondent only.
5. On 11 August 2023 the Tribunal wrote to the Applicant's agent to confirm the only tenancy agreement lodged was the joint tenancy commencing on 1 July 2018 and requesting if the Applicant was relying on another tenancy that a copy be lodged.
6. On 16 August 2023, the Applicant's agent advised he had taken over management of the property from a former colleague, that there was no new lease starting on 1 July 2018 uploaded on their system, but that he was still looking to get eviction due to the rent arrears.
7. On 31 August 2023 Tribunal accepted the application under Rule 9 of the Regulations 2017.
8. On 11 October 2023 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 1 November 2023. By letter dated 11 October 2023 the Tribunal advised both parties that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 15 November 2023. The letter served on the Respondent by Sheriff Officer on 12 October 2023. The Respondent did not make any written representations.

### **Case Management Discussion**

9. The Tribunal proceeded with a CMD on 15 November 2023 by way of teleconference. Mr Callum Walker from Pavillion Properties appeared for the Applicant. There was no appearance by or on behalf of the Respondent

despite the teleconference starting 5 minutes late to allow the Respondent plenty of time to join. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in her absence.

10. The Tribunal had before it a Private Residential Tenancy Agreement between the Applicant, the Respondent and Fraser James Gow signed on 4 June 2018 with a start date of 1 July 2018, a letter dated 10 February 2023 addressed to the Respondent, an email and Notice to Leave dated 10 March 2023 addressed to the Respondent, a Royal Mail Track and Trace receipt dated 13 March 2023, an email to Dundee City Council with a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 dated 10 March 2023 and a rent statement to 12 July 2023. The Tribunal considered these documents.
11. Mr Walker submitted arrears had increased to £4541.54. With reference to the rent statement lodged he submitted the Respondent had been in arrears since 29 November 2022. No rent had been paid between February – May 2023. They started to receive Universal Credit payments of £500 per month from May -September 2023, but this did not cover the rent of £650 per month. There had been no further UC payments after September. The Tribunal noted Clause 8 of the tenancy agreement showed monthly rent of £650. In addition, Mr Walker submitted they had also some arrears direct payments from Universal Credit.
12. He believed the Respondent was on a zero hours contract and may have been entitled to Universal Credit. He was not aware whether there had been a change in circumstances. The accounts team had sent letters to the Respondent about the arrears. He explained there was a concern for the Respondent's safety as they had not heard from her since April. The annual gas servicing was due. They had had no response from the Respondent. They had tried all methods of contact including calling round at the property but to no avail.
13. The Tribunal questioned Mr Walker about the tenancy agreement and pointed out that no Notice to Leave had been served on the joint tenant. Mr Walker explained that a previous colleague had noted on the file that Mr Gow the joint tenant named on the tenancy agreement had been "released" from that tenancy agreement on 30 June 2018. He submitted there was a new tenancy then with the Respondent starting on 1 July 2018.
14. The Tribunal noted the joint tenancy lodged and signed by both the Respondent and Mr Gow on 4 June 2018 had a start date of 1 July 2018. Mr Walker clarified that although he had access to his former colleague's emails and there was a note that Mr Gow was being "released" there was nothing on their system to show that a new tenancy agreement in the Respondent's sole name had been sent to the Respondent. As far he was aware the Respondent lived alone and had no vulnerabilities. He submitted that the arrears may have

accrued after the Respondent had received a large invoice from contractors for damage to scaffolding at the property.

### **Findings in Fact**

15. The Applicant entered into a Private Residential Tenancy Agreement with the Respondent and Fraser James Gow on 4 June 2018 with a start date of 1 July 2018. In terms of Clause 8 the monthly rent is £650.
16. Arrears of £4541.54 have accrued under the tenancy.
17. On 10 February 2023, the Applicant's agent wrote to the Respondent signposting her to support agencies to assist with the arrears.
18. On 10 March 2023 the Applicant's served a Notice to Leave on the Respondent by email and by Recorded Delivery mail. The said Notice requested that the Respondent remove from the Property by 10 April 2023. No Notice to Leave was served on Fraser James Gow.
19. A Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 was served on Dundee City Council on 10 March 2023.

### **Reasons for Decision**

20. The Tribunal was not satisfied that a new tenancy in the sole name of the Respondent had been entered into with a start date of 1 July 2018. Mr Walker had not been able to identify any such tenancy agreement had been sent to the Respondent on their system. The only tenancy agreement before the Tribunal was the joint tenancy between the Applicant, the Respondent and Fraser James Gow dated 4 June 2018 and commencing on 1 July 2018. That being the case in the absence of a Notice to Leave on Mr Gow, the Tribunal has no power to issue an Order to evict.
21. Section 78 (3) of the 2016 Act provides that in the case of joint tenants, reference in the Act to "tenant" means all of them. Adrian Stalker in "Evictions in Scotland" at page 320 states that "*In Sections 51 (1) and 52 (3) the words "an eviction order against the tenant" and "notice to leave ... given to the tenant" means all the joint tenants ; there is no provision under the Act in terms of which the landlord may select those joint tenants he wishes to put out"* Mr Stalker also notes that a single Notice to Leave may be served on all joint tenants or separately on each of them. However, in this case there is simply no Notice to Leave at all served on one of the joint tenants. Accordingly, without that Notice to Leave and in the absence of proof that there is indeed a sole tenancy in the name of the Respondent alone the application must fail.

## **Decision**

22. In the circumstances the Applicant is not entitled to an Order for eviction. The decision of the Tribunal is unanimous.

## **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.**

S. Evans

**15 November 2023**

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**Legal Chair**

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**Date**