

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014 and Section 18 of the Housing (Scotland) Act 1988.

Chamber Ref: FTS/HPC/EV/23/3119

Re: Property at 51 St Swithin Street, First Floor, Aberdeen, AB10 6XL (“the Property”)

Parties:

Mr Colin Smith and Mrs Norma Smith, both residing at Cairnwell, Edgewood Place, Aboyne, AB34 5JT (“the Applicants”); and

Mackinnons Solicitors LLP, 14 Carden Place, Aberdeen, AB10 1UR (“the Applicants’ Representative”) and

Ms Hazel Paterson, 51 St Swithin Street, First Floor, Aberdeen, AB10 6XL (“the Respondent”)

Tribunal Members:

G McWilliams- Legal Member

J Heppenstall- Ordinary Member

Decision in the absence of the Respondent:

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determines to grant the Application.

Background and Case Management Discussion on 4th March 2024

1. Case Management Discussions had taken place on 8th December 2023 and 26th January 2024. Reference is made to the Notes on those Case Management Discussions. Both of the Case Management Discussions were continued for further intimation of the Application papers and Case Management Discussion (“CMD”) details to the Respondent Ms Paterson. The difficulty with regard to intimation of Application papers is that the Property does not have a letter box.

2. The Tribunal's Office intimated details of the CMD, scheduled for 4th March 2024, through Sheriff Officers and by first class and recorded delivery post. The Sheriff Officers served Application papers, and intimation of the fresh CMD on 4th March 2024, by leaving the relevant documents on the doorstep immediately outside the Property on 5th February 2024. The papers sent by recorded delivery post were returned to the Tribunal's Office marked "Not Called For" on 22nd February 2024, after two attempts at delivery on 2nd February and 3rd February 2024.
3. The Applicants' Representative's Miss Bain sent papers to Ms Paterson by e-mail and recorded delivery post on 13th February 2024. She sent the papers to the e-mail address ellbain@hotmail.co.uk which was an e-mail address that Ms Paterson had used herself to communicate with the Applicants in November 2022. Copies of Miss Bain's e-mail dated 13th February 2024, and the read receipt which she received in respect of her e-mail communication, also dated 13th February 2024, had been sent by her to the Tribunal's Office on 21st February 2024. Miss Bain's recorded delivery letter to Ms Paterson had also been returned to her office marked "Not Called For".
4. Miss Bain attended the CMD on 4th March 2024. Ms Paterson did not attend and was not represented. Miss Bain referred to the updated Rent Statement which she had also provided to the Tribunal's Office on 21st February 2024, and said that the outstanding rent due, at 23rd January 2024 was £6,535.05. She stated that Ms Paterson had not engaged with the Applicants or her office in response to the pre-action letters sent to her and also in relation to the Application, although she had responded to a previous e-mail in November 2022, as stated in paragraph 3 above. Miss Bain said that there had been some recent damage in the hallway of the flatted development, in which the Property is situated, which had been reported by another neighbour. She said that Ms Paterson had not replied to communications regarding the damage and there was no answer when a contractor knocked on the door of the Property in this connection. Miss Bain submitted that, in all the circumstances, and, in particular with the rent arrears increasing, the Applicants sought that the eviction order is granted now. She said that neither she nor the Applicants consider that Ms Paterson will engage in any communications regarding the parties' tenancy and that the Applicants cannot sustain their continuing loss of rent with no communication from Ms Paterson.
5. The Tribunal observed that it was possible that the papers sent to Ms Paterson in advance of the CMD on 4th March, and also the previous CMD on 26th January 2024, by first class post had been received by her, as had the Sheriff Officer's papers left on her doorstep on 5th February. They observed that another possible option open to the Tribunal, regarding intimation of the Applicant papers and details of a CMD, was service by advertisement.

Findings in Fact and Law

6. The parties have a tenancy agreement which began on 23rd June 2017. The monthly rent due is in the sum of £950.00.

7. The Respondent Ms Paterson has had arrears of rent since 2019 and from March 2023 her rental payments through her Universal Credit benefit have been at least £275.00 less than the rent amount of £950 each month. Her rent arrears, at 23rd January 2024, are £6535.05
8. The principal Ground upon which the Application proceeds, namely Ground 11 in Schedule 5 to the 1988 Act, is satisfied. Ms Paterson has persistently delayed paying rent which has become lawfully due.
9. It is reasonable that an order for possession is granted given the extent and increasing amount of rent arrears owing by Ms Paterson to the Applicants.

Reasons for Decision

10. Section 16 of the Housing (Scotland) Act 2014 provides as follows:

“16. Regulated and assured tenancies etc.

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal -

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

11. Accordingly, the Tribunal now has jurisdiction in relation to claims by landlords, such as the Applicants, against tenants, such as the Respondents, for possession relating to a tenancy agreement, such as the parties' tenancy agreement.

12. In terms of Section 18 of the 1988 Act the Tribunal shall not make an order for possession of the house let on the tenancy except on one or more of the grounds set out in Schedule 5 to the 1988 Act.

13. Ground 11 in Schedule 5 to the 1988 Act provides that it is an eviction ground that, whether or not any rent is in arrears on the date on which proceedings for possession are begun, the tenant has persistently delayed paying rent which has become lawfully due. The Rent Statements provided by Miss Bain show that there have been arrears of rent lawfully due since 2019 and, at 23rd January 2024, there are rent arrears of £6535.05 lawfully due.

14. The Tribunal carefully considered the issue of whether or not intimation to Ms Paterson of the Application papers and notification of the CMD on 4th March 2024, had been carried out successfully. They found, on a balance of probabilities, that there had been intimation on Ms Paterson. Sheriff Officers had left papers on the doorstep immediately outside the Property, a first-class letter had been sent by the Tribunal's office, and, in addition, the Applicant's Representative's Miss Bain had also sent an e-mail to Ms Paterson confirming

details of the Application and CMD. The Tribunal also found that it was in the interests of justice to proceed to determine the Application at the third CMD, rather than have a fresh CMD fixed for service by advertisement on the Tribunal's website. The Tribunal found, on balance, that it was appropriate to proceed given the increasing rent arrears, and the fact that Ms Paterson was not engaging with the Tribunal, the Applicants' Representative, or the Applicants themselves regarding the Application and other matters such as repairs. The Tribunal found that it was unlikely that Ms Paterson would engage in respect of the Application proceedings as a result of service by advertisement as it was unlikely that she would look on the Tribunal's website.

15. Given the level of outstanding rent, and the continuing shortfall in rent each month, as evidenced by the updated rent statement lodged by Miss Bain the Tribunal found in fact and law that Ground 11 in Schedule 5 of the 1988 Act is satisfied. As Ms Paterson has not engaged in respect of the Application, and has not made any representations, or attended at a CMD, to oppose and state any contradiction to the terms of the Application, the submissions of Miss Bain, the Tribunal decided that it was reasonable to grant an eviction order.

16. In the event that Ms Paterson is not aware of the Application proceedings she may contact the Tribunal's Office and apply for recall of the eviction order.

Decision

17. The Tribunal grants the Application.

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.

Gerald McWilliams

4th March 2024

Tribunal Legal Member

Date