



**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for eviction/ possession of a Rented Property in terms of Rule 109 of the Procedure Rules.**

**Chamber Ref: FTS/HPC/EV/24/0240**

**Re: 1st Floor Right, 25 Benvie Road, Dundee, DD2 2PD ("the Property")**

**Parties:**

**Lucinda Claire Paulo residing at 21 Murrayfield Avenue, Edinburgh, EH12 6AU ("the Applicant")**

**David Gray, Gilson Gray, Solicitors (The Applicant's Representative')**

**Elaine Clark, 1<sup>st</sup> Floor Right, 25 Benvie Road, Dundee, DD2 2PD ("the First Respondent")**

**Mrs Vicki McLanders, Dundee Law Centre ('The First Respondent's Representative')**

**Murray Mitchell, 1<sup>st</sup> Floor Right, 25 Benvie Road, Dundee, DD2 2PD ("the Second Respondent")**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal")**

**Tribunal Members: Jacqui Taylor (Legal Member) and Angus Lamont (Ordinary Member)**

## **1. Background**

1.1. The Applicant submitted an application to the Tribunal for eviction/ possession of the Rented Property under section 51(1) of the Private Housing Tenancies (Scotland) Act 2016, in terms of Rule 109 of the Procedure Rules.

1.2 The application was dated 9<sup>th</sup> January 2024. The application stated that the ground for eviction was as follows:

'The Respondents are in arrears of more than three months rent and Ground 12 is established'

1.3 Documents lodged with the Tribunal were:-

- Private Residential Tenancy Agreement between the Respondents and MS Matthew trading as Matthew Properties dated 25<sup>th</sup> August 2018.
- A rent statement dated 23<sup>rd</sup> November 2023 for the period to 25<sup>th</sup> January 2023 to 25<sup>th</sup> October 2023 showing arrears of £3268.40.
- Notices to Leave dated 28<sup>th</sup> November 2023 advising the Respondents that an application for an eviction order on the ground that there has been rent arrears over three consecutive months will not be submitted to the Tribunal before 28<sup>th</sup> December 2023.
- Certificate of Services by Alan Black, Sheriff Officer dated 29<sup>th</sup> November 2023 confirming that the Notice to Leave was served on the Respondents on 29<sup>th</sup> November 2023.
- Section 11 Notice addressed to Dundee City Council.
- Email to Dundee City Council dated 9<sup>th</sup> January 2024 attaching the section 11 Notice.
- Copies of Pre action letters sent to the Respondents dated 29<sup>th</sup> August 2023
- Email from Universal Credit dated 7<sup>th</sup> October 2023 advising that they are unable to make payments direct to the Landlord.
- Title sheet ANG92103 for the Property ½, 25 Benvie Road, Dundee confirming that the Applicant purchased the Property on 26<sup>th</sup> January 2023.

2. By Notice of Acceptance by Helen Forbes, Convener of the Tribunal, dated 15<sup>th</sup> February 2024 she intimated that she had decided to refer the application (which application paperwork comprises documents received on 16<sup>th</sup> January 2024) to a Tribunal.

### **3.1 The Applicant's Written Representations.**

'The Property was purchased by the applicant with the tenants in place in January 2023. The applicant worked with the respondents to have their DWP Universal Credit payments transferred over to the new owners for payment of their rent going forward. This included the creation of new leases to assist with their journals. Initially the first-named respondent was responsive and pro-active in working with the applicant. During this time payments from UC were still being paid to the previous owner of the Property. On or about March 2023, payments towards rent either from UC or from the second-named respondent ceased. The respondents informed the applicant that the first-named respondent had accessed the second-named respondent's journal on his behalf, but as he had changed phone number they could not gain access. They required an appointment with UC in order to do this but suggested that it was 'impossible' to arrange this over the phone. The applicant attempted to accommodate the issues being experienced by the respondents. Frequent discussions were held and the completion of UC45 forms to assist. As time dragged on however the reasons for failure to pay rent began to lose credibility. On or about 30 November 2023 the respondents were invited to attend a meeting with their property manager in order to discuss the issue of UC contributions and the increasing rent arrears. At the meeting the respondents again advised that they could not get access to the second named respondent's journal due to the phone number issue. UC were called at the meeting who advised that all the second-named respondent required to do was attend the local

job centre and this could be sorted promptly. The second-named respondent undertook to attend the job centre that same day and resolve the issue. Attempts were made by the applicant to obtain assurance that the situation had been resolved in the following few weeks. The respondents provided no such assurance and no rent was paid. A copy of the email sent to the respondents on 6 December 2023 is produced. The respondents did not respond to that email. The applicant has sought to end the tenancy on the basis of the outstanding rent arrears. In addition, however the disposal of the property by way of sale is required as part of a marital separation agreement. The Property requires to be vacant in order to satisfy this condition. A copy of the applicant's separation agreement is produced in evidence of the position. The arrears as at 17 May 2024 are £4,355.44. They have failed to address the arrears or to make any proposals that would see this repaid. The applicant continues to make a financial loss that is unsustainable in the circumstances. As of December 2023, UC for the first-named respondent ceased and that of the second-named respondent reactivated. Throughout the duration of the tenancy the applicant has only ever received one-half share of the contractual rent. Payments from the second-named respondent are received on the 17th of each month. It is the applicant's position that it is reasonable for the order for eviction to be granted on the basis of unpaid rent, and to thereafter allow for the sale of the property in furtherance of the applicant's separation agreement'.

The Applicant lodged additional written representations on 4<sup>th</sup> June 2024:

'They operate an online portal via which tenants can submit repair reports and requests. No such requests are currently logged as being outstanding. A copy of the repair log is attached. The last issue reported by the respondents was related to the boiler at the property. The applicant replaced the boiler at significant cost. The respondent notes that she has been withholding rent due to a failure to carry out repairs. She has however provided no evidence as to when this was reported, to whom it was reported, and the method by which she reported it. The applicant has received no prior notice of any issue. In counterpoint the applicant can demonstrate fully that repairs have been carried out promptly to the property over time'.

### **3.2 The First Respondent's Written Representations.**

'The First Respondent confirms that she signed a tenancy agreement on the 25 August 2018. The Respondent confirms she has a Private Residential Tenancy. As a result of the aforementioned acceptance, the First Respondent accepts that the Notice to leave is a legally valid document and was served correctly.

In terms of the Ground being used for eviction:

The First Respondent, born 5 March 1990, resides at the property along with her daughter aged 3 in one bedroom and a friend, who is the joint tenant and second named Respondent in the second bedroom. They have resided at the property for around 5-years. The First Respondent is in receipt of Universal Credit and has been for some time. It is understood for a significant portion of the tenancy, housing costs have been paid direct to the landlord by Universal Credit. This has covered part of the rent charge. The First Respondent states that the majority of the arrears have accrued as the second named respondent had issues with his Universal Credit claim. Further, once this was resolved, Universal Credit housing costs were not paid forward to the landlord. The reason to this is unknown. The First Respondent explains that over the

past two months, she has been withholding her side of the rent as repairs to the property were not being completed. The First Respondent states that these repair issues were raised with the landlord's agent on a number of occasions. The last issue being in or around early May when the toilet stopped working. The Respondent advises her agent that she has been withholding the rent and putting this aside. The Respondent suffers from mental health issues and is diagnosed with depression and anxiety. Her sole income is made up of social security benefits including Universal Credit, Child Benefit, Scottish Child Payment and Personal Independence Payment. Should she be evicted, her and her daughter would have nowhere to go and would be homeless'.

#### **4. Case Management Discussion**

4.1 This case called for a conference call Case management Discussion (CMD) at 10.00 on 10<sup>th</sup> Apr 2024.

David Gray, the Applicant's Representative, and Mrs Viki McLanders the First Respondent's Representative attended the CMD.

The Second Respondent did not attend and was not represented.

The Second Respondent had been served with a letter advising him of the CMD by Roger Ewen, Sheriff Officer on 26<sup>th</sup> April 2024. The Tribunal were satisfied that the requirements of Tribunal Rule 29 had been complied with and continued with the CMD.

Mrs McLanders confirmed that she did not require additional time to consider the Applicant's written representations that she had only recently received from the Tribunal.

4.2 The Tribunal identified with the Applicant's Representative and the First Respondent's representative the following agreed facts, which were accepted by the Tribunal:

4.2.1 The Respondents are Tenants of the Property in terms of the Private Residential Tenancy dated 28<sup>th</sup> August 2018.

4.2.2 The Rent due by the Respondents in terms of the lease is £680 per month.

4.2.3 The Notice to Leave was served on the Respondents by Sheriff Officer on 29<sup>th</sup> November 2023 and advised the Respondents that an application would not be made to the Tribunal before 28<sup>th</sup> December 2023

4.2.4 The rent statement produced is correct.

#### **4.3 Oral Evidence.**

4.3.1 Mr Gray advised that due to the significant amount of rent arrears he considered that it was reasonable to grant the eviction sought. In addition, there were other matters to be considered. The Applicant and her ex husband have agreed to the sale of the property with vacant possession as part of their separation agreement. The current rent arrears amount to £4645.75. Given the Respondent's personal circumstances, if the eviction Order was granted he would give consideration to not enforcing it for several months.

**4.3.2** Mrs McLanders confirmed that she does not dispute the level of rent arrears. The Respondent's Universal Credit payments are now in place and the Universal credit payments are up to date. The rent arrears arose due to the Second Respondent not passing Universal Credit payments to the Applicant. The rent arrears should now be static. The First Respondent is withholding rent as there are outstanding repairs. She believes that the First Respondent intimated the repairs to Pauline at Gilson Gray. She acknowledged that they had not been logged via the portal. The First Respondent has advised that she has retained £1500 towards the rent pending the repairs being carried out. The outstanding repairs are that the toilet does not flush (the First Respondent has had this repair carried out), the kitchen window frame is rotten and needs to be replaced and there is damp and mould in the Property. She confirmed that the First Respondent has not made a Repairing Standard application to the Tribunal. She also confirmed that the First Respondent does not have any proposals to make in relation to the rent arrears. The First Respondent has applied to the Local Authority for rehousing but the application is at an early stage. The application is a joint application by the First and Second Respondents. The First Respondent resides in the Property with her three year old daughter and the Second Respondent. She is in receipt of PIP and has health issues. If she is evicted she will be homeless. If the order for eviction was granted she would request that an additional period of thirty days before the order was enforced.

## **5. Decision**

### **5.1. Requirements of Section 109 of the Procedure Rules.**

**5.1.1** The Tribunal confirmed that the application correctly detailed the requirements of section 109(a) of the Procedure Rules namely:-

- (i) the name, address and registration number of the Landlord.
- (ii) the name and address of the Landlord's representative.
- (iii) the name and address of the Tenants.
- (iv) the ground of eviction. The ground stated in the application is that the tenants are in rent arrears over three consecutive months.

The Tribunal accepted that this is Ground 12 of Schedule 3 of the 2016 Act.

**5.1.2** The Tribunal confirmed that the application complied with the requirements of Section 109(b) of the Procedure Rules:

- (i) evidence showing that the eviction ground or grounds had been met.

The required rent statement had been provided showing rent arrears over three consecutive months.

- (ii) a copy of the notice to leave given to the Tenant as required by section 52(3) of the 2016 Act.

The Tribunal confirmed that the Notice to Leave was in correct form as set out in Schedule 5 of the Private Residential Tenancies Notices and Forms (Scotland) Regulations 2017.

The Notices to Leave were dated 28<sup>th</sup> November 2023 and advised the Tenants that the Applicant intends to apply to the Tribunal for an eviction order in respect of the property on the basis of Ground 12 (The Tenant is in rent arrears over three

consecutive months). It also advised that an application would not be submitted to the Tribunal for an eviction order before 28<sup>th</sup> December 2023.

The Tenancy commenced on 25<sup>th</sup> August 2018. As at 28<sup>th</sup> November 2023 (the date of the Notice to Leave) the Tenants had resided in the property for more than six months.

The application for eviction was based on Ground 12 of Schedule 1 of the 2016 Act and therefore twenty eight days notice was required.

The Landlord served the Notice to Leave on the Tenants on 29<sup>th</sup> November 2023 by sheriff officer and correctly gave the Tenants a minimum of twenty eight days notice.

(iii) a copy of the notice given to the local authority as required by Section 56(1) of the 2016 Act.

The Tribunal confirmed that a copy of the required notice had been provided.

**5.1.3** The Tribunal confirmed that the application form had been correctly signed and dated by the Landlords' representatives as required by Section 109(c) of the Procedure Rules.

## **5.2 The Tribunal made the following findings in fact:**

5.2.1 The Respondents are Tenants of the Property in terms of the lease between the Respondents and the former landlords MS Mathew trading as Matthew Properties. The start date of the Tenancy detailed in the lease was 28<sup>th</sup> August 2018.

5.2.2 Applicant is Landlord of the Property following her purchase of the Property on 26<sup>th</sup> January 2023. The Tribunal had a copy of the Applicants' title deeds being Land Certificate ANG92103. Section B of the Land Certificate confirmed that the Applicant is heritable proprietor of the Property. She is entitled to sell the Property.

5.2.3. The lease is a Private Residential Tenancy in terms of the Private Housing Tenancies (Scotland) Act 2016 ('The 2016 Act').

5.2.4 The rent detailed in the tenancy agreement was £680 per calendar month, payable in advance.

5.2.5 In terms of the lease the obligation to pay the rent is a joint and several obligation on both the First and Second Respondents.

5.2.6 The Notice to Leave was dated 28<sup>th</sup> November 2023 and it was served on the Respondents by Sheriff Officer on 29<sup>th</sup> November 2023 .

5.2.7 The Notice to Leave stated that the Respondents were in rent arrears over three consecutive months, which is Ground 12 of Schedule 3 of the Private Housing (Tenancies) Scotland Act 2016.

5.2.8 The rent account has been in arrears since 25<sup>th</sup> January 2023.

5.2.9 The rent arrears were not due to the delay or failure in the payment of a benefit.

5.2.10 The Landlord's representatives had sent the Respondents pre action letters dated 29<sup>th</sup> August 2023.

**5.3 In relation to the requirements of Ground 12 of the Private Housing (Tenancies) (Scotland) Act 2016 the Tribunal found as follows:**

5.3.1. The Tribunal determined that the Respondents had been in arrears of rent for three or more months at the date of the Notice to Leave, the date of the Application to the Tribunal and at today's date.

5.3.2 The Tribunal found that the rent arrears were not due to a delay or failure in payment of a relevant benefit.

5.3.3 The Tribunal found that it was reasonable for the eviction order to be granted for the following reasons:

5.3.3.1 The considerable amount of the rent arrears owing.

5.3.3.2 The fact that the Applicant had issued a preaction letter to the Respondents.

5.3.3.3 The fact that the Respondents did not have any proposals to make in relation to the rent arrears.

5.3.3.4 The fact that the Second Respondent had received Universal Credit payments in respect of his rent obligations but had chosen not to remit the full amount to the Applicant, which accounted for a large proportion of the rent arrears.

5.3.3.5 The fact that the Respondents had made an application to the Local Authority for rehousing.

5.3.4 The Tribunal acknowledged that the First Respondent had notified the Applicant's agent of outstanding repairs but as no repairing standard application had been made to the Tribunal and as no evidence had been provided to the Tribunal as to the extent of the repairs the Tribunal did not give weight to these repairs.

5.3.5 The Tribunal also acknowledged that the First Respondent's rent payments are upto date after the rent retention of £1500 is taken into account. However, the Tribunal gave little weight to this as both the First and Second Respondents are jointly and severally liable for the rent and the rent arrears.

5.3.5 The Tribunal gave little weight to the separation agreement between the Applicant and her ex husband as no evidence had been provided that the agreement had been amended to the effect that they required vacant possession of the Property before it was sold.

5.3.6 The Tribunal also acknowledged the health difficulties of the First Respondent and due to this fact considered that it was reasonable to allow the Respondents additional time to vacate the Property.

5.4 The Tribunal found in law that the ground in Schedule 3(12)(1) of the 2016 Act was met.

5.5 The Tribunal granted the eviction but determined that the Order should not to be executed prior to 12 noon on 5<sup>th</sup> August 2024.

## **6. 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.**

# J Taylor

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Legal Member

5<sup>th</sup> June 2024