



**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 (“the Act”)**

**Chamber Ref: FTS/HPC/EV/24/0838**

**Re: Property at 130 Abbotsford Street, Bainsford, Falkirk, FK2 7PP (“the Property”)**

**Parties:**

**Mr Scott Laing, 12 Clanranald Place, Lionthorn, Falkirk, FK1 5UF (“the Applicant”)**

**Miss Lynn McNeil, 130 Abbotsford Street, Bainsford, Falkirk, FK2 7PP; and Mr Johnathan (otherwise known as Jonathan) Irvine, present whereabouts Unknown (“the Respondents”)**

**Tribunal Members:**

**Susan Christie (Legal Member) and John Blackwood (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted against the Respondent in favour of the Applicant.**

1. The application made by the Applicant is for an order for possession of the Property under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, Grounds 11, 12 and 12A of Schedule 3 of the Act. It was accepted by a legal member of the tribunal on 17 April 2024.
2. The Applicant produced along with the application the tenancy agreement, supporting evidence in Appendices, a Statement of Arrears and a letter posted to the Respondents, Notices to Leave and accompanying paperwork; and a section 11 Notice in terms of the Homelessness Etc. (Scotland) Act 2003 which had been served on the relevant local authority.
3. The paperwork was served by the Tribunal on the Respondent Lynn McNeil by personal service by Sheriff Officers on 22 July 2024. The occupation of the second Respondent Johnathan (or Jonathan) Irvine could not be established by Sheriff Officer’s service. Accordingly, service was carried out by

advertisement of the tribunal website and the tribunal had sight of a certificate to that effect.

4. No Written Representations were submitted by the Respondents.

### **The Case Management Discussion**

5. The Case Management Discussion (CMD) took place on 21 August 2024 at 2pm by Conference call. The Applicant participated. Neither Respondent joined the call. The tribunal being satisfied that proper intimation had been made on the Respondents proceeded in their absence.
6. The reason for the CMD was explained and the paperwork produced was examined and discussed in detail.
7. The tribunal considered that the application could be determined on the information and evidence provided. The tribunal adjourned for a period to deliberate and then reconvened the CMD.

### **Findings in Fact**

- I. The Applicant is the owner and Landlord of the Property.
- II. The Parties entered into a Private Residential Tenancy over the Property with a date of entry of 31 March 2020.
- III. The Respondents are jointly and severally liable under the tenancy agreement.
- IV. The Applicant served valid Notices to Leave on the Respondents.
- V. A section 11 Notice in terms of the Homelessness Etc. (Scotland) Act 2003 was served on the relevant local authority.
- VI. The Respondents are in breach of Section 17 of the tenancy agreement as they have failed to take reasonable care of the Property. Specifically, the smoke alarm that is necessary to alert occupants in the event of fire had been removed and thrown away by the Respondents; the Property was not kept adequately heated.
- VII. The Respondents are in breach of their duties under Section 18 of the tenancy agreement as they had failed to notify the Applicant, as landlord, of repairs issues or defects that required attention as soon as was reasonably practicable and also had failed to allow access.
- VIII. The Respondents are in breach of Section 20 of the tenancy agreement as they have failed to allow access to the Property for authorised purposes having been given reasonable notice and despite reasonable repeated efforts having been made by the Applicant as landlord. Specifically, access has been refused to allow Electrical Safety inspections.
- IX. By virtue of said breaches of the tenancy agreement specifically around sections 17,18 and 20; Ground 11 of Schedule 3 to the Act is established.
- X. The Respondents have been in rent arrears for three or more consecutive months and have made no payments towards rent since 18 August 2023(Ground 12).
- XI. The Respondents have substantial rent arrears that exceeds the equivalent of 6 months rent when the Notice to Leave was served and currently (Ground 12A).

- XII. The rent arrears are not because of any failure or delay relating to any relevant benefit.
- XIII. The Applicant had signposted the Respondents and sought to resolve the payment of rent arrears by agreement but was unsuccessful.
- XIV. The tribunal determined that it is reasonable to grant an eviction order.

### **Reasons for Decision**

- 8. The Tribunal was satisfied at the CMD that it had sufficient information upon which to decide.
- 9. Proper intimation had been made on the Respondents.
- 10. Valid Notices to Leave had been served with extensive detail to support the Grounds relied upon.
- 11. Intimation of the application had been made on the relevant local authority by way of a Section 11 Notice, as required.
- 12. The Tribunal determined that Grounds 11,12 and 12A are established and evidenced by the documents provided and the oral information given.
- 13. The exchanges sent by the Applicant to the Respondent Lyn McNeil seeking access to carry out necessary gas and electric safety checks, showed that the tenant had repeatedly frustrated access and had caused inconvenience, cost and distress to the Applicant who was simply trying to comply with his duties as landlord to keep the tenant safe. Eventually when access was given for a gas safety check it was discovered that the gas had been capped and this resulted in a cost of £200 to the Applicant to have the supply reconnected to carry out checks. It was a pre-paid meter and there had been a debit occasioned by the Respondents use of the emergency feature. This had not been reported to the Applicant as landlord. The Carbon Monoxide detector had been thrown out by the tenant Lynn McNeil as she said it had been bleeping, but a battery change may have prevented this as it was still within its valid warranty period. No entry has been allowed or given for electrical safety checks and the safety Certificate has since expired.
- 14. The Respondents are in breach of Section 17 of the tenancy agreement as they have failed to take reasonable care of the Property. Specifically, the smoke alarm that is necessary to alert occupants in the event of fire had been removed and thrown away by the Respondents; the Property was not kept adequately heated.
- 15. The Respondents are in breach of their duties under Section 18 of the tenancy agreement as they had failed to notify the Applicant, as landlord, of repairs issues or defects that required attention as soon as was reasonably practicable and also had failed to allow access.
- 16. The Respondents are in breach of Section 20 of the tenancy agreement as they have failed to allow access to the Property for authorised purposes having been given reasonable notice and despite reasonable repeated efforts having been made by the Applicant as landlord. Specifically, access has been refused to allow Electrical Safety inspections.
- 17. By virtue of said breaches of the tenancy agreement specifically around sections 17,18 and 20; Ground 11 of Schedule 3 to the Act is established.

18. The initial rent was set at £440 per calendar month payable in advance. This increased over time by rent-increase notices that the Applicant spoke to having served. The current rent is £481 per calendar month.
19. The rent arrears at the date of service of the Notices to leave was £4499 and £4980 at the date of the Application and are now more than that as some six months have lapsed and no payments have been made.
20. The Respondents have been in rent arrears for three or more consecutive months and have made no payments towards rent since 18 August 2023(Ground 12).
21. The Respondents have substantial rent arrears that exceeds the equivalent of 6 months' rent when the Notice to Leave was served and currently (Ground 12A).
22. The rent arrears are not because of any failure or delay relating to any relevant benefit.
23. The Applicant had signposted the Respondents and sought to resolve the payment of rent arrears by agreement which was unsuccessful.
24. The Tribunal then considered whether it was reasonable to grant an eviction order.
25. The Applicant explained that he was employed as an emergency services worker and that he had suffered from clinically diagnosed stress and anxiety because of the difficulties he had experienced financially due to the situation. He now wishes to sell the Property to try to resolve his financial problems. He has taken on some £8-9000 credit card debt to allow him to maintain paying his mortgage and the landlord liability insurance. He has also had unexpected factoring bills for the Property that have run into 4 figures to cover roofing work, guttering and emergency drainage repairs. His mortgage has gone up twice during the period the rent arrears have accrued. He can no longer sustain the deficit he has been carrying. In so far as the Respondents position is concerned, he had been told that the Respondent Lynn McNeil was pregnant at one point. He had been dealing with her mother when she had said her debts were too much for her, but she too had ceased contact after a short while, and no-one was answering his messages. He had a large rent deficit in year two of the rental but that had been cleared (reputedly by the Respondent using inheritance money). It had not taken long before rent arrears had accrued again. He had to raise the rent due to his mortgage payments increasing but had tried to accommodate an arrangement by instalments. None of this had worked to ensure payment of rent. He believed Lynn McNeil may be in employment as it had been suggested that her wages were being arrested due to non-payment of Council tax. When he had rented the Property to the respondents initially there were two incomes but appreciated that may have changed with one tenant leaving. He now needed to realise the potential equity and clearing his debts, having been married this year. Any further outlays or delay would cause him notable difficulties.
26. The Tribunal accepted the Applicant's reasons given for the making of the Application and his safety concerns and financial considerations. The tribunal had regard to the fact that not only were there significant rent arrears but that the Respondents had compromised the Applicant's ability to meet his obligations to ensure electrical safety in the Property and had been obstructive over the gas safety access. They had also not advised the

Applicant that the gas had been capped and that other repairs around that were needed which cost the Applicant £200 to have it reconnected before the safety check could take place. The Tribunal determined that having regard to the information presented, that to grant the order was reasonable. The Respondents had chosen not to participate in the procedure and had not made representations.

27. The Tribunal therefore determined it was reasonable to make an eviction order. 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.**

# Susan Christie

Legal Member/Chair

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21 August 2024

Date