



**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/23/4577**

**Re: Property at 3 Campend Cottages (Also known as 3 Strawberry Cottages), Campend Farm, Dalkeith, EH22 1RS (“the Property”)**

**Parties:**

**Mr Ian Douglas Lowe, 27 Hill Street North Lane, Edinburgh, EH2 3LQ (“the Applicant”)**

**Miss Rebecca Sloan, Mr Callum Bruce, 3 Campend Cottages (Also known as 3 Strawberry Cottages), Campend Farm, Dalkeith, EH22 1RS (“the Respondents”)**

**Tribunal Members:**

**Richard Mill (Legal Member) and Gerard Darroch (Ordinary Member)**

**Decision**

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

Introduction

This application seeks an eviction order in respect of rent arrears. The applications are under Rule 109 and Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016.

The CMD took place by teleconference on 13 September 2024 at 2.00 pm. The applicant was represented by Mr Calvin Gordon of Thorntons Law. The first respondent joined the hearing personally.

Findings and Reasons

The property is 3 Campend Cottages (also known as 3 Strawberry Cottages), Campend Farm, Dalkeith EH22 1RS.

The applicant is Mr Ian Douglas Lowe who is the heritable proprietor and registered landlord of the property. The respondents are Miss Rebecca Sloan and Mr Callum Bruce who are the tenants. The parties entered into a private residential tenancy which commenced on 18 August 2021. The agreed rent in terms of the written lease was £925 per month plus £40 service charge for water.

The eviction proceedings are based upon the arrears of rent and the ground relied upon is ground 12, contained within Part 1, Schedule 3 to the 2016 Act, namely that the respondents are in rent arrears over three consecutive months.

A Notice to Leave was served upon the respondents by email on 10 November 2023 by Lowe Dalkeith Farms. The Notice to Leave is dated 10 November 2023 and confirms that the earliest that an application be submitted to the Tribunal for an eviction would not be before 13 December 2023. At the time that the Notice to Leave was served, the relevant notice period was one of 28 days. The required statutory notice was given.

As at the date that the Notice to Leave was served, the respondents were in rent arrears to the extent of £25,090. No rent has been paid since September 2021. As at the date of the hearing on 13 September 2024 have risen to £34,740. It is the respondents position that not all of the rent is due to be paid as a consequence of the state of disrepair of the property. They have retained around £8,000 in a separate bank account pending agreement over this disputed issue.

The ground is established given the high arrears of rent. The respondents accept this. Regardless of any rebate of rent due to repair issues they acknowledge that rent was due and not paid to meet the ground for eviction.

The tribunal carefully considered the reasonableness of granting the application.

The applicant has evidenced compliance with the pre-action protocol and, in particular, issued letters to the respondents dated 27 April 2023, 10 May 2023, 19 May 2023 and 12 June 2023

The respondents do not oppose the application. They live with two children aged 4 and 4 months. They wish to move and wish to seek Council housing. There is evidence that the local authority has been advised of the eviction proceedings with a relevant section 11 Notice having been issued by the applicant. In the event of an eviction order being granted the local authority has an obligation to make alternative accommodation available to the respondents.

It is not reasonable for the applicant to continue to make the tenancy available for the respondents in the absence of any rent being paid.

In all the circumstances, the Tribunal determined that an eviction order was reasonable. The respondents did not seek any extension of the standard 30 day implementation period for the order to be executed.

## **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.**

**13 September 2024**

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**Legal Member/Chair**

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**Date**