



**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/24/0784**

**Re: Property at 18 Ladysbridge House, Ladysbridge Drive, Banff, AB45 2LE (“the Property”)**

**Parties:**

**Mrs Audrey Steele-Chalmers, Thriepland, Boyndie, Banff, AB45 2LD (“the Applicant”)**

**Mr Dean Clark, Mr Reg Turley, 18 Ladysbridge House, Ladysbridge Drive, Banff, AB45 2LE; 18 Ladysbridge House, Ladysbridge Drive, Banff, AB45 2LE (“the Respondents”)**

**Tribunal Members:**

**Nairn Young (Legal Member) and Helen Barclay (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

- Background

This is an application for an eviction order against the Respondents, who have a private residential tenancy agreement with the Applicant concerning the Property. It called for a case management discussion (‘CMD’) at 10am on 28 October 2024, by teleconference. The Applicant was on the call in-person. The Respondents were not on the call in-person and were not represented. The commencement of the CMD was delayed by 10 minutes to allow for any technical difficulty they may have been experiencing, but they did not make contact.

Service of the application and papers on the Respondents was effected by sheriff officers on 25 September 2024. The Tribunal concluded that they did not intend to take part in proceedings and considered that it was fair to proceed in their absence.

- Findings in Fact

The following facts from the application, taken as unopposed, provided the basis for the Tribunal's decision:

1. The Respondents occupy the Property in terms of a private residential tenancy, with a start date of 16 April 2023.
2. Rent of £700 is due on the sixteenth of each month, in terms of the tenancy agreement.
3. The Respondents did not pay rent on 16 October, November or December of 2023; but did not have arrears of rent prior to that.
4. Aside from their non-payment of rent, the Respondents have not otherwise breached their tenancy terms.
5. The Applicant served a notice to leave on the Respondents in-person on 12 January 2024, stating that she intended to rely on Grounds 11 and 12 of schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016, in any application for an eviction to follow.
6. The Respondents have continued not to pay rent since service of the notice to leave.

- Reasons for Decision

7. There is clear authority from the Upper Tribunal that a landlord cannot validly serve a notice to leave in anticipation of ground for eviction coming into existence. The ground must be satisfied at the time of service of the notice

(*Majid v Gaffney* [2019] UT 59 & *Rafique v Morgan* [2022] UT 07). On that basis, the Applicant cannot validly rely on ground 12 in this case, since the Respondents had not been in arrears of rent of three consecutive months as at 12 January 2024, when the notice was delivered. Given the discussion at the CMD, the Tribunal in particular notes here that satisfaction of that ground does not depend on the amount of rent outstanding, but the time period for which any level of arrears has been in existence. In other words the fact that three rent payments had been missed in this case, does not mean that the Respondents had been in arrears for three consecutive months: that state of affairs would only come into existence on 16 January 2024.

8. Insofar as the application proceeds on ground 11, it is also ill-founded. The wording of ground 11 is clear that it does not apply to a breach of the tenancy term requiring payment of rent and that is the only failure alleged in this case.

9. The application therefore falls to be refused.

- Decision

### **Application refused.**

### **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.**

**28 October 2024**

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Date