



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/23/3275

Re: Property at 49 Ballindean Place, Dundee, DD4 8PE (“the Property”)

Parties:

Mrs Anne Jordan, Mr Charles Jordan, 80 Balunie Drive, Dundee, DD4 8PY (“the Applicant”)

Miss Amanda Smeaton, 49 Ballindean Place, Dundee, DD4 8PE (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery and possession should be granted in favour of the Applicant which is not to be enforced before 15th July 2025.

Background

1. An application was received by the Housing and Property Chamber dated 18th September 2023. The application was submitted under Rule 109 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on grounds 11 and 12A of the Private Housing (Tenancies) (Scotland) Act 2016.
2. On 11th January 2024, all parties were written to with the date for the Case Management Discussion (“CMD”) of 28th February 2024 at 2pm by teleconferencing. The letter also requested all written representations be submitted by 1st February 2024.

3. On 28th February 2024 at 2pm a CMD was held by teleconferencing. The outcome of the CMD was that the application was to proceed to a hearing. This was to be an in person hearing. An inspection of the Property was to proceed the hearing to allow the Tribunal to ascertain the condition of the Property in terms of ground 11 issues raised in the application. An inspection and hearing date was set for 15th August 2024.
4. On 12th August 2024, the Respondent's solicitor emailed the Housing and Property Chamber to request a postponement of the hearing as she would not be able to attend the inspection or the hearing.
5. The postponement was granted. A new date was set for 15th January 2025 for both the inspection and the hearing. All parties were written to on 29th November 2024 to inform of the date and the time of the inspection and the hearing.
6. The Applicant and the Respondent's solicitors lodged further submissions.

The inspection

7. On 15th January 2025 at 10am the Tribunal attended the Property to undertake an inspection in terms of ground 11. The Tribunal took photographs during the inspection. The photographs are not included within this decision as an order has been granted by consent in terms of ground 12A.

The hearing

8. A hearing was held on 15th January 2025 at 11.45am at Endeavour House, 1 Greenmarket, Dundee. The Applicants were both present and represented by Ms Alison Fitzgerald, Partner, Lindsays solicitors. The Respondent was present and was represented by Mr Kenneth Marshall, Principal Solicitor, Dundee Law Centre.
9. Ms Fitzgerald submitted that an order for eviction was still being sought. In terms of ground 11 the majority of issues had been attended to but not all had been. She stated that it was likely that the Respondent would return the Property to the previous condition in the future. In terms of ground 12A, the rent has been paid in full by Universal Credit with an amount of £39.35 being paid month in a direct payment to the arrears. Ms Fitzgerald maintained that it was still reasonable to grant an order as the arrears are over £4700. Prior to May 2024 the rent was being paid at £500. There were 9 months where there were no payments made.
10. Mr Marshall said that the Respondent wished to continue to live in the Property and opposed an order for eviction being granted. He explained that in April 2024 there was a significant rise in Local Housing Allowance which went from £500 to £779 per month. This is why the full rent is now able to be addressed. The Respondent said that she could pay the full amount of the arrears if the repairs in the Property was undertaken as she had support from her family. She considered that she had withheld the rent but had not put it in a separate bank account or given the Applicants the notice of doing this.

11. The Tribunal asked if parties had the opportunity to discuss any possible negotiations. Ms Fitzgerald and Mr Marshall advised that this had not been possible to undertake any negotiations to date. The Tribunal adjourned to allow parties to negotiate should there be points of agreement.
12. On returning from the adjournment Ms Fitzgerald and Mr Marshall told the Tribunal that there had an agreement between parties. The parties both sought, by consent, that an order be granted for eviction which was not to be enforced for 6 months. The Tribunal accepted this and was content to supersede the date of enforcement of the order to 15th July 2025.

Findings and reason for decision

13. A Private Rented Tenancy Agreement commenced 17th December 2017.
14. The Respondent persistently failed to pay her rent charge of £550 per month for 9 months.
15. Parties negotiated during and adjournment in the hearing and agreed to an order being granted which would not be enforced before 15th July 2025.
16. The arrears sought totalled £4703.98 as at 24th December 2024. This is more than 6 months rental charge.
17. There are no issues of reasonableness that prevent an order from being granted.

Decision

18. The Tribunal found that ground 12A has been established and granted an order in favour of the Applicant.

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.

G. Miller

15 January 2025

Legal Member/Chair

Date