



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/24/1892

Re: Property at 6 Chalk Hill Court, Dundee, DD4 0LU (“the Property”)

Parties:

Andrea Smith, 12 Rugby Terrace, Broughty Ferry, DD5 2EQ (“the Applicant”)

Daniel Garland, whose current address is unknown (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. This is an application by the Applicant for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”). The PRT in question was by the Applicant to the Respondent dated 4 and 7 May 2019 and commencing on 1 June 2019.
2. The application was lodged with the Tribunal on 25 April 2024. The application relied upon a Notice to Leave dated 9 February 2024 in terms of section 50 of the *Private Housing (Tenancies) (Scotland) Act 2016*, intimated upon the Respondent by email (in terms of the Tenancy Agreement) on that date. The Notice relied upon Grounds 10, 11 and 12 of Schedule 3 Part 1 of the 2016 Act, being (respectively) abandonment, breach of the Tenancy Agreement, and that the Respondent has been in rent arrears for three or more consecutive months. The Notice to Leave said no application would be raised before 13 March 2024.

3. In regard to these three grounds the Notice to Leave was accompanied by a four-page paper apart and a one-page document, said to be a summary of the Tenancy Agreement. Combined, the Notice and these documents were materially the basis for the eviction application and any additional papers within the applications sought to support what was in them:
 - a. In regard to Ground 10, it was stated that the Respondent left the Property on 9 December 2023 following a leak from the flat above. He obtained hotel accommodation (paid for by insurance cover). Despite communication on behalf of the Applicant on 18 December 2024 (and over the following weeks) that the Property was ready for him to move back, the Respondent never returned to the Property and thus abandoned it.
 - b. In regard to Ground 11, reliance was made on clauses 16 and 30 of the Tenancy Agreement in regard to the Property being found to be in poor condition (when the work was being undertaken to repair the leak), with bags of rubbish lying around, filled bins in the garden, and mould on a number of walls. There was also evidence of heavy smoking having occurred within the Property, in breach of clause 33.
 - c. In regard to Ground 12, the supporting document to the Notice set out that no payments of rent had been received for the rent due on 1 December 2023, 1 January 2024 and 1 February 2024. The rent was said to be £400/m for December 2023 and January 2024 and £414 for February 2024 (further to notices to increase the rent that were not included in the application papers).
4. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon Dundee City Council on 24 April 2024 was provided with the application. There was no evidence in the application papers of formal compliance with provision of the pre-action protocol information but the Applicant provided written submissions on engagement with the Respondent regarding arrears.

The Hearing

5. The matter called for a CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 5 February 2025 at 10:00. We were addressed by the Applicant's representative Michael Wells (though the Applicant was also in attendance). There was no appearance from the Respondent.
6. We were informed by the clerk that no contact had been received from the Respondent (or on his behalf) with the Tribunal. We noted that, after an unsuccessful attempt at tracing the Respondent, the Applicant had sought service by advertisement and evidence of compliance with that advertisement procedure was provided by the clerk. The Applicant's agent said that no communication had been received from the Respondent since 18 December 2023 when he had sent a text stating that he had left his hotel and sought further information. Despite attempts to call, text, WhatsApp message, and email him over the weeks that followed, the Applicant had received no further contact from the Respondent. Initially WhatsApp messages showed evidence of having been read but that then ceased. The Notice to Leave on 9 February 2024 had been

emailed, hand-delivered to the Property, and communicated by WhatsApp and text. The Notice to Leave was the last email sent. The last text sent was on 18 March 2024 (seeking engagement on voluntary surrender of the Property) but it bounced back as if the Respondent had now blocked the Applicant.

7. We considered that the Respondent had received appropriate service by advertisement and the lack of engagement with the application was consistent with the lack of engagement prior to the application having been raised. Having not commenced the CMD until around 10:10, we were satisfied to consider the application in the Respondent's absence. In any case, no attempt was made by the Respondent (nor anyone on his behalf) to dial in late to the CMD.
8. The Applicant's agent confirmed that the application for eviction was still insisted upon and on the grounds set out in the papers attached to the Notice to Leave. In regard to the three grounds:
 - a. Grounds 10 and 11: The factual information provided for these two grounds were interlinked:
 - i. The Respondent had appeared to keep the Property in reasonable condition through to 2022 but the condition was found to be materially poorer when the Applicant visited in relation to the work being carried out after the water ingress of 9 December 2023. In the Applicant's representative's words, the Property had been "abused". There were bags of rubbish lying around and general disorder, with partly eaten food lying in the kitchen, and mould on a number of walls. Bins outside were full but not taken out, and the garden was in poor condition. Further there was evidence of smoking (visible evidence and a strong smell of stale tobacco) despite smoking not being permitted under the Tenancy Agreement.
 - ii. After the work was completed, there was no evidence of the Respondent returning to the Property, and not attempt by the Respondent to address the poor condition.
 - iii. On the expiry of the Notice to Leave on 13 March 2024 the Applicant and her representative visited, and the exterior of the Property looked unchanged. All the blinds were drawn (as they had been before). The Applicant and representative knocked loudly and, when there was no answer, took entry. They found the Property in the same condition as it had been during the time of the work to fix the water ingress, with the same issues of mould, smell of tobacco, and rubbish lying around.
 - iv. A neighbour reported that they had not seen the Respondent since mid-December 2023.
 - v. On the inspection of 13 March 2024, the Property appeared to contain a few personal items (some clothing in a cupboard, two crash helmets, and an inexpensive guitar) but nothing of obvious value and nothing changed since the last visit.
 - vi. The Applicant and her representative have not entered the Property since, but have revisited to view the exterior (which is in the same condition but yet further overgrown).
 - vii. In all the circumstances, the Property appeared abandoned by the Respondent since mid-December 2024. The Applicant was concerned enough to report the Respondent to the Police as a missing

- person on 18 April 2024. (The Police took the report but said that the Applicant would be unlikely to receive any follow up information as they were not a relative.)
- b. Ground 12: No payment had been received since a payment on 6 December 2023 which was a late payment in respect of the rent due on 1 November 2023:
 - i. The Respondent had sent a text on 2 December 2023 citing financial problems, and promising to make that payment as well as a further payment two weeks later to clear the December rent. The Applicant had accepted this proposal on 4 December 2023, but the Respondent only then made the first of the two promised payments and then paid nothing else.
 - ii. The Respondent was not believed to have sought benefits and, though having been made redundant during the pandemic, had obtained other employment.
 - iii. The Applicant's representative set out a history of discussing financial issue with the Respondent and working with him when he had financial difficulties (such as lowering the rent during the pandemic).
9. The Applicant provided further submissions on the background in regard to the reasonableness of the application:
- a. The Property was a flat.
 - b. The Respondent had been believed to live alone at the Property but, during the middle part of the Tenancy, a female companion lived with him for a time.
 - c. The Applicant has not received rent for the Property since December 2023. No information was provided to us, nor was obvious to us from the application papers, to suggest that the Property was especially suitable for the Respondent, due to its location or nature, nor that it was specially adapted for his needs.
10. No motion was made for expenses.

Findings in Fact

11. On or about 4 and 7 May 2019 the Applicant let the Property as a Private Residential Tenancy to the Respondent under a lease with a commencement date of 1 June 2019 ("the Tenancy").
12. Further to valid increases of rent, as of 1 December 2023, the Respondent required to pay rent of £400 a month in advance on the 1st day of each month, rising to £412 a month from 1 February 2024.
13. The Respondent failed to make payment of rent due on 1 December 2023, 1 January 2024 and 1 February 2024.
14. In terms of clause 16 of the Tenancy Agreement, the Respondent was obliged to take reasonable care of the Property including keeping it "adequately ventilated and heated".

15. The Respondent was in breach of clause 16 by allowing mould to grow and remain on several walls of the Property.
16. In terms of clause 30 of the Tenancy Agreement, the Respondent was obliged to dispose of or recycle all rubbish in an appropriate manner and at the appropriate time.
17. The Respondent was in breach of clause 30 by having bags of rubbish, and unbagged waste, within the Property and failing to ensure full bins at the exterior of the Property were emptied.
18. In terms of clause 33 of the Tenancy Agreement, the Respondent agreed not to smoke or allow others to smoke in the Property. The Respondent was in breach of this clause due to smoking having occurred in the Property, to the extent of there being a pronounced smell of tobacco in the Property as at mid-December 2023.
19. On 9 February 2024, the Applicant drafted a Notice to Leave in correct form addressed to the Respondent, providing the Respondent with notice, amongst other matters, that eviction was sought due to abandonment, due to breach of clauses 16, 30 and 33, and because he was in rent arrears for a period of three months' rent.
20. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior to 13 March 2024.
21. The Applicant served a copy of the Notice to Leave on the Respondent by email on 9 February 2024.
22. Clause 3 of the Tenancy Agreement permits service of notices by email to the Respondent at the email address provided by him.
23. The Applicant raised proceedings on 25 April 2024 for an order for eviction with the Tribunal, under Rule 109, relying on Grounds 10, 11 and 12 of Schedule 3 Part 1 of the 2016 Act.
24. Arrears as at the date of lodging the application were £2,036. No payment has been made in respect of these arrears nor any rent due since.
25. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon Dundee City Council by the Applicant on 24 April 2024.
26. The Respondent does not claim to have paid any amount of the arrears remaining as at 5 February 2025.
27. The sum of arrears remaining is neither wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, other than any referable to an act or omission of the Respondent.

28. The Respondent is not known to have visited or occupied the Property since, at the latest, 18 December 2024.

Reasons for Decision

29. The application was in terms of rule 109, being an order for eviction from a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been correctly drafted and served upon the Respondent.
30. We were satisfied on the submissions provided that all grounds were well made out. Though it was conceivable that the arrears were somehow a result of the water ingress (that is, the Respondent had taken steps to withhold rent due to the water ingress), that was not argued. As for the condition of the Property, the Applicant was firm that the condition of the Property was not as a result of the water ingress (or the Respondent requiring to leave with haste). In regard to the abandonment, if the Respondent disputed that the Property was in a condition suitable for his return, he did not argue that. In all the circumstances, the Applicant's position on each ground was clearly made out with no contrary position made in response or clear from the application papers. The Respondent has failed to communicate his intentions or views on the grounds for eviction in any way.
31. We require, in terms of the Act as currently amended, to consider the reasonableness of the application even in regard to well-made out grounds. We were satisfied that the Applicant's reasons for seeking eviction were reasonable given the amount and duration of the arrears and abandonment, and the lack of any apparent attempt by the Respondent to attend to the wants of cleaning and repair at the Property or communicate his intentions on the Tenancy. The Respondent did not provide submissions in regard to any issue regarding reasonableness and we are satisfied that it is reasonable to evict on the basis of the information before us even in the absence of proper compliance with the pre-action protocol. We did accept the Applicant's submissions that there had been attempts at engagement on arrears with the Respondent but the Respondent had failed to engage. Though no potential sources of advice were communicated by the Applicant to the Respondent, the Respondent did not appear to engage with matters in any case. We thus found it reasonable to grant eviction under Ground 12 notwithstanding the lack of proper compliance with the protocol.
32. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time under Grounds 10, 11 and 12.

Decision

33. In all the circumstances, we grant an order against the Respondent for eviction from the Property under section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* further to grounds 10, 11 and 12 of Schedule 3 of that Act.

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 Conn

5 February 2025

Legal Member/Chair

Date