



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”)

Chamber Ref: FTS/HPC/EV/24/1905

Re: 78 Ness Circle, Ellon, AB41 9BR (“the Property”)

Parties:

Mr Barry Cumming, Back Hill of Airdlin Croft, Ythan Bank, Ellon, AB41 7TR (“the Applicant”)

Miss Isla-Marie Wright, 78 Ness Circle, Ellon, AB41 9BR (“the Respondent”)

Tribunal Members:

Pamela Woodman (Legal Member) and Gordon Laurie (Ordinary Member)

Present:

The case management discussion took place at 10am on Thursday 13 February 2025 by teleconference call (“**the CMD**”). The Applicant was present and was represented by Ms Juliet Livingstone of Northwood (Aberdeen) Ltd. Mrs Pippa Cumming was also present. The Respondent was present and was supported/accompanied by Ms Sue Wilson (who was described as being the Respondent’s social worker) and Mrs Mandy Edwards (who was described as being the Respondent’s support worker). The clerk to the Tribunal was Leah Graham. This case was conjoined with the case with reference FTS/HPC/CV/24/1904.

DECISION

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted under ground 12 of schedule 3 to the 2016 Act against the Respondent.

BACKGROUND

1. An application had been made to the Tribunal under section 51(1) of the 2016 Act and in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure)

Regulations 2017, as amended. More specifically, the application was made in terms of rule 109 (*Application for an eviction order in relation to a private residential tenancy*) of the HPC Rules.

2. The order sought from the Tribunal was an eviction order against the Respondent in respect of the Property on the basis of ground 12 (rent arrears over three months).
3. Ground 12 of schedule 3 to the 2016 Act provides that:
 - “(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.”
 - “(3) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—
 - (a) for three or more consecutive months the tenant has been in arrears of rent, and
 - (b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.”
4. The application form was dated 26 April 2024 and copies of various documents were provided, including:
 - a. the private residential tenancy agreement between the Applicant and the Respondent dated 7 February 2024 (“**Tenancy Agreement**”).
 - b. rental statement dated 26 April 2024, which stated that there were arrears of rent of £3,928.13 as at 7 April 2024 (“**Application Rent Statement**”).
 - c. a notice to leave dated 25 March 2024 addressed to the Respondent at the Property (“**Notice to Leave**”), which stated that an application would not be submitted to the Tribunal for an eviction order before 26 April 2024 and that the eviction ground was “You are in rent arrears over three consecutive months” (ground 12).
 - d. covering e-mail to the Respondent (using both of the e-mail addresses for notices to the Respondent set out in the Tenancy Agreement) dated 25 March 2024 attaching the Notice to Leave and the rental statement dated 25 March 2024, which stated that there were arrears of rent of £3,218.13 (“**NTL Rent Statement**”).
 - e. a notice under section 11(3) of the Homelessness etc. (Scotland) Act 2003, together with the covering e-mail sending it to the local authority on 26 April 2024.
5. Submissions from the Applicant and his wife, as well as from the Applicant’s representatives, were received, along with copies of numerous e-mails among the Applicant’s representatives, Mrs Edwards, Ms Wilson and an Aberdeenshire Council housing officer.

6. A notice of acceptance of the application was issued dated 22 August 2024 under rule 9 of the HPC Rules, confirming that the application paperwork had been received between 26 April and 24 July 2024.
7. The Respondent was sent notice of the CMD by letter dated 31 December 2024, which was confirmed (in the certificate of intimation from Walker Love, sheriff officers) as having been served on the Respondent by posting through the letterbox of the Property on 3 January 2025.
8. The Respondent had not provided written representations in advance of the CMD.
9. The Applicant's representatives had sought to lodge an updated rent account covering the period from 7 March 2020 to 7 January 2025, which showed rent arrears of £4,388.13 as at 7 February 2025 ("**Updated Rent Statement**"). This was sent to the Tribunal's administration team on 4 February 2024, seeking to amend the amount claimed.
10. This decision arises out of the CMD.

PROCEEDINGS, NAMELY THE CMD

11. The Tribunal did not permit the lodging of the Updated Rent Statement on the basis that any request to amend the sum claimed (in terms of rule 14A of the HPC Rules) would have required to be submitted more than 14 days prior to the CMD (and it was not).
12. The Respondent confirmed that she opposed the application for an eviction order, primarily on the basis that she stated that certain things required to be done in the Property because there had been issues with the Property, including with the toilet in the Property (that she stated that she had reported on around 8 occasions to the Applicant's representatives) and a mouse infestation in the Property (which she had reported just before Christmas 2024), and that the Applicant's representatives kept hanging up the phone on her (allegedly for her being abusive and threatening on the phone, but she was not).
13. The Respondent confirmed that she believed that the money received in her bank account from the Department for Work and Pensions ("**DWP**") was hers net of housing benefits and that she thought the benefits in relation to the Property were always being sent directly to the Applicant (but now understood that they had not been so sent at certain times).
14. The Respondent accepted that there were rent arrears and that there were more than £2,130 of rent arrears (i.e. more than three months' rent). Otherwise, she noted that she had not checked the Application Rent Statement and so did not know if it was accurate.
15. Ms Livingstone was asked to explain the gap between the date of entry set out in the Tenancy Agreement (namely 7 June 2019) and the date of signing of the Tenancy Agreement (namely 7 February 2024) and the discrepancy between the rent narrated in the Application Rent Statement and NTL Rent Statement before 7

October 2022 as being £695 and the rent narrated in the Tenancy Agreement as being £710.

16. Ms Livingstone explained that the Respondent had originally been a joint tenant of the Property (from 2019 with a Mr Sinclair) and that the Tenancy Agreement was entered into (at the Respondent's request, which the Respondent confirmed to be true) in order to remove the joint tenant (who was understood to have ceased to occupy the Property at some time before October 2023) but otherwise to reflect the continuation of a tenancy of the Property by the Respondent since 2019. The Tenancy Agreement was also updated to reflect the rent then payable as well. Ms Livingstone agreed that joint tenants were jointly and severally liable under the original tenancy but confirmed that the Applicant was not pursuing the former joint tenant for arrears. It was understood that this was because the former joint tenant had continued to pay half of the rent until the removal date in terms of an earlier notice to leave dated 4 October 2023, even though he had ceased to occupy the Property at some time before that.
17. According to the Application Rent Statement, there had been rent arrears of some amount since 7 February 2023 and Ms Livingstone confirmed that the standard procedure for notifying a tenant of arrears had been followed in this case, with the usual arrears letters being sent to the Property and by e-mail. Mrs Edwards confirmed that she had seen letters notifying the Respondent that she was in arrears. It was not explained why these letters had not been submitted to the Tribunal as evidence on behalf of the Applicant.
18. Ms Livingstone also explained that, by the end of 2023, significant efforts were made by and on behalf of the Applicant to get help from the DWP around the lack of benefit payments being made directly to the Applicant in respect of the Respondent's rent and arrears.
19. There were allegations that the Respondent had made changes to the details held with DWP so that payments were made to her, rather than to the Applicant. When this was put to the Respondent, she stated that she was unable to remember because of her mental health. She stated that she had believed that the rent was being paid directly by DWP. Mrs Edwards confirmed that she had supported the Respondent in attending the DWP office in Aberdeen and it transpired that the Respondent had made a joint claim which resulted in the original claim being stopped. This was some time in summer 2024. Ms Wilsom confirmed that, when they became aware of the issue around the payment of the benefit to the Respondent, rather than to the Applicant, they did what they could to try to put it right.
20. Ms Livingstone confirmed that, since April 2024, £650 per month has been being paid directly via the DWP in respect of the Applicant's rent, but that they had requested the arrears, but struggled to get any answers, from the DWP regarding any payment in respect of the arrears.
21. In addition to the payments from the DWP, it was noted that the Respondent had agreed to pay £20 per month to the Applicant's representatives on behalf of the

Respondent to show willing to try to reduce the arrears. She confirmed that she could not afford to pay any more than that. Mrs Edwards confirmed that this had been set up as a standing order but it was noted that the £20 payments were no longer being paid. The Respondent indicated that she was not aware that those payments had stopped, nor why.

22. The Respondent accepted that, even if the £20 per month from the Respondent was paid to the Applicant as rent along with the £650 from the DWP, that was still insufficient to meet the monthly rent of £710 per month.
23. The Respondent was questioned about the allegations made in the papers regarding her conduct, which she denied and confirmed that the reason why she was on remand was not linked to the Property and/or her behaviour at it.
24. Ms Livingstone and the Respondent agreed that there had been 5 or 6 reports from the Respondent to Ms Livingstone in relation to an issue with the toilet and that Drain Surgeon had been sent out to the Property on multiple occasions, such reports being actioned each time they were made with escalating levels of investigations, until the toilet was taken off and diagnostic work was undertaken, which identified a toothpaste tube stuck down the toilet. The Respondent indicated that there was still an issue with the toilet and that it was backing up, which she stated that she had reported to Ms Livingstone before Christmas 2024. Ms Livingstone stated that she did not recall any such report and that, as she had done on receipt of all previous reports, she would have reported this to the Applicant and had Drain Surgeon sent out again. On this basis, she did not consider that such a report had been made.
25. Ms Livingstone noted that Respondent had reported an issue with mice in the Property before Christmas 2024. She stated that she had informed the Respondent that this was a matter for the Respondent to deal with under the Tenancy Agreement and that this provision was typically included because infestations were often caused as a result of lifestyle etc, for example leaving food out. Clause 40 of the Tenancy Agreement was identified as the relevant provision.
26. It was agreed that Ms Livingstone had requested photographs of the mice allegedly at the Property but the Respondent noted that she did not have a phone with a camera. It was suggested that the Respondent might ask her social/support workers for assistance in taking photos. Upon being asked, Mrs Edwards and Ms Wilson both confirmed that they had not seen any evidence of mice in the Property and had not been asked to help to take photographs of any mice. The Respondent clarified that Mrs Edwards and Ms Wilson would only go into the living room or kitchen in the Property but not other rooms or the attic, where she had placed mouse traps.
27. Upon being asked about the terms of clause 40 of the Tenancy Agreement (which was read out during the CMD), the Respondent indicated that she agreed that it said that any infestation was her responsibility.

28. The Respondent confirmed that she had had a severe psychotic breakdown at the end of 2024 following the murder of her sister, at which time the police were called to the Property on a number of occasions. She confirmed that she was now getting help and that she received injections for her mental health which kept her stable. She explained that she had in the past thought that she could come off the medication but now realised, with the help of Mrs Edwards, that it was better that she continued to receive the medication. The Respondent confirmed that, when she came off the medication, she would have auditory and visual hallucinations, and that she had called the police in those situations.
29. The Respondent noted that she had support in Ellon, including from close friends of 9-10 years who are church members and from Mrs Edwards and Ms Wilson. Mrs Edwards confirmed that, if the Respondent were to be moved outwith the region, she would receive the same local authority professional support, albeit from different people. Mrs Edwards noted that it had taken a number of years to build the relationship and trust with the Respondent. She had been involved for more than 5 but fewer than 10 years. Ms Wilson noted that, if the Respondent were to be evicted, she would probably be offered temporary accommodation but did not know if she'd be offered permanent accommodation.
30. The Respondent confirmed that she had no one living with her at the Property. She also confirmed that she had four children, none of whom were currently living with her.
31. The Respondent confirmed that she was keen to return to the Property as that was her home. This was notwithstanding that there was no gas supply to the Property.
32. On being asked what would happen when the two-week period of remand ended on 21 February 2025, Mrs Edwards noted that social work reports had been requested and so whether or not the Respondent was bailed at that time would be dependent on those.
33. Ms Wilson confirmed that the housing application had been made only to seek to protect the Respondent when the Notice to Leave was served and it was not that the Respondent was actively seeking to leave the Property.
34. A housing officer in an e-mail to the Applicant's representatives, Ms Wilson and Mrs Edwards on 22 February 2024 confirmed that "Once the First Tier Tribunal has given an eviction date and we have sight of the document, Aberdeenshire Council will be able to take a homeless application and place Isla-Marie in temporary accommodation. We have evidence of Isla-Marie's arrears standing order for £20 on the 3rd of every month started in January, this would mean that she would be eligible for an offer of housing after 3rd March."
35. Ms Livingstone noted that the Property was uninhabitable because there was no gas supply and Scottish Gas Networks ("**SGN**") would not provide one for so long as the Respondent was in the Property as a result of the Respondent's alleged threats to blow up the Property. She noted that this was not a matter within the Applicant's control and was a decision made by SGN.

36. The Applicant stated that he had done what he could with regard to repairs but that the behaviour of the Respondent and inability to take access to the Property were causing him problems in trying to ensure that his obligations as a landlord were able to be met. He noted that the issues with the Respondent and the Property had been negatively affecting his own mental health.
37. The Applicant confirmed that he had a mortgage on the Property which was, at one time, a property in which he had lived and he was now self-funding the mortgage payments while the rent was not being paid. He confirmed that he had one other rental property with a friend.
38. The Applicant explained that there had been direct complaints from neighbours (and it was noted that there was a letter from Stonehouse letting agents dated 18 September 2023 in the case papers with a number of complaints about the alleged behaviour of the Respondent). He also explained that he was not only concerned for the state of the Property but also the safety of the Respondent and of the neighbours.

FINDINGS IN FACT

39. The Tenancy Agreement stated that:
- a. the start date was 7 June 2019;
 - b. rent was payable at a rate of £710 per month, on or before the 7th of the month;
 - c. a rent deposit of £1,000 was to be paid;
 - d. notices to be served under the Tenancy Agreement may be served using the email addresses set out in the Tenancy Agreement.
40. Whilst it might have been preferable for the Tenancy Agreement to reflect a date of entry which more closely took into account when the Respondent became a sole tenant, that had not happened and the Tribunal noted the explanation given with regard to the Respondent's occupation having continued since 2019. The Tribunal noted the Respondent's confirmation that she had requested that the new Tenancy Agreement be entered into.
41. The Tribunal was satisfied, on the balance of probabilities:
- a. the Notice to Leave was valid and had been validly served;
 - b. the section 11 notice was valid and had been validly served;
 - c. the Applicant had taken steps to notify the Respondent of the arrears since (at least) October 2023 and the Respondent had sought guidance from Mrs

Edwards on receipt of those letters, and so it could not be said that the Respondent was unaware of there being rent arrears of some amount.

42. The Tribunal noted that the Applicant was the registered landlord of the Property.
43. The Tribunal also noted that the Applicant was the registered proprietor of the Property (title number ABZ28298).
44. The Tribunal was satisfied, on the balance of probabilities, that the Respondent had been in rent arrears for three or more consecutive months as at the date of service of the Notice to Leave; there having been arrears of some amount since 7 February 2023 and the arrears as at 6 April 2024 were £3,928.13. In addition (and whilst not necessary to meet the ground), the Tribunal was satisfied, on the balance of probabilities, that there continued to be rent arrears of over three months' rent (namely of over £2,130) as at the date of the CMD.
45. Whilst not directly relevant to the question as to whether or not there were rent arrears, the Tribunal was satisfied, on the balance of probabilities, that:
 - a. had a further issue been reported with the toilet just before Christmas 2024, Ms Livingstone would have recalled this and dealt with it – this was based on it having been agreed that, on the 5 or 6 prior occasions of reports being made (albeit apparently all stemming from an issue with a toothpaste tube having been dropped down the toilet), steps had been taken to investigate and seek to resolve an issue with the toilet;
 - b. clause 40 of the Tenancy Agreement is in the following terms: “The Tenant is responsible for the eradication of vermin and other pests if the infestation occurs after one week of the Date of Entry.” Accordingly, the Tribunal was satisfied, on the balance of probabilities, that (if there was any infestation of mice) it was the Tenant’s responsibility to deal with and eradicate any such infestation; and
 - c. there was no gas supply to the Property and it was unlikely that SGN would restore any supply to the Property while the Respondent was the tenant and/or in occupation.
46. There would be alternative accommodation for the Respondent, probably temporary accommodation at least initially, should an eviction order be granted.

REASONS FOR DECISION

47. The Tribunal was satisfied, on the balance of probabilities, that:

- a. The requisite notices were valid and had been validly served (and received by the Respondent);
- b. The Respondent had been in arrears of rent (of some amount) for over thirteen months when the Notice to Leave was issued, the amount of arrears at that time being £3,218.13.
- c. It was reasonable to grant an eviction order in the circumstances of this case. This was on the basis that:
 - i. there had been arrears of rent (of some amount) since February 2023, so for over two years;
 - ii. whilst copies of pre-action protocol letters had not been provided to the Tribunal, both parties confirmed that there had been communications about the arrears of rent;
 - iii. the amount of the monthly payment coming from the DWP towards the rent of the Respondent was less than the amount of the rent due and payable each month (by £60 per month) and so arrears continued to increase, with the Respondent confirming that she could not afford to pay more than £20 towards the arrears and so was unlikely to be able to pay another £60 in addition to cover the balance of the future rent payments;
 - iv. whilst the Respondent considered the Property to be her home and wished to remain there, it did not (and would not while the Respondent was the tenant) have a gas supply, which had an impact on habitability and also potentially cause some deterioration in the standard of repair of the Property (e.g. through lack of heating, damp, etc);
 - v. there were no dependents living with the Respondent;
 - vi. the local authority had indicated that temporary accommodation would be available to the Respondent;
 - vii. whilst the Respondent had some friends and support in the area where the Property was situated and there was no guarantee that any alternative accommodation would be in the same area, that was not sufficient reason to ignore the more compelling reasons related to the arrears of rent and likelihood that they would increase (based on the information before the Tribunal at the CMD); and
 - viii. the police had been called to the Property on a number of occasions in relation to the behaviour of the Respondent and/or others at and/or accessing the Property (including, upon the admission of the

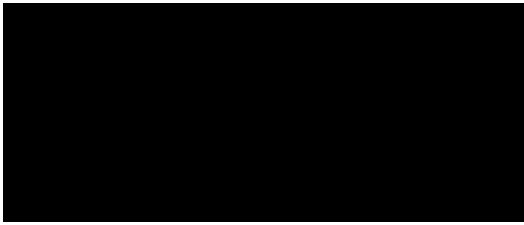
Respondent, at her request) and there were other reports of alleged behaviour by the Respondent and damage to the Property.

DECISION

48. The Tribunal granted the application under section 51(1) of the 2016 Act for an eviction order on the basis of ground 12 (rent arrears).

Right of Appeal

In terms of Section 46 of the Tribunals (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 February 2025

Date