

Housing and Property Chamber
First-tier Tribunal for Scotland



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 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/24/2817

Re: Property at 8 Merryton Crescent, Nairn, IV125AQ (“the Property”)

Parties:

Mrs Wendy Simmonds, 25 Victoria Crescent, Brora, KW96QU (“the Applicant”)

Mr Jason Liddle, 8 Merryton Crescent, Nairn, IV125AQ (“the Respondent”)

Tribunal Members:

Sarah O'Neill (Legal Member) and David Fotheringham (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession should be granted in favour of the Applicant against the Respondent.

Background

1. An application was received on 18 June 2024 from the Applicant under Rule 109 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (‘the 2017 rules’) seeking recovery of the property under Ground 12 as set out in Schedule 3 of the 2016 Act.
2. Attached to the application form were:
 - (i) Copy Notice to Leave dated 14 May 2024 citing ground 12, and stating the date before which proceedings could not be raised to be 14 June 2024, together with certificate of service on the Respondent by sheriff officer dated 16 May 2024.
 - (ii) Rent statement showing the Respondent’s outstanding rent arrears to be £3600 as at 1 June 2024.
 - (iii) Copy notice to Highland Council under section 11 of the Homelessness etc. (Scotland) Act 2003 with proof of sending by email on 17 June 2024.

- (iv) Copies of pre-action protocol letters sent by the Applicant to the Respondent and served by sheriff officer on 19 March, 5 and 22 April, all 2024.
 - (v) Copy text messages between the parties dated 8 August 2021 and 2 December 2023.
3. In response to a request from the Tribunal administration, further information was received from the Applicant on 22 July 2024.
 4. The application was accepted on 28 August 2024.
 5. Notice of the case management discussion (CMD) scheduled for 11 March 2025, together with the application papers and guidance notes, was served on the Respondent by sheriff officer on behalf of the Tribunal on 5 February 2025. The Respondent was invited to submit written representations by 25 February 2025.
 6. An updated rent statement was received from the Applicant on 3 March 2025. This showed that the outstanding rent arrears owed by the Respondent had increased to £7200 as at 1 March 2025.
 7. No written representations were received from the Respondent prior to the CMD.

The case management discussion

8. A CMD was held by teleconference call on 11 March 2025 to consider the present application and the accompanying civil proceedings application (FTS/HPC/CV/24/2818). The Applicant was present on the teleconference call and represented herself.
9. The Respondent was not present or represented on the teleconference call. The Tribunal delayed the start of the CMD by 10 minutes, in case the Respondent had been detained. He did not join the teleconference call, however, and no telephone calls, messages or emails had been received from him.
10. The Tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date and time of a case management discussion had been duly complied with. It therefore proceeded with the CMD in the absence of the Respondent.

Preliminary issue

11. The Tribunal noted that the Applicant had not produced a written private residential tenancy agreement between the parties, albeit this was not a requirement for a valid application under rule 109. The Applicant said that the Respondent had moved into the property on 8 August 2024 as evidenced by a text message which she had submitted with the application. She said that they had agreed a rent of £450 per month.
12. The Respondent had been a tenant at the property previously, prior to the tenants who had preceded his current tenancy. The parties had made handwritten amendments to a previous tenancy agreement between them, which they had both signed. The Respondent had retained his original copy, but she had not received a signed copy from him. She had known him for a long time and trusted him, as he had previously been a good tenant. At the start of the tenancy, she was preoccupied with caring for her mother who had dementia, which had been very stressful, and had forgotten about getting a copy of the agreement. The Respondent had continued to pay the agreed rent on time until November 2023.
13. The Tribunal was satisfied on the basis of the evidence before it that there was a private residential tenancy in place between the parties which had commenced on or around 8 August 2021.

The Applicant's submissions

14. The Applicant asked the Tribunal to grant an eviction order against the Respondent on ground 12. As at the date of the CMD, the Respondent owed £7600 in rent arrears. The Respondent had paid no rent since 1 December 2023.
15. The Applicant said that there had previously been good communication between herself and the Respondent, up until he had stopped paying the rent from December 2023 onwards. She had made it clear to him that she was willing to talk to him about resolving the situation, and had just asked him to keep her updated on what was happening. She said that she had previously let him off with occasional missed rent payments. From the time she had started contacting him about the missed rent payments in early 2024, he had stopped taking her calls and would not answer the door.
16. The Applicant said that she suffers from anxiety and that she was finding the current situation very stressful. She does not own or rent out any other properties. The property was previously her own home and when she had

remarried and moved further north, she had kept it because it gave her an important connection to her home town, where she had previously lived for her entire life. The income from the property, over which there is no outstanding mortgage, had boosted her employment income. She said that she had not let it out primarily for financial reasons. She pointed out that the rent was low for a two-bedroomed flat, and had remained at the same level since she first rented it out 15 years ago.

17. In terms of the Respondent's circumstances, so far as the Applicant is aware, he lives alone in the property and his children are grown up. He was working when his tenancy began, and she believes that he is still in employment. He has no disabilities or health issues to her knowledge. She believed that he had previously been in receipt of housing benefit, and thought from what he had said that there had been a review of his benefits. She thought that he may have been informed that he no longer qualified for housing benefit, and that it may have been around that time that he stopped paying the rent.

Findings in fact

18. The Tribunal made the following findings in fact:

- The Applicant owns the property and is the registered landlord for the property.
- There is a private residential tenancy in place between the parties, which commenced on or around 8 August 2021.
- The rent payable under the tenancy is £450 per calendar month, payable in advance on the first of each month.
- The Notice to Leave was validly served on the Respondent by sheriff officer on 14 May 2024.
- The Respondent has been in rent arrears continuously since December 2023.
- The Applicant has complied with the pre-action requirements.

Reasons for decision

19. The Tribunal considered that in the circumstances, it was able to make a decision at the CMD without a hearing as: 1) having regard to such facts as were not disputed by the parties, it was able to make sufficient findings to determine the case and 2) to do so would not be contrary to the interests of the parties.

20. The Tribunal considered whether Ground 12 (rent arrears) had been met. Ground 12 states:

Rent arrears

12(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2).....

(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)In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider—

(a) whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit , and

(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations.

20. The Tribunal noted that the Respondent had been continuously in arrears since December 2023. He had therefore been in rent arrears for three or more consecutive months.
21. The Tribunal then considered whether it was reasonable to issue an eviction order in all the circumstances of the case. In doing so, it took into account all of the evidence before it. The Tribunal was satisfied that the Applicant had complied with the pre-action protocol. While the Tribunal noted that the Respondent appeared to have been previously in receipt of housing benefit, it was satisfied on the basis of the evidence before it that the arrears were not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
31. The Tribunal gave particular weight to the substantial rent arrears owed by the Respondent to the Applicant. It noted that the Applicant had made significant efforts to resolve matters with the Respondent, but that he had failed to engage with these and had stopped communicating with her.
32. The Tribunal found the Applicant to be credible and reliable in her evidence. The Tribunal noted that the Respondent's arrears were having an adverse impact on her both financially and in terms of her mental health.

33. The Tribunal had little evidence about the Respondent's circumstances, as he had not submitted any written representations. It appeared, however that he is in work, lives alone in the property and does not have any health issues or disabilities.

33.The Tribunal decided that in light of all the above considerations, it was reasonable in all the circumstances to grant an order for eviction in favour of the Applicant against the Respondent.

Decision

The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the property.

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.

Sarah O'Neill

11 March 2025

Legal Member/Chair

Date