



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for eviction/ possession of a Rented Property in terms of Rule 109 of the Procedure Rules.

Chamber Ref: FTS/HPC/EV/24/3675

Re: 31 Midshore, Pittenweem, KY10 2NN ('the Property')

Parties:

Elizabeth Doig residing at 1 Burnside Cottage, Straad, Rothesay, Isle of Bute, PA20 0QF ('the Applicant')

Tracey Allan, Belvoir, 9 Whytecauseway, Kirkcaldy, KY7 6DQ ('The Applicant's Representative')

Joan Porter residing at 31 Midshore, Pittenweem, KY10 2NN ('the Respondent')

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal')

Tribunal Members: Jacqui Taylor (Legal Member) and Gerard Darroch (Ordinary Member)

1. Background

1.1. The Applicant submitted an application to the Tribunal for eviction/ possession of the Rented Property under section 51(1) of the Private Housing Tenancies (Scotland) Act 2016, in terms of Rule 109 of the Procedure Rules.

1.2 The application was dated 9th August 2024. The application stated that the ground for eviction was Ground 3. The Landlord intends to refurbish the let property.

1.3 Documents lodged with the Tribunal were:-

- Private Residential Tenancy Agreement between the parties dated 16th and 17th April 2024. The commencement date of the tenancy was 12th April 2024. The rent was £413.30 per calendar month.
- Notice to Leave dated 9th May 2024 advising the Tenant that an application will not be submitted to the Tribunal for an eviction before 4th August 2024.

- Email from the Applicant's representative to the Respondent dated 9th May 2024 sending her the Notice to Leave and explaining that the Landlord had decided to fully refurbish the Property and it will not be possible for the Tenant to remain in the Property during the works.
- Section 11 Notice addressed to Fife Council.
- An email from Fife Council to the Applicant's Representatives dated 9th August 2024 acknowledging receipt of the Section 11 notice.
- Rent statement for the period to 29th April 2022 to 2nd August 2024 showing the balance to be nil.
- An email from the Applicant to the Tribunal dated 8th September 2024 advising that the Property has fallen below the required standard for letting. The complete renovation of the kitchen is necessary for health and safety. There has been a complete lack of cooperation from the tenant over this matter, refusal to answer phone calls and emails, refusal to let tradesmen have access to the Property. It will be impossible to make the flat up to the necessary standard with the tenant in residence.

2. By Notice of Acceptance by P Henning McFatridge, Convener of the Tribunal, dated 22nd October 2024 she intimated that she had decided to refer the application (which application paperwork comprises documents received between 9th August 2024 and 9th September 2024) to a Tribunal.

3. Written Representations

The Respondent did not provide any written representations.

4. The First Case Management Discussion

This case called for a conference call Case management Discussion (CMD) at 10.00 on 14th April 2025.

The Applicant's Representative attended the CMD.

The Respondent also attended.

4.1 The parties confirmed the following factual information:

4.1.1 The property is a one bedroom ground floor flat. The Property is accessed directly from the Street.

4.1.2 The accommodation in the Property comprises one bedroom, living room, kitchen diner, wet room and hall. The Property is single glazed and there is no central heating in the Property.

4.1.3 Mrs Porter is 70 years of age and lives in the Property alone.

4.1.4 Mrs Porter first moved into the Property in 2009. She entered into a lease with the former owner.

4.1.5 The Applicant inherited the Property in 2019.

4.1.6 The Private Residential Tenancy was electronically signed by the Respondent on 16th April 2024 and by the Applicant's Representative on 17th April 2024.

4.2 Additional Oral Submissions by Tracey Allan:

4.2.1 The Application to the Tribunal had been submitted by Hazel Boyle who was the former letting agent and who has since left Belvoir.

4.2.2 She was not aware of the reason the new tenancy agreement was entered into in 2024.

4.2.3 As far as she is aware the application still stands. She has not received any different instructions from the Landlord.

4.2.4 No inventory or condition report was attached to the Private Residential Tenancy Agreement.

4.2.5 She has two routine reinspection reports dated 30th January 2024 and 26th September 2024. The report dated 30th January 2024 describes the kitchen cupboards as falling apart. The report dated 26th September 2024 describes the condition of the kitchen as 'generally clean and tidy, no change.'

4.2.5 She confirmed that the EICR report is up to date.

4.2.6 There is no gas in the Property.

4.2.7 She explained that they are still experiencing difficulty in arranging access for tradesmen. She has not made an application to the Tribunal for assistance in gaining access to the Property.

4.2.8 It is her understanding that the Landlord intends to refurbish the whole property. This is referred to in the email dated 9th May 2024 that was attached to the Notice to Leave. She acknowledged that the email from the Landlord to the Tribunal dated 8th September 2024 only refers to renovation of the kitchen.

4.3 Additional Oral Submissions by Joan Porter:

4.3.1 She acknowledged that a lot of work needs to be carried out to the Property. She described the Property as being 'stuck in the 1970's'.

4.3.2 She cannot find anywhere else to rent at a comparable rent. The Property is a ground floor flat. She uses a disability scooter and a ground floor property is essential for her mobility needs.

4.3.3 In connection with the condition of the kitchen she explained that there are two double base units and one single base unit. There are also wall units. The only kitchen unit that needs to be repaired is the double unit that houses the sink. The doors of that unit are 'hanging off' and the wood is rotten so the hinges cannot be screwed in place. The contractor who called at the Property to provide a quotation for the new kitchen stated that the taps were dated from the 1970's and needed to be replaced. However, she confirmed that the taps operated properly they were just old. She has been told that the whole kitchen needs to be replaced but she does not agree. There is nothing wrong with the other units. She is not interested in a new kitchen.

4.3.4 The previous letting agent Hazel Boyle made a big thing that she had not provided access. She is not in the Property all the time during the day and may have missed calls. To solve the communication difficulties, she had installed an answering machine six months ago. She has not received any messages from the Letting agent over the last six months requesting access.

4.3.5 The bathroom in the Property is in a perfect condition. Her Occupational Therapist arranged for a wet room to be installed.

4.3.6 The windows are not double glazed and there is no central heating in the Property but no one has raised these matters with her.

5. Decision

5.1 Ground 3 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 the Tribunal is in the following terms:

'Ground 3: Landlord intends to refurbish

3(1)It is an eviction ground that the landlord intends to carry out significantly disruptive works to, or in relation to, the let property.

(2)The First-tier Tribunal may find that the eviction ground named by sub-paragraph (1) applies if—

(a)the landlord intends to refurbish the let property (or any premises of which the let property forms part),

(b)the landlord is entitled to do so,

(c) it would be impracticable for the tenant to continue to occupy the property given the nature of the refurbishment intended by the landlord and

(d) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.

(3) Evidence tending to show that the landlord has the intention mentioned in subparagraph (2)(a) includes (for example)—

(a) any planning permission which the intended refurbishment would require,

(b) a contract between the landlord and an architect or a builder which concerns the intended refurbishment.'

5.2 The Tribunal dismiss the Application for the following reasons:

5.2.1 Application form and the Notice to Leave do not specify the works the Applicant intends to carry out to the Property or why it would be impracticable for the Tenant to continue to occupy the Property given the nature of the refurbishment intended by the Landlord.

5.2.2 The email from the Applicant's Representative to the Respondent dated 9th May 2024, which accompanied the Notice to Leave, states that the Landlord intends to fully refurbish the property and she does not feel the scope of works needed will be possible whilst she is in residence. No specification, explanation or detail was provided to the Tenant.

5.2.3 The Applicant's representative was sent an email from the Tribunal administration dated 5th September 2024 asking that she provide the Tribunal with evidence to support the ground for eviction and the Landlord's intention to carry out significantly disruptive works to the Property.

In response the Applicant sent the Tribunal an email dated 8th September 2024 advising that the Property has fallen below the standard for letting and in particular the complete renovation of the kitchen is necessary for health and safety. This statement does not correspond with the oral submissions made by the Tenant or the Applicant's Representative's description of the Reinspection reports dated 30th January 2024 and 26th September 2024.

The Tribunal accepted the oral submissions by the Respondent that the repairs required to the kitchen are the repairs to the double sink base unit. This is also confirmed by the terms of the reinspection report referred to by the Applicant's Representative dated 30th January 2024 which states that kitchen cupboards falling apart. The Tribunal do not accept the terms of the email from the Applicant to the

Tribunal dated 8th September 2024 that complete renovation of the kitchen is necessary for health and safety reasons given the said oral submissions by the Respondent and the terms of the reinspection report referred to by the Applicant's Representative dated 30th January 2024.

5.2.4 The Landlord states in her email dated 8th September 2024 that there has been a complete lack of cooperation from the tenant in relation to providing access to tradesmen. No evidence has been provided that access has been requested and refused. Mrs Porter conceded that there had been communication difficulties and to assist she had installed an answering machine. No messages had been left on the answering machine by the Applicant's Representative requesting access. No correspondence from the Applicant's Representative to the Tenant requesting access has been produced. The Applicant's Representative has not made a separate application to the Tribunal requesting assistance in gaining access to the Property.

5.2.5 The Applicant has not provided any evidence that the kitchen repairs cannot be carried out whilst the Tenant remains in occupation of the Property. The Tribunal find that on the balance of probabilities the kitchen renovations whether they amount to replacement of the whole kitchen or replacement of the sink double base unit could be carried out without the Tenant vacating the Property as the Property is a one bedroom flat and the kitchen will be small.

5.2.6 The Applicant has not explained why it would be reasonable for the eviction to be granted given the fact that the Tenant has resided in the Property since 2009, there are no rent arrears and the Tenant requires a ground floor property for her disability scooter.

In the circumstances the Tribunal do not consider that a hearing is necessary. The factual condition of the Property is not in dispute. Due to these reasons the Tribunal dismiss the Application. The Tribunal advised the parties of this decision at the Case Management Discussion.

6. 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.

Legal Member: J Taylor

Date: 14th April 2025