

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**Decision 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/24/5700**

**Re: Property at 139B Union Street, City Centre, Aberdeen, AB11 6BH (“the Property”)**

**Parties:**

**Claymore Homes Limited, Aden Business Park, Newlands Road, Mintlaw, Aberdeenshire, AB42 5BP (“the Applicant”)**

**Mrs Linda Leung, Mr David Grierson, Mr Kenny Leung, 139B Union Street, City Centre, Aberdeen, AB11 6BH (“the Respondent”)**

**Tribunal Members:**

**John McHugh (Legal Member) and Ann Moore (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for possession of the Property should be made in favour of the Applicant.**

**Background**

The Applicant is the Landlord and the Respondents are the Tenants in terms of a tenancy agreement in respect of the Property dated 9 and 10 February and 3 March 2023.

The Applicant presented an application to the Tribunal on 12 December 2024 for possession of the Property on the ground that the Respondents are in rent arrears for a period of more than three consecutive months.

## **Case Management Discussion**

A Case Management Discussion ("CMD") took place by telephone conference on 21 March 2025. The Applicant was represented by its letting agents' Raphael Bar and Leanne Young.

Linda and Kenny Leung were in attendance by telephone from Italy. David Grierson was not in attendance. Mr Grierson had previously contacted the Tribunal by email to advise that he is in the USA attending to his brother who has been hospitalised. Mrs Leung advised that she would make representations on his behalf.

The CMD dealt both with the present application and with two related applications one relating to eviction of the Respondents on different grounds and one relating to the payment of rent.

## **Findings in Fact**

The Applicant is the Landlord and the Respondents the Tenant in terms of a tenancy agreement in respect of the Property dated 9 and 10 February and 3 March 2023.

The tenancy agreement provides (at Clause 1.2) that the Respondents are jointly and severally liable for the obligations arising under it.

The rent payable is £1050 per month.

The first two Respondents are married to one another. The third Respondent is the first Respondent's second cousin.

On 2 November 2023, the Tribunal (in Application HPC/RP/23/1995) made a finding that the Property failed to meet the repairing standard and issued a Repairing Standard Enforcement Order.

On 29 April 2024, the Tribunal made a Rent Relief Order ("RRO") which reduced the rent payable by 20%.

The Tribunal was satisfied that the repairs required were completed by 17 January 2025 on which date it revoked the RRO and the rent reverted to the level specified in the tenancy agreement.

The rent due (including the reduction provided by the RRO) at the time of the Application was £19,960.34 and by the time of the CMD had risen to £20,147.21.

No payments of rent have been made since October 2023.

The Respondents have been in arrears of rent for more than three consecutive months.

The Applicant intends to sell the Property and has brought a separate Application seeking eviction on that ground.

The Applicant is a housebuilder. It acquired the Property as a part exchange against a new house which it sold.

The Applicant had at the same time acquired 10 properties as part exchanges at around the same time. It had sold eight of these.

The Applicant had tried to sell the Property in October 2022 but had found no buyer and so had decided to rent out the Property.

The Applicant wishes to market the Property for sale once again.

The Applicant is entitled to sell the Property.

The Respondent served a Notice to Leave upon the Respondents by email on 24 October 2024.

The Notice relating to Kenny Leung was emailed to [Impact43@hotmail.com](mailto:Impact43@hotmail.com).

The tenancy agreement provides for service by email.

The tenancy agreement provides an email address of [impact43@hotmail.com](mailto:impact43@hotmail.com) for Kenny Leung.

The Notices to Leave were validly served.

On 28 June 2024, Linda Leung had emailed the Applicant's letting agent to advise that the impact43 address was wrong and that impact45@hotmail.com should be used for Mr Leung instead.

The Applicant has taken reasonable steps in accordance with the pre-action protocol before beginning the Application.

It would be reasonable to grant the Order sought.

## **Reasons for Decision**

### *Validity of Process*

The Respondents complained at the hearing that the Notices to Leave were defective. Mrs Leung indicated that she was not prepared to explain why this was so as she had been advised by professional advisors not to as this was an issue for the Landlord and not the Tenant. We advised Mrs Leung that if she had any concerns, she ought to express them to the Tribunal.

She indicated three concerns. The first was that the Notices to Leave were not posted but sent by email. That is not a good argument given that the tenancy agreement provides for communication by email.

The second was that the Notice to Leave was not received by her husband. He was in Hong Kong at the time. The email attaching the Notice went to the [impact43@hotmail.com](mailto:impact43@hotmail.com) address specified in the tenancy agreement but which she says is the wrong address (the correct one, she says, being [impact45@hotmail.com](mailto:impact45@hotmail.com)). She states that Mr Leung remained in ignorance of the service of the Notice for some time. She maintained that although both she herself and Mr Grierson had received their Notices to Leave, and although she was in communication with her husband, she did not mention the fact of the Notices to him at all, preferring to do it when he came home after his trip. We did not find this aspect of Mrs Leung's evidence credible.

Mrs Leung had, by email dated 28 June 2023 to the Applicant's letting agents, advised that [impact43@hotmail.com](mailto:impact43@hotmail.com) was the wrong email address for her husband and that [impact45@hotmail.com](mailto:impact45@hotmail.com) was the correct one to be used instead. Mrs Leung's recollection was that she had communicated the email address issue by telephone. She indicated that at some points even she had been confused as to which email address was the correct one.

(It should be noted that the Applicant has in the other eviction case heard simultaneously with the present case served the Notice to Leave using the [impact45@hotmail.com](mailto:impact45@hotmail.com) address).

The Respondents have provided no evidence that [impact43@hotmail.com](mailto:impact43@hotmail.com) was not the correct email address or that [impact45@hotmail.com](mailto:impact45@hotmail.com) is correct.

We find the Respondents' whole position around the email address to be confused and unsatisfactory and we do not accept their evidence in this regard.

We consider that the Notice to Leave in this case was correctly and effectively given to Mr Leung in accordance with the method agreed between the parties using the email address contained in the Lease. For Mr Leung to legitimately expect that his intimation email address would be changed, he ought to have communicated that change himself rather than via his wife who was not specifically authorised on his behalf to communicate the change. He ought to have sought confirmation from the Applicant that the fact of the change had been agreed. To do otherwise, was to leave himself at risk that important documents such as the Notice to Leave would not come to his attention.

(In case it should be suggested that there is some tension between our acceptance of the valid service in this case using the [impact43](mailto:impact43@hotmail.com) address and also accepting valid service using the [impact45](mailto:impact45@hotmail.com) address in the other proceedings, it should be understood that in the present case service was valid for the reasons noted in the immediate paragraphs whereas, in the other application, the Respondents' position is that the [impact45](mailto:impact45@hotmail.com) address which was used was the correct address and, if that is true, it seems reasonable to deduce that as a matter of fact the Notice in that case would have been received).

The third aspect of concern is that the Notices to Leave in the two simultaneous applications for possession refer to different lease termination dates. That is simply because different time periods apply to different grounds under the legislation. This criticism is without merit.

#### *Rent Arrears*

No rent has been paid since October 2023. There are accordingly very significant arrears which amount to more than three months' consecutive rent.

#### *Reasonableness*

The first Respondent reports that she is not in employment but works as a full-time carer of the third Respondent who has been in the USA visiting his hospitalised brother for the past two months. The first and second Respondent accompanied him on the visit but are presently in Italy where they have been for around two weeks.

The second Respondent was employed as an HGV driver but is currently unable to work until his diabetes is stabilised. It is not clear when that will be. The second Respondent suffered chest pains two days before the CMD while in Italy. He has been released from hospital.

The third Respondent is a retired US serviceman and has a pension. He has mental health issues and is not in work.

The Respondents report that they have no other property at which to live and are uncertain as to what provision would be available were they to be evicted.

As regards the question of reasonableness of making an eviction Order, we have in mind in particular the very significant rent arrears and the total absence of payment since October 2023. At the hearing, the Respondents expressed no intention to begin paying.

The Respondents expressed dissatisfaction with the Applicant's efforts to negotiate a payment plan with them but the Respondents have received correspondence from the Applicant attempting to discuss such matters with them and have not co-operated. We accept Mr Bar's evidence that his colleagues made efforts to discuss the situation with the Respondents and, in particular, that they issued a letter to the Respondents on 18 July 2024; spoke to Mrs Leung on the telephone thereafter and emailed her on 10 October 2024 in an effort to resolve matters. We find this to satisfy the obligations upon the Applicant in relation to the pre-action protocol.

The Respondents have made no payment offers. It is not apparent that any different or additional steps by the Applicant would have made any difference to the Respondents' approach.

There is no evidence that the Respondents are in financial difficulties such that they cannot pay. Their position is that because they are unhappy with the treatment they have received from the Applicant's director, Mr Smith, they do not feel they ought to be required to pay (see our Decision in FTS/HPC/24/4211).

The Respondents' position in this regard is unreasonable and has left the Applicant with no reasonable alternative but to seek an eviction order.

There is no suggestion that any difficulty with the Respondents' benefits is a factor in the non-payment of rent.

In the circumstances, we consider that it would be reasonable to make an Order for possession of the Property in favour of the Applicant.

## **Decision**

**An Order for possession of the Property will be made 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.**

**Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.**

**Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.**

# J. McHugh

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24 March 2025

Date