

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/24/4584

Re: Property at 25 Golf Street, Ladybank, Cupar, Fife, KY15 7NT (“the Property”)

Parties:

Executor Jane Davidson Nairn McAndry, Executor Agnes Campbell Nairn, Executor Robin Todd Winter, Executor Kenneth William Smith, Executors of Mrs Euphemia Thomson Nairn, Cronk Coar, Ballamodha Straight, Ballamodha, Ballasalla, Isle of Man, IM9 3AY; 2 Rosslyn Road, Bath, BA1 3LH; 22 Crossgate, Cupar, Fife, KY15 5HW; 9 Little Carron Gardens, St Andrews, Fife, KY16 8QL; Late of Pitlair House, Bow of Fife, Cupar, KY15 5RF (“the Applicants”)

Kelly Mulholland, Mark Webster, 25 Golf Street, Ladybank, Cupar, Fife, KY15 7NT (“the Respondents”)

Tribunal Members:

Susan Christie (Legal Member) and Gordon Laurie (Ordinary Member)

Decision (in absence of the Respondents)

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

Background

1. The Applicants lodged an application for an eviction order in terms of section 51 and Ground 12 of the 2016 around 2 October 2024. It was accepted by a legal member of the First-Tier Tribunal with delegated powers to do so on 29 October 2024.
2. Along with the application there were lodged the private residential tenancy agreement (“PRT”), Notice to Leave with evidence of service, Rent statements, pre-actions letters particularly letter of 2 September 2024 to the Respondents, copy correspondence by WhatsApp between the Parties, copy e mail exchanges between the Parties, correspondence from the first named

Respondent dated 13 May 2024 and 13 June 2024, tenant rent statement, Death Certificate of Euphemia Nairn, Certificate of Confirmation and a section 11 Notice to Fife Council with evidence of service.

3. A copy of the application and paperwork was served on both Respondents by Sheriff Officer service on 26 February 2025 and the Parties were notified that a Case management Discussion ("CMD") would take place by conference call on 23 April 2025 at 11 a.m. Prior to the CMD the Applicants lodged an updated rent statement to reflect the increased rent arrears due, and updated details of the interest sought for the associated payment application that was scheduled to call for a CMD on the same date but at 10 a.m. The Respondents had been copied into this.
4. An e mail was submitted to the tribunal by the first named Respondent on 21 April 2025 stating she does not oppose the eviction which has been set out in the form of the application submitted.
5. The CMD took place on 23 April 2025 and the Applicants were represented by Mr Deane, trainee solicitor. Neither of the Respondents participated.

Summary of the Case Management Discussion

6. The documents lodged in support of the application were discussed.
7. Mr Deane provided the tribunal with further information to supplement those. The Respondents had originally planned to purchase their own property, but the second named Respondent had lost his job and was unable to regain employment. This had caused them to accrue rent arrears. The first named Respondent was believed to be in part time employment. They have two children in the household. They were not believed to be receiving nor were they believed to be waiting on payment of a relevant benefit (as defined in the 2016 Act). The last payment to rent had been made on 1 March 2024 of £700 against a monthly rent of £625. The Respondents had indicated in May 2024 that they would be applying for local authority housing due to their financial difficulties. Mr Dean took the e mail from the first named Respondent dated 21 April 2025 to be confirmation of their intent as a family.
8. The rent arrears stood at £6,145 when the Notice to leave was sent; and £11,770 at 9 April 2025.
9. The Applicants are the Executors-Nominate of the Estate of the deceased landlord. It had been decided more recently that the portfolio of properties in her Estate would be sold. Three had already been sold and another was in the process of being sold. The intention was now to also sell the Property.

Findings in Fact

10. The Applicants are the Executors-Nominate over the Estate of the late Euphemia Thomson Nairn.
11. Confirmation was issued in the Applicants favour over the Property from the Commissariat of Tayside, Central and Fife on 20 September 2022 in the capacity of Executors-Nominate over the Estate of the late Euphemia Thomson Nairn.

12. The Executors-Nominate over the Estate of the late Euphemia Thomson Nairn acquired the landlord rights over the PRT entered into between the Parties on 16 June 2020.
13. The Respondents are due to pay the contractual rent of £625 per calendar month.
14. The Respondents have been in rent arrears since around December 2021.
15. The rent arrears due as of 9 April 2025 are £11,770
16. The last payment to rent was made by the Respondents on 1 March 2024 of £700.
17. The Applicants served a Notice to Leave on the Respondents on 26 June 2024.
18. The Applicants had issued information to the Respondents in compliance with the Rent Arrears Pre-action Protocol.
19. Efforts to agree a repayment plan were not successful.
20. The Respondents being in arrears is not wholly or partly as a consequence of a delay or failure in the payment of a relevant benefit.
21. The Respondents live in the Property with their two children.
22. The Respondents wish to be rehoused by the local authority.
23. The first named Respondent intimated she did not oppose this application for eviction.

Reasons for Decision

24. The tribunal was satisfied that intimation of the CMD had been made on the Respondents as evidenced by the Sheriff Officer's Certificates of Service and proceeded in their absence.
25. The Notice to Leave served on 26 June 2024 relied on ground 12, rent arrears of three or more consecutive months.
26. Section 51(1) of the 2016 Act requires the tribunal on an application being made, to issue an eviction order against a tenant under a PRT where it finds that one of the eviction grounds referred to in Schedule 3 applies.
27. The Pre-Action Requirements Regulations require clear provision of information to the tenant relating to the terms of the tenancy agreement, the level of arrears, the tenant's rights in relation to eviction proceedings and around seeking to agree repayment arrangements.
28. In terms of Ground 12 of Schedule 3 (as amended by the Coronavirus (Recovery and Reform (Scotland) Act 2022), it is an eviction ground that the tenant has been in rent arrears for three or more consecutive months; and the tribunal may find that ground applies if for three or more consecutive months the tenant has been in arrears of rent, and the tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.
29. From the documentation produced the tribunal is satisfied that the Respondents currently owe £11,770 in unpaid rent and that they have been in rent arrears for three or more consecutive months.
30. The tribunal proceeded to consider the written and oral information it had been given and whether it would be reasonable to grant an eviction order and noted the following:
 - a) The tribunal is satisfied the Pre-Action Protocol requirements have been satisfied.

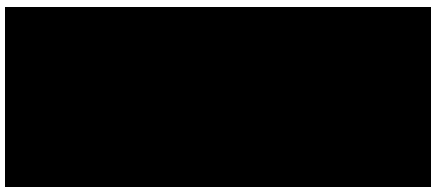
- b) The tribunal is satisfied that there was no evidence to show that the Respondents being in arrears was wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
 - c) The rent arrears are substantial and the last payment to rent was made on 1 March 2024.
 - d) The Respondents themselves have indicated that they are unable to afford the Property and are seeking alternative local authority accommodation.
 - e) The first named Respondent indicated she had no opposition to the eviction application.
31. The tribunal concluded that it would be reasonable to grant the order for eviction.

Decision

32. The tribunal finds it is reasonable to grant an order for eviction against the Respondents and Ground 12 of Schedule 3 of the 2016 Act is established.

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/Chair

23 April 2025
Date