



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 (in relation to application reference FTS/HPC/EV/24/2619) and under Section 16 of the Housing (Scotland) Act 2014 (in relation to application reference FTS/HPC/CV/24/2620)

Chamber Ref: FTS/HPC/EV/24/2619 and FTS/HPC/CV/24/2620

Re: Property at McDonald Court, 78b Jute Street, Aberdeen, AB24 3HB (“the Property”)

Parties:

Mr Garry Smith, 10 Fayre Park Gardens, Westhill, Aberdeen, AB32 6WL (“the Applicant”)

Ms Kim Baff, McDonald Court, 78b Jute Street, Aberdeen, AB24 3HB (“the Respondent”)

Tribunal Members:

Andrew Cowan (Legal Member) and Melanie Booth (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 eviction should be granted in favour of the Applicant.

The Tribunal further determined that the sum of £31,350 is lawfully due by the Respondent and granted an order for payment of that sum by the Respondent to the Applicant.

Background

1. The Applicant has raised an application for an eviction order in relation to a Private Residential Tenancy (“PRT”) in terms of Section 51 of the Private Housing (Tenancies) Scotland (“the Act”) and rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”).

2. The application relies upon a Notice to Leave dated 13 December 2023 in terms of section 50 of the Private Housing (Tenancies) (Scotland) Act 2016, served upon the Respondent on 13 December 2023. The Notice relied upon Ground 12A of Schedule 3 Part 1 of the 2016 Act, being that “the tenant has substantial rent arrears”.
3. The Applicant has also raised an application against the same Respondent for a payment order in the sum of £24200 in relation to rent arrears which the Applicant avers are due to him by the Respondent. That application was raised under Rule 111 of the Rules.
4. The Tribunal has conjoined proceedings in relation to both these applications. This decision and these reasons relate to both of the applications.

The Case Management Discussion

5. The Tribunal held a Case Management Discussion (“CMD”) in relation to the application on 29th November 2024. The CMD was held by conference call. The Applicant was represented on the conference call by his solicitor, Ms Linda Fyffe. The Respondent also joined the conference call.
6. In advance of the CMD the Respondent had emailed the Tribunal, on numerous occasions, giving several reasons for her opposition to the applications. The reasons for her opposition include, but not limited to, the following matters (as summarised by the Tribunal):-
 - a. The Applicant has failed to properly serve pre action notices against the Respondent in advance of the application and accordingly the action is unlawful
 - b. The Applicant, or their solicitor, has made false statements in the pre action notices
 - c. The Respondent has significant health problems
 - d. The Respondent is no longer the Tenant of the Property
 - e. The Property requires repairs to be carried out to ensure that it meets the repairing standard.
7. At the CMD the Respondent stated that she considered that the Applicant’s solicitor had a conflict of interest as the solicitor had previously issued false statements and had advised the Applicant not to have any direct contact with the Respondent. The Tribunal determined that these allegations of conflict of interest were completely unfounded.

8. The Respondent's primary defence to the applications was based on her assertion that she is not the Tenant of the Property. She explained to the Tribunal that she signed the tenancy agreement between the parties, but that she then moved out of the Property 14 days after that tenancy had commenced. She submitted that the Applicant and Mr James Fraser entered into a verbal agreement whereby Mr Fraser became the Tenant of the Property, on a rent free basis, from the date that the Respondent removed from the Property. The Respondent further explained that she had moved back into the Property, but that was as an occupier and not as a Tenant. The Respondent explained that she has evidence in the form of videos and recordings which substantiated her claims in this respect.
9. The Respondent claimed that, as she is not the Tenant of the Property, she is not liable for any rent in relation to a tenancy of the Property and that the applications for rent arrears and eviction should therefore be dismissed.
10. The Respondent wished to highlight the condition of the Property and the assertion that the Property does not meet the Repairing Standard. The Tribunal noted that claims in relation to the condition of the Property were not consistent with the Respondent's averment that she is not the Tenant of the Property. Issues as to whether the Property meets the Repairing Standard require to be brought by a tenant under their own application to the Tribunal.
11. At the CMD the Tribunal decided to fix a further hearing at which the Tribunal would hear evidence in relation to the application, and the opposition thereto. Given the potential difficulties in managing the hearing the Tribunal determined that the evidential hearing was to be held in person and not by teleconference call. The hearing was subsequently arranged to be held on 20th May 2025 at AB1, Ground Floor, 48 Huntly Street, Aberdeen.
12. By letter dated 12th December 2024^t the Tribunal administration provided the Respondent with instructions/procedures to allow the Respondent to lodge the video and recorded evidence which the Respondent had referred to at the CMD.

Correspondence after the CMD

13. Between the date of the CMD and the evidential hearing in relation to these applications the Tribunal received over 30 emails from the Respondent. Some of these emails were addressed directly to the Tribunal. Other emails were address to other parties including the Applicant's solicitors, the Tribunal President, the Court of Session and the Local Authority. These emails referred to a number of diverse statutory provisions with no coherent submission as to the relevance of such provisions. The emails included reference to a "devolution minute" under the Scotland Act, but again did not state any relevance to these proceeding, A number of the emails made allegations of bias and criminal behaviour allegedly conducted by other parties. None of these emails were coherent and it was not possible to ascertain the relevance of the issues raised in these emails to the current applications which were being considered by Tribunal.

14. Some of the emails submitted by the Respondent sought to adjourn the evidential hearing which had been arranged for 20th May 2025. An email from the Respondent to the Tribunal dated 24th April 2025 referred to the Respondent's inability to attend the planned hearing "due to unresolved safety issues and ongoing stress caused by the Applicant's inaction to repair the front door at the Property."
15. The Tribunal acknowledged the Respondent's emails and advised that the tribunal can only consider an adjournment or postponement of a hearing where a party has shown good reason why such an adjournment or postponement is necessary. The Respondent was advised that the tribunal did not consider that The Respondent had shown such reason to postpone the hearing. The Tribunal advised the Respondent that that any relevant matters which the Respondent had raised in her email would be discussed as preliminary issues at the start of the evidential hearing. The Tribunal refused to adjourn or postpone the hearing which had been arranged for 20th May 2025. The Tribunal reminded the Respondent that if she did not take part in the hearing on 20th May 2025 it would not stop a decision or order being made by the Tribunal if the Tribunal considered that it had sufficient information before it to do so, and the procedure was fair.
16. By letter dated 1st May 2025 the Applicant's solicitor sought permission to amend the sum claimed in application reference FTS/HPC/CV/24/2620 by increasing the sum claimed by way of rent arrears from £24,200 (being the sum stated in the original application) to £31,350 (being the alleged rent arrears outstanding as at 1st May 2025).
17. By email dated 12th May 2025 the Respondent sought an extension of time to allow her to seek legal assistance in relation to the applications. The Respondent referred to an application she had made to the Tribunal President in which she had sought a "stay" of proceedings. The Respondent again referred to several statutes including the Human Rights Act but failed to specify the relevance of these statutes to the current applications. In the same email the Respondent listed 23 witnesses as her list of witnesses in advance of the evidential hearing. Those witnesses included the Tribunal President, the Tribunal Chairman, the Applicant's legal representative, an MSP, the local authority and the Police.
18. The Tribunal advised parties by email dated 14th May 2025 that:

"Parties have lodged written requests with the Tribunal which seek to amend the application or to adjourn further proceedings. The Tribunal intend to consider these requests as preliminary matters at the hearing which has been arranged for 20 May 2025."

Hearing the application in the absence of the Respondent.

19. The Tribunal convened to hear evidence from parties and their witnesses at 10am on 22nd May 2025.

20. Shortly before the start of proceedings the Tribunal were advised that the Tribunal caseworker had received a phone call from the Respondent. The call was received approximately 10 minutes before the hearing was due to start. The Respondent sought to ensure that the Tribunal had received further emails and productions that the Respondent had emailed to the Tribunal administration earlier that morning. The Respondent confirmed that she would not be attending the hearing and that her witnesses would also not be attending. The caseworker advised the Respondent that the hearing was proceeding, as previously intimated to parties.

21. The Applicant attended the hearing. He was represented at the hearing by his solicitor, Ms Linda Fyffe. Ms Faith Milne, trainee solicitor was also in attendance.

22. At the start of the hearing the Tribunal advised the Applicant and his representative of the terms of the phone call which had been received from the Respondent. As the Respondent had previously sought an adjournment of the hearing, and as the tribunal had indicated to parties that preliminary issues would be considered at the start of the hearing, the Tribunal invited submissions from the Applicant's representative on whether the hearing should proceed in the absence of the respondent.

23. The Applicant's solicitor referred to rule 29 of the tribunal rules of procedure which states:

Hearing case in the absence of a party

29. If a party or party's representative does not appear at a hearing, the First-tier Tribunal, on being satisfied that the requirements of rule 24(1) regarding the giving of notice of a hearing have been duly complied with, may proceed with the application upon the representations of any party present and all the material before it.

24. The Applicant's solicitor submitted that it was clear from emails and correspondence received from the Respondent that she was aware of the hearing and that she had received notice of that hearing.

25. The Applicant's solicitor referred to the overriding objectives of the tribunal, as specified in paragraph 2 of the tribunal rules of procedure. Those objectives state:

The overriding objective

2.—(1) The overriding objective of the First-tier Tribunal is to deal with the proceedings justly.

(2) Dealing with the proceedings justly includes—

(a) dealing with the proceedings in a manner which is proportionate to the complexity of the issues and the resources of the parties;

(b) seeking informality and flexibility in proceedings;

(c) ensuring, so far as practicable, that the parties are on equal footing procedurally and are able to participate fully in the proceedings, including

assisting any party in the presentation of the party's case without advocating the course they should take;
(d) using the special expertise of the First-tier Tribunal effectively; and
(e) avoiding delay, so far as compatible with the proper consideration of the issues.

26. The Applicant's solicitor submitted that the respondent had failed to show good cause why the hearing should be adjourned. The Respondent had a notice to leave served upon her on 13th December 2023. It was submitted that the Respondent had had ample opportunity to seek independent advice in relation to the terms of the application. It was the Applicant's position that the Respondent had failed to pay any rent throughout the period of the tenancy and that a further delay in proceedings would further prejudice the applicant's right to recover rent in relation to the property. The tenant had complained that she did not feel it was safe to leave the property as the front door of the property was damaged. The Applicant's solicitor highlighted that the Applicant had been willing to repair the front door of the property, but the Respondent had not allowed necessary repairs to be completed. The Applicant's solicitor noted that the Respondent had also referred to her health issues as being a barrier to her attending the hearing. The Respondent has not submitted any medical evidence to support any such contention.

27. The Applicant's solicitor submitted that, having regard to the overriding objective and in particular to the objective to deal with proceedings in a manner which is proportionate to the complexity of the issues and to avoid delay, so far as compatible with the proper consideration of the issues, it would be unfair upon the Applicant if the tribunal were adjourned to a future date.

28. Having considered the submissions made, the Tribunal determined to proceed with the hearing in the absence of the Respondent. The Tribunal are satisfied that Respondent had been notified of the hearing. This had been acknowledged by the Respondent in her various communications with the Tribunal. The Respondent has failed to lodge any relevant written evidence in support of her contention, as stated at the CMD, that she is no longer the tenant of the property. The notice to leave was served on the Respondent on 13th December 2023. The Respondent has been advised on numerous occasions that the hearing would be proceeding and has been guided to seek advice or support in relation to these proceedings. The Respondent has failed to clearly explain the reasons for her non-attendance at the hearing. The Tribunal determined that it would be manifestly unfair to the Applicant if the proceedings were delayed further as his ability to recover rent in respect of the property would be prejudiced. The Tribunal considered in all the circumstances that it was appropriate to continue to consider the applications in absence of the Respondent in accordance with rule 29 of the tribunal rules of procedure.

Applicant's amendment to sum claimed in application for payment.

29. By letter dated 1st May 2025 the Applicant's solicitor sought permission to amend the sum claimed in application reference FTS/HPC/CV/24/2620 by

increasing the sum claimed by way of rent arrears from £24,200 (being the sum stated in the original application) to £31,350 (being the alleged rent arrears outstanding as at 1st May 2025). A copy of the application to amend the sum claimed had been intimated by letter upon the Respondent by the Applicant on 1st May 2025.

30. The Tribunal considered that the Applicant's request to amend the sum claimed in terms of rule 14A of the Tribunal rules of procedure. The application to amend had been made at least 14 days prior to this hearing, It had been intimated upon the Respondent. The Applicant's representative explained that the Respondent had not made any payment of rent since the start of the tenancy and that the sum claimed by way of rent arrears had continued to increase after the date of the CMD. The Applicant claimed that the amount of the rent arrears due by the Respondent as at 1st May 2025 had increased to £31,350 and sought to amend the claim for payment to that sum.
31. The Respondent has not made submission in relation to the application to amend the sum claimed.
32. The Tribunal consider that is appropriate and fair to consent to the Applicant's request to amend the application and allow the sum claimed in application FTS/HPC/CV/24/2620 to be increased to £31,350.

The Tenancy Agreement between the parties.

33. The Applicant has lodged with the Tribunal a copy of a tenancy agreement between the parties which was signed by the Respondent on 1st September 2020.
34. That tenancy agreement purports to be a short assured tenancy agreement, granted under the Housing (Scotland) Act 1988, ("the 1988 Act") between the parties in respect of the Respondent's occupation of the Property.
35. The Applicant has submitted that the Tenancy Agreement is a Private Residential Tenancy agreement under the Private Housing (Tenancies) Scotland Act 2016. Schedule 5 of that Act.
36. The 1988 Act states that:
"12 (1A) A tenancy cannot be an assured tenancy if it is granted on or after 1 December 2017. "
37. The Tribunal accept that the tenancy between the parties is a Private Residential Tenancy under the terms of the 2016 Act.

Evidence of the Applicant

38. The Tribunal heard evidence at the hearing from the Applicant.

39. In his evidence, the Applicant explained that he had agreed to lease the property to the Respondent from 1st September 2020. The Respondent had signed a tenancy agreement in which she had agreed to pay £500 per month as rent. No deposit was paid by the Respondent.
40. The Applicant explained that, approximately two weeks after the Respondent had moved into the Property, he had met the Respondent and Mr James Fraser outside the Property. The Respondent had asked if Mr James Fraser could reside at the Property. The Respondent had explained that Mr Fraser was her carer. The Applicant confirmed that he had no objection to Mr Fraser occupying the Property with the Applicant. The Applicant noted that (at the CMD) the Respondent had claimed that the Applicant had agreed that Mr Fraser was to be a new tenant of the Property in her place, and that he could reside at the Property on a rent free basis. The Respondent had further claimed that the conversation where this alleged arrangement had been agreed was recorded by the Respondent or Mr Fraser. The Applicant denied that there was ever any such agreement that Mr Fraser was to be the tenant of the property or that he could reside at the Property on a rent free basis. He had not agreed to this arrangement at the meeting with the Respondent.
41. The Applicant explained that the Respondent has never paid any rent for her occupation of the Property despite several requests for such payment to be made. The Applicant explained that he had visited the tenant at the property on a number of occasions to discuss the rent arrears. The Applicant confirmed that he offered to support the Respondent in applying for Housing benefit. He had accompanied the Respondent to the offices of the local authority to assist her in completing the necessary forms. The Applicant is unaware if the Respondent was awarded any housing benefit. The Respondent continued to accrue rent arrears and in 2023 the Applicant instructed solicitors to seek recovery of the arrears of rent and, if necessary to seek an order for the Respondent's eviction.
42. The Applicant confirmed that he instructed his solicitors to send letters to the Respondent advising her of the amount of rent arrears due and providing advice on where she could seek assistance and support.
43. The Applicant is concerned that no rent has been paid in respect of the tenancy between the parties since the tenancy started in 2020. He wishes to recover possession of the property so that it can be relet. He also wishes to seek payment of rent arrears due in the sum of £31,250.

Findings In Fact

44. Having considered the available written evidence and the evidence of the Applicant at the hearing the Tribunal make the following findings in fact.

- a) The Applicant let the Property to the Respondent under a Private Residential Tenancy with commencement on 1st September 2020 ("the tenancy agreement"). The rent charged under the tenancy agreement is £550 per month.
- b) The Respondent remains the tenant under the tenancy agreement as at the date hereof.
- c) The Respondent has not made any payments towards the rent due under the terms of the tenancy agreement.
- d) By 1st May 2025 the Respondent had accrued arrears of rent in the sum of £31,350.
- e) The Applicant has issued a Notice to Leave dated 13th December 2023 in terms of section 52 of the Private Housing (Tenancies) (Scotland) Act 2016. The notice was served upon the Respondent by Sheriff Officers on 13th December 2023.
- f) Rent arrears due by the Respondent to the Applicant in terms of the tenancy agreement were £21450 as at the date of the Notice to Leave.
- g) The Applicant has raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 12A of Schedule 3 of Part 1 of the 2016 Act.
- h) A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon Aberdeen City Council on the Applicant's behalf on 6th August 2024.
- i) As at the date of the CMD the rent arrears due and owing by the Respondent to the Applicant are £31,350.
- j) The Applicant and his solicitor have made reasonable efforts to engage with the Respondent in relation to the Respondent's failure to pay the rent due. The Applicant's solicitor has issued letters to the Respondent in compliance with the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020, Those letters to the Tenant were dated 10th August 2023, 3rd September 2023 and 18th September 2023.

Reasons for the Tribunal's decision

- 45. The Tribunal were satisfied on the basis of the application and supporting papers that the Notice to Leave had been competently drafted and served upon the Respondent.

46. Ground 12A of Schedule 3 to the 2016 Act (as amended and applying to this application) states that:

(1) It is an eviction ground that the tenant has substantial rent arrears.

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

(a) the tenant has accrued rent arrears under the tenancy in respect of one or more periods,

(b) the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy when notice to leave is given to the tenant on this ground in accordance with section 52(3), and

c) the Tribunal is satisfied that it is reasonable to issue an eviction order.

(3) In deciding under sub-paragraph (2) whether it is reasonable to issue an eviction order, the Tribunal is to consider—

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

(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers under paragraph 12(4)(b) (and continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022).

(4) For the purpose of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the Housing Benefit Regulations 2006 (S.I. 2006/213),

(ii) a payment on account awarded under regulation 93 of those Regulations,

(iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,

(iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,

(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.

47. The tribunal is satisfied that the requirements of ground 12A have been established by the Applicant.
48. The respondent has accrued rent arrears under the tenancy between the parties in respect of one or more periods of rental due. The Respondent has not made any payment of rent throughout the term of the tenancy.
49. The cumulative amount of the rent arrears due by the Respondent exceeded an amount that is the equivalent to 6 months' rent under the tenancy both when the notice to leave was given to the Respondent and as at the date of this hearing.
50. No evidence was presented to the Tribunal which suggested that any of the arrears of rent were wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
51. Copy letters were submitted by the Applicant which demonstrated that the Applicant had complied with the pre-action protocol prescribed by the Scottish Ministers under paragraph 12(4) of the Coronavirus (Recovery and Reform) (Scotland) Act 2022).
52. The Tribunal considered whether it was reasonable to issue an eviction order. The Respondent stated at the CMD that her defence to the application was that she was no longer the tenant of the property and that the Applicant had agreed to the transfer of the tenancy to Mr James Fraser. The Respondent submitted at the CMD that she had a recording which substantiated her claim in this respect. The Respondent has failed to provide any evidence to support her contention that she is not the tenant of the Property or that the tenancy has been transferred to another party. The Applicant refutes that any agreement was made whereby Mr James Fraser became the tenant of the Property. The evidence of the applicant at the hearing was presented in a straightforward and credible manner. The Tribunal accept the Applicant's evidence on this point.
53. The Respondent is the tenant of the Property under the terms of the tenancy agreement between the parties. The Respondent is responsible for the rent to be paid under the terms of that agreement. The Respondent has not paid any rent whatsoever since the tenancy started. The Applicant has made reasonable attempts to recover the rent arrears, but the Respondent has repeatedly ignored these attempts and has further ignored letters from the Applicant's solicitor requesting payment. The rent arrears due by the respondent are substantial and equate to almost five years rent due to the Applicant. There is little or no prospect that the Applicant will recover those rent arrears in the future
54. In all the circumstances the Tribunal are satisfied it is entirely reasonable to grant in order for eviction.

55. The Respondent is due payment to the Applicant the sum of £31,250 being the rent arrears claimed by the Applicant in his amended application.

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.

Andrew Cowan

Andrew Cowan

5th June 2025

Legal Member/Chair

Date