



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/24/4112

Re: Property at 13 Ken Road, Kilburn, KA1 3QR (“the Property”)

Parties:

Mr Mohammed Sajad Razzaq, Mrs Sarwat Razzaq, 51 Old Rome Road, Kilburn, KA1 2RU (“the Applicants”)

Miss Megan Calderwood, Mr David Johnstone, 13 Ken Road, Kilburn, KA1 3QR; 48 Carron Avenue, Kilburn, KA1 3NF (“the First and Second Respondent”)

Tribunal Members:

Mary-Claire Kelly (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for eviction.

Background

1. By application accepted on 24 December 2024 the applicant seeks an order for eviction, relying on ground 12 (rent arrears for three or more consecutive months) in Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.
2. The applicant lodged the following documents with the application:
 - Copy tenancy agreement
 - Notice to Leave with proof of delivery
 - Rent statement
 - Pre action emails to the respondents.
 - Notice under section 11 of the Homelessness Etc. (Scotland) Act 2003.

3. The second respondent Mr Johnstone lodged written representations and documents in response to the application.
4. A case management discussion ("cmd") was assigned for 4 June 2025.

Case management discussion (cmd) – 4 June 2025- teleconference

5. The applicant was represented by Ms Mackenzie, property manager, Limegreen Estate Agents. The respondents were not present or represented. The Tribunal was satisfied that the respondents had received proper notice of the cmd and proceeded with the cmd in their absence in terms of rule 29.
6. Ms Mackenzie sought an order for eviction relying on ground 12. She stated that since February 2024 the respondents had made one payment of £20 towards the rent. She referred to an updated rent account that had been submitted which showed that arrears as at 12 May 2024 amounted to £7480. Ms Mackenzie stated that the applicants had been impacted as no income was being received from the property and they were therefore having to cover the costs associated with the property. Ms Mackenzie stated that Mr Johnstone had moved out of the property in January 2024. Ms Calderwood continued to reside in the property with her 2 school aged children. Ms Mackenzie referred to the email correspondence that had been submitted which showed multiple attempts to contact Ms Calderwood. Ms Mackenzie stated that the last contact with Ms Calderwood had been in July 2024 when she had responded to a pre-action email to advise that she would begin making payments towards the arrears. Ms Mackenzie stated that the letting agents had attended the property on several occasions to try to carry out inspections however they had been unable to gain access. She stated that it was clear from the external inspection that the property remained occupied. Ms Mackenzie stated that she was aware that Ms Calderwood was claiming benefits however no housing benefits were in payment at present.
7. Ms Mackenzie was referred to the written submissions from Mr Johnstone and the documents he had submitted. Ms Mackenzie stated that her company had taken over management of the property for the applicants after Mr Johnstone had given notice that he would be leaving the property. She stated that no action had been taken as a result of the 2 letters received by the applicants

from the respondents on 10 and 15 January 2024 and the tenancy had continued to be in joint names. She stated that the applicants had not instructed the previous letting agent to take steps to place the tenancy in the sole name of Ms Calderwood.

8. Ms Mackenzie stated the pre-action requirements had been complied with. She referred to the emails that had been lodged all of which had been sent to Ms Calderwood containing information required to comply with the pre-action protocol. She confirmed that when her company had taken over management of the property initially an incorrect email address had been used for Mr Johnstone however he had pointed this out and pre-action emails had been sent to his correct email address on 25 July 2024 and 9 September 2024.
9. Ms Mackenzie stated that the letting agents previously had contact with the respondents in relation to a previous property. She stated that the respondents had followed a similar pattern in that property with Mr Johnstone moving out of the property leaving Ms Calderwood in the property with rent not paid for an extended period before enforcement action was taken.

Findings in fact and law

10. Parties entered into a tenancy agreement with a commencement date of 12 July 2022.
11. Monthly rent due in terms of the agreement is £500.
12. Arrears as at 4 June 2025 amounted to £7480.
13. The respondents have not made any payments towards the rent or arrears since March 2024.
14. Mr Johnstone moved out of the property on or around January 2024.
15. The tenancy was not terminated after Mr Johnstone moved out and he remains a joint tenant.
16. The applicant complied with the pre-action requirements set out in the Rent Arrears Pre Action-Requirements (Coronavirus) (Scotland) Regulations 2020.
17. Ground 12, in schedule 3 of the 2016 Act has been established.
18. It is reasonable to grant an order for eviction.

Reasons for the decision

19. Rule 18 states:

Power to determine the proceedings without a hearing

18.—(1) *Subject to paragraph (2), the First-tier Tribunal—*

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

20. Mr Johnstone had lodged written representations opposing an order being granted against him. He stated that he had moved out of the property after his relationship with Ms Calderwood had broken down. She continued to reside in the property with their children. He had lodged documentary evidence including written notices that were sent to the applicant and email correspondence with the applicants' representatives. The facts in relation to the contents of the communications between Mr Johnstone and the applicants and their representative were not in dispute. The Tribunal took into account that neither respondent attended the cmd without explanation. Considering the submissions from both parties and the information provided by Ms Mackenzie the Tribunal was satisfied that having regard to the undisputed facts of the case it was able to make a determination and that it was not contrary to parties' interest to do so at the cmd without the need for a further hearing.

21. Sections 48 and 49 of the 2016 Act set out the procedure for termination of the tenancy agreement by tenants:

48Tenant's ability to bring tenancy to an end

(1)A tenant may bring to an end a tenancy which is a private residential tenancy by giving the landlord a notice which fulfils the requirements described in section 49.

(2)A tenancy comes to an end in accordance with subsection (1) on the day on which the notice states (in whatever terms) that it is to come to an end.

(3)But a tenancy does not come to an end in accordance with subsection (1) if—

(a)before the day mentioned in subsection (2), the tenant makes a request to the landlord to continue the tenancy after that day, and

(b)the landlord agrees to the request.

(4)In subsections (1) and (3), in a case where two or more persons jointly are the landlord under the tenancy, references to the landlord are to any of those persons.

49Requirements for notice to be given by tenant

(1)A notice fulfils the requirements referred to in section 48(1) if—

(a)it is given—

(i)freely and without coercion of any kind,

(ii)after the tenant begins occupying the let property,

(b)it is in writing, and

(c)it states as the day on which the tenancy is to end a day that is after the last day of the minimum notice period.

(2)A notice is to be regarded as fulfilling the requirements referred to in section 48(1), despite its not complying with the requirement described by subsection (1)(c), if the landlord agrees in writing to the tenancy ending on the day stated in the notice.

(3)In subsection (1)(c), “the minimum notice period” means a period which—

(a)begins on the day the notice is received by the landlord, and

(b)ends on the day falling—

(i)such number of days after it begins as the landlord and tenant have validly agreed between them, or

(ii) if there is no such valid agreement, 28 days after it begins.

(4) An agreement as to the number of days after which a minimum notice period ends is invalid for the purpose of subsection (3)(b)(i) if the agreement—

(a) is not in writing, or

(b) was entered into before the tenancy became a private residential tenancy.

(5) In a case where two or more persons jointly are the landlord under the tenancy, references in this section to the landlord are to any one of those persons.

22. In the case of a joint tenancy written notice must be provided by each of the tenants. Mr Johnstone produced 2 letters which he submits in his written representation had the effect of terminating the tenancy and creating a tenancy in the sole name of Ms Calderwood. A letter from Mr Johnstone to the first applicant is dated 10 January 2024 and states:

I am writing to inform you that I have moved out of the property at Ken Road and would like to be removed as a tenant for all purposes.

23. A second letter from Ms Calderwood also to the first applicant is dated 15 January 2024 and states:

David has asked me to write to let you know he has moved out. Can I be made the only tenant at Ken Road please?

24. There is no proof of postage for either letter. In an email dated 23 August 2024 Mr Johnstone stated “I also sent a letter to the landlord directly however he is claiming not to have received this”. No further letter was produced. Ms Mackenzie referred the Tribunal to an email Mr Johnstone sent to the previous letting agent dated 31 August 2022 stating that Mr Johnstone had moved out “around two weeks after I helped them move in.” and requesting that the tenancy be changed to make Ms Calderwood the sole tenant. The previous letting agent had confirmed that no action had been taken in response to that email, as they received no response to their request for further information in their reply to Mr Johnstone of 1 September 2022. In any event, neither the letters nor the email of 31st August 2022 fulfils the requirements of section 49, in particular section 49(1)(c). The applicants did not agree to the termination on a specific date and no action was taken to issue a fresh tenancy agreement to

Ms Calderwood. In the circumstances the Tribunal determines that the tenancy agreement was not terminated and Mr Johnstone remains a joint tenant.

25. Ground 12 states:

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.

26. The Tribunal was satisfied on the basis of the rent accounts that had been lodged that the respondents had been in arrears of rent for a period in excess of three months.

27. The Tribunal proceeded to make a determination of whether it was reasonable to grant an order for eviction. The Tribunal took into account the application and documents lodged by the applicants, the written submissions and documents submitted by Mr Johnstone and Ms Mackenzie's submissions at the cmd. In assessing whether it is reasonable to grant an order all available facts relevant to the decision were considered and weighed in the balance, for and against.

28. The Tribunal determined that the correspondence sent to the respondents complied with the pre-action requirements. The Tribunal had regard to the email correspondence that had been lodged and accepted that the respondents had been provided with information relating to the rent arrears and guidance on

how to access assistance in compliance with the pre-action requirements on multiple occasions. Ms Calderwood had received a number of emails including emails dated 2 July 2024, 18 July 2024, 25 July 2024, 9 September 2024. Mr Johnstone had received the email dated 25 July and 9 September. The content of the emails and the fact that initially emails to Mr Johnstone had been sent to an incorrect email address was not disputed by Ms Mackenzie.

29. The Tribunal was satisfied that the arrears at the property amounted to £7480 as at the date of the cmd. The respondents had not lodged any information which sought to dispute the level of arrears or demonstrate that the arrears were in any part due to issues with benefits.
30. The Tribunal took into account the information provided by Ms Mackenzie. The Tribunal noted the high level of arrears, which continued to rise and that no contact or payment had been made by Ms Calderwood for a considerable period of time. The Tribunal took into account the undisputed evidence regarding the impact the increasing rent arrears were having on the applicants' financial circumstances.
31. The Tribunal gave particular weight to the fact that Ms Calderwood who resided in the property had not taken any steps to oppose the application or lodge a defence. Correspondence submitted by Ms Mackenzie showed that there were regular attempts to engage with Ms Calderwood which received no response.
32. The Tribunal took into account that Mr Johnstone had moved to alternative accommodation and that whilst he had sought to oppose the application on technical grounds he did not make any submissions relating to reasonableness relying on the personal circumstances of the occupants of the property.
33. The Tribunal gave weight to the fact that Ms Calderwood resided in the property with her 2 children. Had she attended the cmd to oppose an order this would have been a weighty factor however, in the absence of any opposition to the application from her and taking into account the high level of arrears the Tribunal considered that this factor did not outweigh the factors in favour of granting an order.
34. In the foregoing circumstances the Tribunal determined that it was reasonable to grant an order for eviction.

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.

Mary-Claire Kelly

Legal Member/Chair

Date: 4 June 2025