



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

Chamber Ref: FTS/HPC/EV/24/5322

Re: Property at Flat 4, 4 Avon Street, Hamilton, ML3 7HU (“the Property”)

Parties:

Ms Farhana Ghani, 15 Fleurs Avenue, Glasgow, G41 5AR (“the Applicant”)

Mr Ighedeosa Febian and Mrs Josephine Febian, both residing at Flat 4, 4 Avon Street, Hamilton, ML3 7HU (“the Respondents”)

Tribunal Members:

Andrew Cowan (Legal Member) and Janine Green (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.

Background

1. This is an application for an eviction order in regard to a Private Residential Tenancy ("PRT") made in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (as amended) ("the Rules"). The PRT is between the Parties and relates to the Property. The tenancy commenced on 10th December 2017.
2. The application includes and relies upon a Notice to Leave dated 8th October 2024, issued in terms of section 52 of the Private Housing (Tenancies) (Scotland) Act 2016. The notice was served upon the Respondents by Recorded Delivery Postage on 10th October 2024.
3. The Application papers included evidence that a section 11 notice, in terms of the Homelessness Etc. (Scotland) Act 2003, had been served upon South Lanarkshire Council by recorded delivery mail on 7th November 2024

4. The Application papers, and further submissions from the Respondents, also included:
 - a. Copy order of the First Tier Tribunal for payment by the Respondents to the Applicant in the sum of £6215, dated 26th August 2024
 - b. Sworn affidavit of Mr. Amimul Chowdhury, dated 25th September 2024
 - c. Sworn affidavit of Mr. Abdul Ghani, dated 7th October 2024
 - d. Rent statement in relation to the tenancy for the period from 15th December 2022 to July 2024 showing rent arrears due by the Respondent as of July 2024 in the sum of £6215.
 - e. Letter dated 20th November 2024 issued to the Respondents which provided information to the Respondents as to where they could seek further support and assistance in relation debt advice and benefits.
 - f. Copy electrical safety report in respect of the Property dated 16th March 2023.

Case Management Discussion

5. A Case Management Discussion ("CMD") took place by teleconference on 7th July 2025. The Applicant was represented at the CMD by Mrs Joanne Hogg, solicitor. The Applicant and her father, Mr Abdul Ghani also joined the CMD call although neither gave any direct statement to the Tribunal during the CMD.
6. The Respondents did not join the CMD call. The Tribunal were satisfied that the Application, and details of the CMD, had been intimated upon the Respondents by Sheriff Officers on 8th April 2025. The Respondents have not made any written representations to the Tribunal in advance of the CMD. The Tribunal was satisfied that the Respondents have been given reasonable notice of the date, time and place of the CMD and that the requirements of rule 24(1) of the First-Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Procedure Rules") had been duly complied with. In the circumstances the Tribunal proceeded with the application in accordance with rule 29 of those Procedure Rules.

Preliminary finding in Law

7. The Applicant has lodged with the Tribunal a copy of a tenancy agreement between the parties which was signed by the Respondent on 10th December 2017
8. 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.
9. 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.

10. The 1988 Act states that:
 “12 (1A) A tenancy cannot be an assured tenancy if it is granted on or after 1 December 2017. “
11. The Tribunal accept that the tenancy between the parties is a Private Residential Tenancy under the terms of the 2016 Act.

Findings in Fact

12. The Applicant let the Property to the Respondents under a Private Residential Tenancy with commencement on 10th December 2017 ("the Tenancy"). The rent charged under the tenancy agreement is currently £650 per month.
13. The Applicant has issued a Notice to Leave dated 8th October 2024 in terms of section 52 of the Private Housing (Tenancies) (Scotland) Act 2016. The notice was served upon the Respondents by Recorded Delivery Postage on 10th October 2024. The Notice relied upon Grounds 11 (breach of tenancy agreement), 12 (Rent Arrears) and 14 (Anti-social behaviour) of Schedule 3 of Part 1 of the 2016 Act. The Notice to Leave intimated that an application to the Tribunal would not be made before 9th November 2024.
14. In terms of an Application to the Tribunal dated 19th November 2024 the Applicant seeks an order for eviction, relying on the grounds specified in the Notice to Leave,
15. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon South Lanarkshire Council by recorded delivery mail on 7th November 2024.
16. The Respondents continue to occupy the Property.
17. On 26th August 2024 the First Tier Tribunal granted an order for payment of the sum of £6215 to the Applicant, by the Respondents in relation to rent arrears due by the Respondents at that date.
18. From September 2024 to July 2025 the Respondents have made payment of monthly rent due, together additional payments towards the arrears of rent which have accrued.
19. As at the date of the CMD the Respondents are due arrears of rent to the Applicant in the sum of £5820.
20. The Respondents have been in rent arrears for three or more consecutive months.

21. In terms of clause 11.4 of the tenancy agreement between the parties the Respondents agreed to take reasonable care of the Property. The Respondents have breached this term of the tenancy agreement.
22. In terms of clause 14.1 of the tenancy agreement the Respondents agreed to give the Landlord access to the Property for the purpose of conducting maintenance, repair or inspection. The Respondents have breached this term of the tenancy agreement.
23. The Respondents have engaged in anti-social behaviour during the period of the tenancy between the parties.

Finding in Law

24. It is it is reasonable, on account of the facts, to issue an eviction order.

Reasons for Decision

25. 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 Respondents.
26. The Tribunal were satisfied that it had had sufficient information upon which to make a decision at the CMD, having considered the written and oral representations made on behalf of the Applicant. The Tribunal rules of procedure allow, at rule 17(4), for a decision to be made at a CMD as at a hearing before a full panel of the Tribunal.
27. The Tribunal were satisfied, on the uncontested evidence provided, that the Respondent has been in arrears of rent for three or more months. Mrs Hogg explained to the Tribunal that the Respondents have outstanding arrears of rent in the sum of £5820 as at the date of this hearing.
28. The Tribunal were satisfied, on the uncontested evidence provided by way of affidavit evidence, that the Respondents have breached the terms of the tenancy agreement. The Respondents have refused to give reasonable access to tradespeople instructed by the Applicant to carry out repairs to the Property or to complete inspections necessary to ensure that the Property complies with gas and electrical safety regulations. The Respondents continue to store vast amounts of "clutter" within the Property leading to a significant fire risk
29. The Tribunal were satisfied, on the uncontested evidence provided by way of affidavit evidence, that the Respondents have engaged in anti-social behaviour during the period of the tenancy between the parties. The Respondents have

been abusive to the Applicants contractors and have acted in an aggressive manner towards neighbouring proprietors of the Property.

30. The Tribunal considered whether it was reasonable to issue an eviction order.
31. In determining whether it is reasonable to grant the order, the Tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties
32. In this case the tribunal finds that it is reasonable to grant the order under each of the grounds relied upon by the Applicant in the Notice to Leave
33. At the CMD the Applicants representative submitted that the Respondents have significant rent arrears. Although the Respondents have made ten additional payments of £95 towards arrears accrued, they have failed to enter into any agreement to pay those arrears within a reasonable timescale. The Applicant and their solicitor have written to the Respondent to request payment of rent arrears which have accrued. The Respondent has not engaged with the Applicant or his letting agents in relation to these rent arrears and has not reached any agreement to make payment of the arrears of rent within a reasonable timescale.
34. It was further submitted that the Respondents are not taking reasonable care of the Property and have refused requests for access to the Property to carry out inspections. The Respondents have failed to respond to the Applicant's reasonable request for such access. In addition, the Respondents have acted in an aggressive manner toward neighbouring proprietors.
35. Miss Scott advised the Tribunal that it is believed that the Respondents live in the Property with three children. It is understood that the First Named Respondent is in full time employment.
36. In all the circumstances, the Tribunal consider that it is reasonable to grant the eviction order. In reaching a decision on whether it was reasonable to grant the order sought the Tribunal took account of the fact that the Respondent has not submitted written representations to the Tribunal and has not appeared at the CMD.
37. The balance of reasonableness is weighted towards the Applicant.
38. The Tribunal also exercised the power within rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that a final order should be made at the CMD.

Decision

39. In all the circumstances, the Tribunal grant an order against the Respondent for eviction from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016.

40. The decision of the Tribunal is unanimous.

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.

A. Cowan

7th July 2025

Legal Member/Chair

Date