

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

Chamber Ref: FTS/HPC/EV/23/3796

Re: Property at 30D George Street, Perth, PH1 5JR (“the Property”)

Parties:

Douglas Copland Property Company, 12 Station Crescent, Invergowrie, Dundee, DD2 5DT (“the Applicant”)

Mr Bartek Cybula, 30D George Street, Perth, PH1 5JR (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for recovery and possession should be granted in favour of the Applicant.

Summary of Discussion

1. An application was received by the Housing and Property Chamber dated 26th October 2023. The application was submitted under Rule 109 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on ground 11 of the Private Housing (Tenancies) (Scotland) Act 2016.
2. On 12th December 2023, all parties were written to with the date for the Case Management Discussion (“CMD”) of 5th February 2024 by teleconferencing. The letter also requested all written representations be submitted by 2nd January 2024.
3. On 18th December 2023, sheriff officers served the letter with notice of the hearing date and documentation upon the Respondent by letterbox service.

This was evidenced by Certificate of Intimation 18th December 2023. This date was then postponed.

4. On 26th March 2024, all parties were written to with the date for the Case Management Discussion ("CMD") of 3rd May 2024 at 10am by teleconferencing.

The Case Management Discussion

5. A CMD was held on 3rd May 2024 at 10am by teleconferencing. The Applicant was not present but was represented by Mr Calvin Gordon, Senior Solicitor, Thorntons Law LLP. The Respondent was present and represented himself.
6. Mr Gordon confirmed that he still was motioning for an order for eviction to be granted under ground 11. Essentially this ground was based upon the Respondent owning and having cats in the Property, damage which has been done to the Property, the failure to report a water leak and the use of illicit drugs in the Property. The Tribunal discussed each of the points in turn.
7. The cats were discussed first. The Respondent confirmed that he has two cats. He has had them since they were kittens. They are 2 1/2 years old and 4 years old. They have litter trays in the property. They are male cats. He has had the cats neutered a few months ago. This should stop them spraying in the Property. He knows that they have sprayed in the carpets. He has been washing the carpets but has struggled with some parts where the cats also scratched the carpets. He had both cats when he moved into the Property. They are his son's cats essentially. He has his son on a part time basis. The cats have not damaged the walls. Mr Gordon said that the neighbours have complained regarding the cats. Mr Gordon said that it is obvious that the Respondent requires to get permission from the Applicant to own cats which he has not done. He said that this is clearly a breach of the tenancy agreement. Mr Gordon did not have more information with regard to what date the neighbours had complained about the cats and on what basis.
8. The damage to the carpet was discussed next. The Respondent said that the carpets have been damaged as a result of the cats spraying and scratching the carpets a little. They have pulled a little bit of the carpet off which is not fixed yet but it is the Respondent's intention to fix the carpets. He has bought carpet to do this. He has had a problem trying to get the repair done. He bought a new piece of carpet but has not put it down yet. He has intended to lay the carpet himself but now is looking to get somebody to do it for him. He is now working at night and has more money to be able to afford to pay somebody to undertake the repair. Mr Gordon said that the carpet had been removed and there is visible the damage to the carpet. Mr Gordon said that obviously the damage was caused with the cats scratching it. The smell has all also been an issue.
9. The leak in the ceiling was discussed next. The Respondent said that he did not know how this had happened. Everything was fine on one day and then the hole appeared. He was working away most days and came back late and had

not noticed the damage to the ceiling. He sent a message to the Applicant. He does not know if she had received this message or not. He does not have a copy of a text message that he sent to the Applicant because that was on an old phone. The leak was caused by the neighbours above the Property. The repair has not been completed yet. Mr Gordon said that the Applicant has not been able to undertake the repair as she has not been able to get into the Property to get it fixed. The Respondent said that the hole happened last year. He said he told the Applicant when he became aware of it. He said he believed that the upper neighbour had a flood in their property. The Respondent noted that during that time there has been other work undertaken by a plumber in his property. Mr Gordon said that his understanding about the leak was that it was from the property above. It was not reported in a reasonable time which is a breach of the tenancy. The issue that caused the leak from the upper neighbour has now stopped. There is an issue regarding whether this damage is causing dry rot which is concerning the Applicant. The damage needs to be repaired. The Respondent advised the Tribunal that he believed the leak had occurred around the end of May 2023. The Applicant became aware of the substantial damage and asked for access to the Property. Mr Gordon said it was at this point that the Applicant became aware of the other issues that have been raised within this application. Mr Gordon did not have a date that the Applicant had entered into the property and made the discoveries of these other items. Mr Gordon noted that the Applicant had experienced some difficulties in liaising with the upstairs neighbours to allow the work to be completed. He said that it had been reported to the insurance company. Mr Gordon does not know what access is needed for the repairs to be made.

10. The position concerning illicit drugs was discussed next. Mr Gordon said that the Applicant had seen what she believed to be illicit drugs of a Class B type in the Property. This was when she had gone in regarding the hole in the ceiling as referred to above. She will not tolerate this in her property. This is a breach of the tenancy agreement. Mr Gordon confirmed that there has been no police involvement at the point of discovering the alleged illicit drugs or since then. The drugs appeared to be a cannabis type drug. Mr Gordon said that the Respondent had been a previous tenant of the Applicants. The Applicant had freshly decorated this property prior to the start of this tenancy. The Respondent had moved into it from a previous tenancy. The Applicant is quite disappointed in the Respondent's behaviour particularly in terms of the drugs. The Respondent said that the photo that had been taken was not of cannabis but of CBD. It is not an illicit drug and it was bought legally in a shop in Perth called Blazed. He does not have a receipt for this. He does not take drugs but he wanted to try this as it was legal. He said he bought it for between £15 - £20.
11. The Respondent said that he wanted to stay in the Property. The Tribunal was not satisfied that this matter had been proved that the Respondent was in breach of tenancy terms. It is accepted that the Respondent had breached the terms having his cats in the Property without permission. It is not clear what impact this has upon the Applicant especially given that the cats had lived in the previous tenancy that is owned by the Applicant, albeit without permission. It is not clear why it would be reasonable to evict the Respondent on this basis. It is accepted that there was damage to the carpet by the cats. However, it is

not clear if the Respondent can remedy this by replacing the damaged carpet. It is accepted that there is a hole in the ceiling caused by water ingress from the above neighbour's flat flooding. It is not clear exactly when the hole occurred and when it was reported. It is not clear that if there was access for another plumbing matter why this was not addressed at that time. It is not known when the Applicant entered the Property to take photos and why the repair was not undertaken then. It is not clear why this has not been addressed since. It is not known what the substance in the bag in the photo was, crucially if the substance was an illicit drug. It will need to be clear exactly what the substance was. If it is not an illicit drug then is not a breach to the tenancy agreement. This matter will need to proceed to a hearing too allow evidence to be presented by both parties on all each alleged breach or tenancy. The Tribunal will also need to be fully addressed on reasonableness at the hearing.

12. The Tribunal continued the application to a hearing. This is to allow the parties to provide substantially more evidence to the Tribunal to allow it to be able to make a decision whether it is or is not reasonable to grant an order for eviction based on the above alleged breaches of tenancy. The application was continued to a hearing to allow both parties to evidence their positions. A direction will be issued to both parties.
13. On 29th January 2025, the Applicant lodged a submission and further items that she considered fulfilled the direction. This was not passed to the Tribunal until late on the day before the hearing. It was sent recorded delivery to the Respondent on the day before the hearing.

The continued CMD

14. A CMD was held 6th February 2025 at 10am by teleconferencing. The Applicant was represented by Mrs Fiona Armstrong. The Respondent was not present. The Tribunal noted that the Respondent had not had sight of the submission lodged by the Applicant. For this reason the Tribunal converted the hearing to a CMD. The Tribunal would not be making a decision on this date but will move to a further hearing. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondent did not make representations or a response to the direction in advance of the now CMD.
15. Mrs Armstrong gave the Tribunal further background to the application. She said that there had been two leaks in the Property. It is an old and odd shaped property particular in terms of its plumbing. The first leak was one that went from the property above down the wall to the property below. It is believed that this was due to sealant on the bath no longer being waterproof. This cause a hole in the ceiling of this property. The upstairs tenants moved out. There has been no further issues. It is not known if this upstairs landlord had resolved the issues or not as he does not respond to communications. The neighbours underneath do not use their property all of the time as it is their second home. Mrs Armstrong had a plumber visit who confirmed that there was no further issues from this leak though there was damage to the ceiling. The downstairs neighbours shortly after noticed water coming into their property again. This

time it smelt of clothes detergent. Investigation by the Applicant's plumber identified a leak under a floorboard where the pipe that led from the washing machine to a pipe but the connector had cracked (there was no suggestion that the Respondent was at fault for this issue). Mrs Armstrong said that she wants the Property recovered so that she can assess the damage from the water. The Tribunal asked if it was cosmetic damage. Mrs Armstrong said that she does think it would be cosmetic damage but if there is rot to the woodwork she will need to have this repaired. She needs into the Property to make this assessment. The Tribunal asked if she had considered applying for a Right of Entry through the Housing and Property Chamber. Mrs Armstrong said that she had but thought that she would wait until she knew the outcome of the application today. She was not sure about what she could do when she had the Right of Entry. The Tribunal noted that they would not be able to give legal advice but she may well benefit from consulting a solicitor or the Scottish Association of Landlords or other such organisation who would be able to give her that advice. The Tribunal considered, insofar as the evidence that it had before it, that it would not be reasonable to evict the Respondent on the information provide as both the leaks had been fixed though it noted that the impact of the damage was unclear.

16. The Respondent allowed access to the Property on two occasions. Both times it was his mother that had let Mrs Armstrong into the Property. Mrs Armstrong found the Property to be exceptionally messy and the Property was dirty. The bed had been moved into the Livingroom.
17. In terms of the substance in the photos, Mrs Armstrong accepted that she could not confirm that this was an illicit substance or not. There was no police involvement and no testing of the substance. The Tribunal was not satisfied that without evidence confirming that this was an illicit substance and the effect of this that it should be a ground for the eviction of the Respondent. Mrs Armstrong understood this point and that it was not able to be evidenced any further. She has spoken to the local CBD shop who said that they do not sell anything like that which was shown in the photos. However, she has not called this man as a witness and there is no sworn statement from him lodged. She will not rely on this point further. The Tribunal removed this from the reasons for applying for eviction.
18. The Tribunal discussed the issue regarding the Respondent having cats in the Property next. Mrs Armstrong explained that the Respondent had let a property from her directly before letting this property. The block that the flat was in had a fire at the bottom (which was nothing to do with the Respondent). All the occupants had vacate the building for several months while the damage was assessed and repaired. Mrs Armstrong noted that there was no sign of any cat at that point. The Respondent wanted to move to a bigger property with his then girlfriend. Mrs Armstrong was happy to let him another property as he had been a good tenant. She made it clear that there were to be no pets. It is the policy of the Applicant not to allow pets in a property. The Respondent had asked if he could have a cat. He was told that it was not permitted. If he wished to keep his cat he would have to live somewhere else. He said that the cat would go to his mother's house. Mrs Armstrong thought that was an end to the matter. It

was not until she had to enter the Property regarding the first leak that she saw that he had two cats. There was a strong smell coming from the Property which she supposed to be cat urine. She believes that they are house cats so it is not a smell from those cats in the hallway but rather the smell directly from the Property. She noted that there were two clean litter trays in the Property. There has been some damage to carpets around the Property where the cats have scratched the carpet. The Tribunal noted that the Respondent accepted at the last CMD that he had two cats. They were now neutered. He said that he has carpet to replace the damage done to the carpet. The Tribunal queried why such damage to the carpets warranted the Respondent being evicted rather than claiming from the deposit scheme at the end of the tenancy. Mrs Armstrong said that the carpets were in very good condition at the beginning of the tenancy. They were approximately 6 ½ - 7 years old when the Respondent moved into the Property. The Tribunal noted that it is not disputed that there has been a breach in the tenancy agreement with the Respondent owning and having two cats in the Property. However, the Tribunal must at all times consider reasonableness when reaching its decision. The Tribunal must consider whether it is reasonable to evict the Respondent from his home because he owns two cats. Mrs Armstrong said that she had shown clearly that the Respondent had lied to her about owning the cats. Mrs Armstrong said that she is of the view that it was because he had the cats that the Respondent did not allow entry to the Property to fix the ceiling or do the other repairs. The Tribunal requires to be satisfied that it is reasonable to evict the Respondent. The Tribunal noted that Mrs Armstrong will need to prove these points to the Tribunal such as it was due to the cats that he did not let her in to undertake the repairs. Noting that she was allowed in on two occasions when the cats were in the Property. A full explanation of the damage to the Property and the costs involved to remedy this damage should also be produced along with an explanation as to why this is not a matter for the deposit scheme at the end of the tenancy. As it stands, the Tribunal will need more evidence to support that this breach is sufficient to meet the test for reasonableness. Although owning the two cats is a breach of tenancy it does not appear reasonable, from what the Tribunal has before it, to grant an order for eviction. The Tribunal noted that the Applicant may wish to get further legal advice in terms of this test and consider her position as to whether she wishes to proceed with the application.

19. Mrs Armstrong said that there are no other tenancy issues. The Respondent has paid his rent and it is up to date with no arrears.
20. The Tribunal continued the CMD to a hearing to allow further evidence to be presented by both Parties. The Tribunal issued a second direction asking for further evidence. Both parties were reminded that this Tribunal has to look at the legal context of whether it is reasonable to evict or not. Both parties were reminded that they can get representation either from an appropriate organisation or from a solicitor regarding what that means in terms of the law.
21. On 18th April 2025, Applicant emailed the Housing and Property Chamber lodging her response to the direction. This included a submission, photos of the Property and quotations for new flooring. The quotations for the new carpet totalled £2809.05.

22. A hearing was held 20th June 2025 at 10am by teleconferencing. The Applicant was represented by Mrs Fiona Armstrong. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondent did not make representations or a response to the direction in advance of the hearing or respond to the direction.
23. Mrs Armstrong explained that her position remained the same, namely that she was seeking an order for eviction. Her position remains that the Respondent has breached the tenancy agreement by having cats in the Property. The cats have gone on to damage the carpets and walls. There is a strong smell from the Property from the cats being there. The carpets will need to be completely replaced due to the damage from scratching and the smell of them.
24. She last spoke to the Respondent in on 5th April 2025. She had made an arrangement for the ceiling to be repaired by a joiner. The Respondent could only let the joiner in on a Saturday. Mrs Armstrong and the joiner attended the Property on 29th March 2025 to allow the joiner to make an assessment of the work which needed to be undertaken. Mrs Armstrong and the joiner returned to the Property on 5th April 2025 when the joiner cut out a part of the ceiling plasterboard and replaced it. Mrs Armstrong has not been able to return to the Property to get the decorative repairs completed to the ceiling. Mrs Armstrong did not mention matters arising from this application as she did not want to be deemed as harassing him. The Respondent did tell her on 27th March 2025 that he was to hire an industrial cleaner that week to make sure all the carpets were clean. When she arrived at the Property on 5th April 2025 the carpets had not been cleaned. She said that the Property was very dirty. She does not consider that he has been looking after the Property which he has a legal obligation to do arising from the lease.
25. Mrs Armstrong said that had the Respondent had cats in the Property but had been ensuring that Property was well maintained and not damaged then she would not have considered it reasonable to evict him. However, he has been aware of the damage and has not done anything to repair it. He had said that he was going to repair one patch but it was a very small area in the vestibule. This has not been done. She has concerns that more damage will occur to the Property if he continues to live there.

Findings and reason for decision

26. A Private Rented Tenancy Agreement commenced 1st October 2021.
27. The Respondent owns and has two cats living in the Property with him. The cats have scratched and sprayed on the carpets.
28. The lease states at clause 35 that the Respondent will not keep any pets within the Property. The Applicant sent a WhatsApp message to the Respondent on 11th October 2021 stating that he must not move in with the cat.

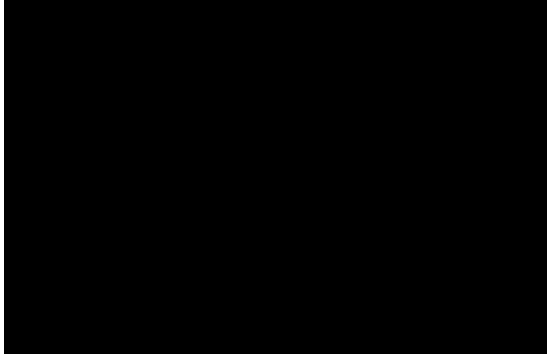
29. Clause 17 states that the Respondent shall take reasonable care of the Property. There was an issue with a leak that was coming in through the roof. The Respondent failed to report this to the Applicant in a reasonable time.
30. There are no rent arrears or other tenancy issues.
31. The Respondent has not engaged with this process since the first CMD on 3rd May 2024. At that CMD he said that he was going to undertake the repairs which he has not done albeit that the hearing was more than a year later.
32. There are no issues of reasonableness that prevent an order from being granted.

Decision

33. The Respondent has persistently breached his PRT by having cats in the Property. While that alone may not have been sufficient to have considered it reasonable to evict him the fact is that he has allowed the Property to be damaged by his cats and not undertaken any of the repairs even though he has been fully aware of his obligation in terms of the lease and that this process has been ongoing. He has not undertaken any of the repairs. There is no evidence that he will address these issues going forward which could lead to the Property falling into further disrepair. The Respondent said in May 2024 that he was able to address the repair financially but did not have sufficient time as he was on night shift. As more than one year has passed since this point it would be reasonable to presume that he should have been able to address the repairs before this point. The Respondent has failed to do so. He has not informed the Tribunal of the repairs undertaken if any. He has not engaged with the Tribunal since the first CMD. Mrs Amstrong was in the Property regarding the ceiling repairs and he had not addressed the damage caused by the cats. Numerous carpets in the Property have been damaged which will cause new carpets to be required to be fitted prior to any further letting of the Property. This will be far beyond the amount of the deposit which is £420. Further the Respondent did not notify the Applicant about the damage to the ceiling. This could have been notified to the Applicant but failing to do so for longer could have resulted in further damage to the Property. It is reasonable for the Applicant to be concerned that there could be further damage in the Property which the Respondent may fail to notify the Applicant about as has happened in this case.
34. The Tribunal found that ground 11 has been established and granted an order 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.



20th June 2025

Date