

**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/25/0115**

**Re: Property at 70B Nelson Street, Aberdeen, AB24 5ES (“the Property”)**

**Parties:**

**Dr Rami Sawalha, Dr Ola Sawalha, 10 Hedgehog Crescent, Edinburgh, EH17 8XP (“the Applicants”)**

**Eileen Mungu, 70B Nelson Street, Aberdeen, AB24 5ES (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Elizabeth Williams (Ordinary Member)**

**Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the provisions of ground 11 and 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) are met and that it would be reasonable to make an eviction order.

The Tribunal therefore made an eviction order under section 51 of the 2016 Act.

**Background**

- 1 This is an application for an eviction order under Rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”) and section 51 of the 2016 Act. The Applicants relied upon grounds 11 and 12 as the grounds for possession, stating that the Respondent had failed to pay rent since moving into the property, and had failed to pay the tenancy deposit. The application was conjoined with an application for a payment order under reference FTS/HPC/CV/25/0116 as the applications related to the same parties and same tenancy.
- 2 The application was referred to a case management discussion (“CMD”) to take place by teleconference on 17 July 2025. The Tribunal gave notice of the CMD

to the parties in accordance with Rule 17(2) of the Rules. Said notice was served upon the Respondent by sheriff officers on 30 April 2025.

- 3 The Tribunal invited both parties to make written representations. On 29 April 2025 and 8 July 2025 the Applicants submitted written representations which were copied to the Respondent. No written representations were received from the Respondent.

### **The CMD**

- 4 The CMD took place on 17 July 2025 at 2pm by teleconference. The Applicants and the Respondent all joined the call.

- 5 The Tribunal had the following documents before it:-

- (i) Form E application form;
- (ii) Title sheet confirming the Applicants' ownership of the property;
- (iii) Excerpt from the online landlord register confirming the Applicants' landlord registration;
- (iv) Private residential tenancy agreement between the parties;
- (v) Notice to leave and proof of delivery upon the Respondent;
- (vi) Section 11 notice and proof of delivery upon the local authority;
- (vii) Rent statements;
- (viii) Bank statements;
- (ix) Excerpt text messages between the Applicants and Respondent;
- (x) Copy letter from the Applicants to the Respondent's guarantor; and
- (xi) The Applicants' written representations dated 29 April 2025 and 8 July 2025.

- 6 The Tribunal explained the purpose of the CMD and proceeded to hear submissions from the parties on the application. The following is a summary of the key elements of the submissions and does not constitute a verbatim account.

- 7 The Applicants explained that they were seeking an eviction order. The Respondent had moved into the property in September 2024. She had never paid any rent. She had also failed to pay the tenancy deposit. She had included her father as guarantor, but it transpired that he had not consented to this. She claimed her father had passed away, but the Applicants had since spoken with him directly regarding the situation. The Applicants outlined the attempts they had made to contact the Respondent regarding the rent arrears. The Respondent had given excuses as to why rent had not been paid, and had provided false proof of payment. She had since blocked the Applicants' number. The Applicants were forced to engage a debt collection agency to try and enforce payment of the rent. The Respondent was also refusing access for safety checks and inspections. The Applicants explained the impact the rent arrears were having on them. They were in financial difficulty. They relied upon the income from the rent to pay the mortgage for their home in Edinburgh. The Applicants explained that they had bought the property at auction, having taken funds out of their pension. They had spent around £25,000 refurbishing the

property before the Respondent moved in. The Applicants confirmed that they owned other rental properties in Edinburgh.

- 8 The Respondent accepted that she was in the wrong. The situation could have been resolved if she had been honest from the start. She did not oppose the eviction order. She was happy to pay the rent arrears. The Respondent explained that she had unexpectedly left university in September 2024. She had since been working odd jobs, with no regular income. She did not know if she could apply for benefits. She did not have enough money for the rent. She had recently started working for a friend and had around £2000 saved. She planned to pay off the arrears by the end of August 2025. The Respondent confirmed that she had been in touch with the council and hoped to get accommodation with them. If not, she would return to Southampton where she had family. The Respondent confirmed that she was 24 years old and lived in the property on her own. She denied that she had refused access to the property.
- 9 The Tribunal adjourned the CMD to deliberate, at which point the parties left the call, before resuming the discussion and confirming its decision.

### **Findings in fact**

- 10 The Applicants are the landlords, and the Respondent is the tenant, of the property in terms of a private residential tenancy agreement which commenced on 12 September 2024.
- 11 In terms of Clause 8 of the tenancy agreement the Respondent undertook to pay rent at the rate of £600 per calendar month in advance.
- 12 The Respondent has failed to pay rent as agreed. As at the date of this decision rent arrears of £6,300 have accrued. No rent has been paid by the Respondent since the tenancy commenced.
- 13 The Respondent has failed to pay the tenancy deposit for the property in the sum of £600, which is a breach of Clause 11 of the tenancy agreement.
- 14 The Applicants have sent a notice to leave to the Respondent by email. The Respondent consented to the delivery of notices by email under clause 4 of the tenancy agreement. The notice to leave included grounds 11 and 12 of schedule 3 of the 2016 Act.
- 15 The Applicants have sent a notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Aberdeen City Council.
- 16 The Applicants have reminded the Respondent of her obligation to pay rent. The Applicants have attempted to engage with the Respondent regarding the rent arrears.

- 17 The arrears are not known to be a result of any failure or delay in the payment of a relevant benefit to which the Respondent may be entitled.
- 18 The Respondent accepts the arrears are due. The Respondent does not object to the eviction order.
- 19 The Respondent is 24 years old and resides alone. The Respondent has family in Southampton that she can stay with.

## **Reasons for decision**

- 20 The Tribunal took into account the application and supporting documentation, written representations, and the submissions from the parties at the CMD, and considered it could make relevant findings in fact in order to reach a decision on the application. The Respondent had not sought to challenge the substantive facts of the case presented by the Applicants and there were therefore no issues to be resolved that would require a hearing to be fixed.
- 21 Based on the application paperwork the Tribunal was satisfied that the tenancy between the parties was a private residential tenancy, and that the Respondent had been given a notice to leave that complied with the provisions of the 2016 Act. The Tribunal was also satisfied that the Applicants had given the local authority notice under section 11 of the Homelessness etc (Scotland) Act 2003 at the time of making this application. The Tribunal therefore considered whether grounds 11 and 12 of schedule 3 of the 2016 Act had been met in this case.
- 22 The Tribunal considered the wording of grounds 11 and 12:-

*“11 (1) It is an eviction ground that the tenant has failed to comply with an obligation under the tenancy.*

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

*(a) the tenant has failed to comply with a term of the tenancy, and*

*(b) the Tribunal considers it to be reasonable to issue an eviction order on account of that fact.*

*(3) The reference in sub-paragraph (2) to a term of the tenancy does not include the term under which the tenant is required to pay rent.*

*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.*

*(5) For the purposes of this paragraph—*

*(a) references to a relevant benefit are to—*

*(i) a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971),*

*(ii) a payment on account awarded under regulation 91 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.*

*(6) Regulations under sub-paragraph (4)(b) may make provision about—*

*(a) information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),*

*(b) steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,*

*(c) such other matters as the Scottish Ministers consider appropriate.”*

- 23 The Tribunal accepted based on the rent statements produced by the Applicants that the Respondent had been in arrears for three or more consecutive months. The Tribunal also accepted that the Respondent had breached a term of the tenancy agreement by failing to pay the tenancy deposit. The Respondent did not dispute either of these facts. The Tribunal therefore went on to consider whether it was reasonable to make an eviction order on account of the facts in this case.
- 24 The Tribunal gave significant weight to the extent of the Respondent's breach of her rental obligations. Payment of rent is a fundamental obligation of any tenancy. The Respondent had paid no rent whatsoever since the tenancy commenced. The arrears were now significant. The Tribunal also took into account the impact of the arrears on the Applicants. It was clear that the situation had caused them financial difficulties as they relied upon the rent as part of their income stream.
- 25 The Tribunal accepted that the Applicants had made efforts to address the arrears with the Respondent. Whilst they had not complied fully with the rent arrears pre-action protocol, the Tribunal gave more weight to the Respondent's complete disregard for her rental obligations. She accepted that she had acted dishonestly in her dealings with the Applicants. She accepted that rent had not

been paid, and there appeared to be no reasonable explanation as to why. The Respondent's submissions on this point were that she had simply had no funds to pay the rent. This appeared at odds with her comment about having £2000 saved in the bank. There also appeared to be no suggestion that the arrears were a result of any failure or delay in the payment of a relevant benefit.

26 Ultimately, the Respondent did not object to the eviction order. She appeared to have options in terms of rehousing, even if this meant moving back to Southampton. Accordingly, having considered the above factors as relevant to the issue of reasonableness, the Tribunal determined that the balance weighed in favour of making an eviction order in this case.

27 The decision of the Tribunal was 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.**

# R. O'Hare

17 July 2025

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Legal Member/Chair

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Date