

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 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/25/1670

Re: Property at 26 Hill Street, Ladybank, Fife, KY15 7NP (“the Property”)

Parties:

Mr Scott Findlay, Mrs Gaye Findlay, Silver Birches, Kettlehill, By Cupar, Fife, KY15 7TW (“the Applicant”)

Miss Beth Galletly, formerly residing at the property (“the Respondent”)

Tribunal Members:

Sarah O'Neill (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted in favour of the Applicants against the Respondent.

Background

1. An application form was received from the Applicants' solicitor on behalf of the Applicants on 17 April 2025 under rule 109 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 ('the 2017 rules'). The application stated that the Applicant sought recovery of the property under Grounds 10, 11 and 12 as set out in Schedule 3 of the 2016 Act, as amended.
2. The Applicants also made a civil proceedings application (reference no: FTS/HPC/CV/25/1673) for a payment order under rule 111 of the 2017 rules in respect of alleged outstanding rent arrears.
3. Attached to the application form were:

- i) Paper apart setting out further details regarding the application.
 - ii) Copy private residential tenancy agreement between the parties in relation to the property, which commenced on 1 May 2022.
 - iii) Notice to Leave dated 15 January 2025 citing grounds 10 (not occupying let property) and 11 (breach of tenancy agreement) and stating the date before which proceedings could not be raised to be 15 February 2025, together with proof of sending by email on 15 January 2025.
 - iv) Further Notice to Leave dated 1 February 2025 citing ground 12 (rent arrears) and stating the date before which proceedings could not be raised to be 4 March 2025, together with proof of sending by email on 1 February 2025.
 - v) Copy notice under section 11 of the Homelessness etc. (Scotland) Act 2003 to Fife Council, together with covering email dated 10 April 2025.
 - vi) Pre-action letters from the Applicants to the Respondent dated 9 and 16 December 2024 and 8 January 2025.
 - vii) Letter from TC Young, the Applicants' solicitor to the Respondent dated 6 March 2025.
 - viii) Rent statement showing alleged rent arrears of £4500 due by the Respondent to the Applicants as at 1 April 2025.
4. The application was accepted on 12 May 2025.
 5. Following a request from the Tribunal administration, further information was received from the Applicants' solicitor on 13 May 2025.
 6. Notice of the case management discussion (CMD) scheduled for 2 October 2025, together with the application papers and guidance notes, was served on the Respondent by sheriff officers on behalf of the Tribunal on 26 August 2025. The Respondent was invited to submit written representations by 15 September 2025.
 7. No written representations were received from the Respondent in advance of the CMD.

The case management discussion

8. The CMD was held by teleconference call on 2 October 2025 to consider both the eviction application and the accompanying conjoined civil proceedings application (reference no: FTS/HPC/CV/25/1673). The Applicants were represented by Miss Simone Callaghan of TC Young solicitors. The Respondent was present on the teleconference call and represented herself.

Submissions on behalf of the Applicants

9. Miss Callaghan asked the Tribunal to grant an eviction order against the Respondent. The Tribunal adjourned the CMD to allow Miss Callaghan to take instructions from the Applicants on whether they wished to proceed with the application, having heard from the Respondent that she had moved out of the property in December 2024, as detailed below.
10. Following the adjournment, Miss Callaghan told the Tribunal that the Applicants still wished to proceed with the eviction application, on ground 10 only. While the Applicants were sympathetic to the Respondent's circumstances, the Respondent had not legally terminated her tenancy under Part 5 of the 2016 Act. The Applicants' solicitor had sent an email to the Respondent on 6 March 2025. This email advised her that it was the Applicants' position that her tenancy had not been legally terminated, and asked her to confirm that she had ceased to occupy the property and did not intend to return there to live. No response had been received from the Respondent.
11. The Respondent had agreed that the Applicants could obtain access to the property for a pest control company in June 2025. This also suggested that her tenancy was still in place at that time.
12. The Applicants therefore wished to obtain an eviction order in order to ensure that the tenancy had been legally terminated and they could take possession of it.
13. Miss Callaghan submitted that it was reasonable to grant an eviction order in the circumstances. The Applicants are in their mid to late 50s and are reliant on the rental income from the property to save for their retirement. They have had no rental income from the property for 11 months, which has caused them a significant financial loss and a lot of stress. They are also concerned about the condition of the property. There have been reports of mice in the property and complaints from neighbours about a bad smell coming from the property. The gas safety certificate has expired. The Applicants need to obtain access to the property in order to address these issues.

The Respondent's submissions

14. The Respondent told the Tribunal that she had moved her family and all of her possessions out of the property on 12 December 2024. She and her children had to leave very suddenly as a result of domestic abuse. She had been advised by the police to move to a safe place and had done so with the assistance of her family support worker. She had been advised not to tell anyone where she was going. This was why she had not contacted the Applicants to let them know that she had moved out.
15. When the Applicants contacted her on 3 January 2025, she had replied to them confirming that she had moved out and explaining the reasons for this. She had been unable to clean the property before she left, as she would have wanted

to. Her car had broken down and she was without a car for 6 months, which meant she was unable to go back and clean the property.

16. The Respondent said that she had sent the keys to the Applicants at their home address between Christmas and New Year by regular post. She had not received the email of 6 March 2025, as she had been having issues with that email address, which was why she had not responded.
17. At the time when she moved out, she was dealing with the threat of domestic abuse and she and her children were living in fear. She is a sole parent with two autistic children aged 13 and 16. She had no car, Christmas was coming up and they had to move very suddenly. She believed that she had clearly notified the Applicants that she had moved out of the property. She said that she accepted that she owed £2175 in rent arrears for the period up to the end of January 2025, but did not believe that she should be liable for any rent after that date.
18. The Respondent confirmed that she was happy to agree to an eviction order being made, as she was no longer living in the property.

Further evidence submitted on behalf of the Applicants

19. The Tribunal asked Miss Callaghan to forward the email correspondence of 3 January 2025 between the parties which was referred to in the application, but had not been submitted. It also asked Miss Callaghan to send the Tribunal the email correspondence of 5/6 June 2025 which she had referred to regarding access to the property. Miss Callaghan forwarded the relevant items of correspondence to the Tribunal during the CMD.
20. The second Applicant, Mrs Findlay, confirmed to the Tribunal that the Applicants had not received the keys to the property, which the Respondent said she had sent in the post.

Findings in fact

21. The Tribunal made the following findings in fact:

- The Applicants are the owners and registered landlords of the property.
- There was a private residential tenancy in place between the parties, which commenced on 1 May 2022.
- The Respondent vacated the property on 12 December 2024.
- The Respondent notified the Applicants on 3 January 2025 that she had moved out of the property with her children.
- On 15 January 2025, the Applicant validly served a Notice to Leave citing Grounds 10 and 11 on the Respondent by email, as provided for in the tenancy agreement.
- The Respondent has not occupied the property as her only or principal home since around 12 December 2024.

Reasons for decision

22. The Tribunal considered that in the circumstances, it was able to make a decision at the CMD without a hearing as: 1) having regard to such facts as were not disputed by the parties, it was able to make sufficient findings to determine the case and 2) to do so would not be contrary to the interests of the parties. It therefore proceeded to make a decision at the CMD without a hearing in terms of rules 17(4) and 18 (1) (a) of the 2017 rules.

23. The Tribunal first considered whether the legal requirements of Ground 10, as set out in Schedule 3 of the 2016 Act (as amended) had been met. Ground 10 states:

Not occupying let property

10(1) It is an eviction ground that the tenant is not occupying the let property as the tenant's home.

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

(a) the let property is not being occupied as the only or principal home of—

(i) the tenant, or

(ii) a person to whom a sub-tenancy of the let property has been lawfully granted,

(b) the property's not being so occupied is not attributable to a breach of the landlord's duties under Chapter 4 of Part 1 of the Housing (Scotland) Act 2006, and

(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.

(3) In sub-paragraph (2), the reference to a sub-tenancy being lawfully granted is to be construed in accordance with section 46(3).

16. The Tribunal determined on the basis of the evidence before it that the Respondent had not occupied the property as her only or principal home since on or around 12 December 2024. There did not appear to be any arrangements for a sub-tenancy in place, and the Respondent had not vacated due to issues of disrepair within the property. The Tribunal therefore determined that Ground 10 had been established by the Applicant.

- 24.** The Tribunal observes that in the circumstances, it is unfortunate that this matter was not resolved sooner without the need for a Tribunal application. This appears to be due to various issues with communication between the parties.
- 25.** The Tribunal considered whether it was reasonable to issue an eviction order in all the circumstances of the case. While the Respondent clearly believed that she had notified the Applicants on 3 January 2025 that she had left the property, she confirmed that she did not wish to oppose the application. The Tribunal found that she had not occupied the property since around 12 December 2024. It was clear that the Respondent would not be returning to occupy the property given her circumstances. The Applicants clearly wished, however, to seek an eviction order for the avoidance of any doubt that the tenancy had ended, in order that they could recover possession of the property.
- 26.** Having carefully considered the evidence and all of the circumstances, the Tribunal determined that on balance it was reasonable to grant an eviction order.

Decision

The Tribunal grants an order in favour of the Applicants against the Respondent for recovery of possession of the property.

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.

Sarah O'Neill

Legal Member/Chair

Date 2 October 2025_