

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)**

Chamber Ref: FTS/HPC/EV/22/3174

Re: Property at 10 Main Street, Rhynie, Huntly, Aberdeenshire, AB54 4HB (“the Property”)

Parties:

**James Muirden & Sons, Netherton, Clatt, Huntly, Aberdeenshire, AB54 4YH
 (“the Applicant”)**

**Mr Norman Reid, 10 Main Street, Rhynie, Huntly, Aberdeenshire, AB54 4HB
 (“the Respondent”)**

Tribunal Members:

Virgil Crawford (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

BACKGROUND

1. By Lease dated 19th June 2012 the Respondent leased the Property from the Executors of the late Mrs Jean Robertson. The Applicant acquired the Property and succeeded in title as landlords of the Property. This was intimated to the Respondent by the Applicant’s solicitors;
2. The tenancy commenced on 1st June 2012 and was for a period of not less than 6 months;

3. No notice in terms of section 32 of the Housing (Scotland) Act 1988 (“the 1988 Act”) – commonly referred to as a form AT5 - was produced to the Tribunal;
4. The rent payable was £400.00 per month;
5. During 2019 the Respondent fell into arrears of rent. Arrears accrued consistently every month. The level of arrears was reduced as a result of the Respondent undertaking farming work for the Applicant, the cost of the work thereafter being set off against the arrears of rent. Despite that, however, the rent arrears were never cleared;
6. The Applicant served a notice in terms of section 19 of the 1988 Act - commonly referred to as a form AT6 - on the Respondent intimating an intention to raise eviction proceedings under Ground 8 of Schedule 5 to the 1988 Act being that, as at the date of service of the form AT6, and as at the date of the hearing, at least 3 months lawfully due from the tenant is in arrears. This Notice was served on 4th February 2022 at which point arrears of rent amounted to £5,600.00, that being the equivalent to 14 months rent arrears. The initial Case Management Discussion was held on 27th January 2023 at which point arrears amounted to £2,800.00 (7 months rent). The Hearing was conducted on 3rd April 2023 at which point rent arrears amounted to £3,600.00 (9 months rent);
7. A notice in terms of section 11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the local authority;
8. The Applicant thereafter presented two separate applications to the Tribunal, one seeking an order for payment of rent arrears (CV/22/3175), the other seeking an order for eviction (EV/22/3174);

THE HEARING

9. The Applicant was represented at the Hearing by Mr A Taylor of Messrs Burnett and Reid LLP, Solicitors. The Respondent did not participate in the proceedings. The Respondent had, however, previously received intimation of the Case Management Discussion held on 27th January 2023 and intimation of the date of the Hearing. The Respondent had lodged no submissions with the Tribunal and did not participate at either calling of the case. In the circumstances, the Tribunal proceeded in absence of the Respondent;
10. Mr Morven Muirden, one of the partners of the Applicant firm, participated as a witness. He advised the Tribunal that the arrears of rent as at the date of the hearing amounted to £3,600.00. He explained that the Respondent is someone who has been known to him most of his life. The Respondent is 59 years of age and lives alone at the Property. He has two children but his children are grown up and no longer reside with the Respondent;
11. The Respondent last spoke to Mr Muirden during November 2022. At that point Mr Muirden made contact with him to encourage him to make payment of the rent which was outstanding. The Applicant advised him

that he “was on it”. Mr Muirden enquired as to how he would sort matters out with a view to making payment of the rent arrears and getting his rent balance back to zero. The Respondent again said he was “on it”. This was said in a forceful way;

12. Mr Muirden heard nothing further from the Respondent thereafter and the arrears of rent have not been reduced;
13. Mr Muirden advised that he is a farmer and at times requires to engage contractors to undertake work at his farm. The Respondent has done such work in the past. Mr Muirden advised that the Respondent owns various pieces of machinery which are useful for various tasks which are required and, as a result, he would, on occasion, engage the services of the Respondent to clear ditches, to knock in fence posts and to sow grain. Over recent years, because of the arrears of rent increasing, an informal arrangement came into place whereby work undertaken by the Respondent for Mr Muirden would result in an invoice being raised with the cost of the invoice then being set against the arrears of rent;
14. This arrangement, as stated, was an informal arrangement. It did not form part of the lease between the parties. Mr Muirden would prefer the rent to be paid;
15. Mr Muirden advised that, in more recent times, he has had less cause to engage the services of the Respondent. He indicated that the Respondent has less machinery than he previously did, the result being that there was less need to call on him for certain tasks. In any event, however, the Applicant should not require to be in a position whereby he is obliged to use the services of the Respondent just to reduce the rent arrears;
16. Mr Muirden advised that Respondent has recently undertaken some work for which he has not issued an invoice. Mr Muirden expects of the value of that invoice to be no more than £250.00. Once the invoice is produced it can, if necessary, be set off against arrears of rent;

FINDINGS IN FACT

17. The Tribunal found the following facts to be established:-
 - a) By Lease dated 19th June 2012 the Respondent leased the Property from the Executors of the late Mrs Jean Robertson. The Applicant acquired the Property and succeeded in title as landlords of the Property. This was intimated to the Respondent by the Applicant’s solicitors;
 - b) The tenancy commenced on 1st June 2012 and was for a period of not less than 6 months;
 - c) The rent payable was £400.00 per month;
 - d) During 2019 the Respondent fell into arrears of rent. Arrears accrued consistently every month. The level of arrears were only reduced as a result of the Respondent undertaking farming work for the Applicant, the cost of the work thereafter being set off against the arrears of rent. Despite that, however, the rent arrears were never cleared;

- e) The Applicant served a notice in terms of section 19 of the 1988 Act on the Respondent intimating an intention to raise eviction proceedings under Ground 8 of Schedule 5 to the 1988 Act being that, as at the date of service of the form AT6, and as at the date of the hearing, at least 3 months lawfully due from the tenant is in arrears. This Notice was served on 4th February 2022;
- f) As at the date of service of the said notice arrears of rent amounted to £5,600.00, that being the equivalent to 14 months rent. The initial Case Management Discussion was held on 27th January 2023 at which point arrears amounted to £2,800.00 (7 months rent). The Hearing was conducted on 3rd April 2023 at which point rent arrears amounted to £3,600.00 (9 months rent);
- g) A notice in terms of section 11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the local authority;
- h) As at the date of the Hearing, arrears of rent amounted to £3,600.00. That amount is due, resting and owing by the Respondent to the Applicant;
- i) It is reasonable that an order for eviction be granted;

REASONS FOR DECISION

- 18. As at the date proceedings were raised before the Tribunal the arrears of rent amounted to £8,788.50. As at the date of the hearing, on the basis of an updated rent statement, the arrears amounted to £3,600.00. In the circumstances, the Tribunal made an order for payment in that amount;
- 19. No monthly rental payments had been made by the Respondent since at least October 2019. The only way in which the arrears of rent were reduced was as a result of the Respondent being contracted by the Applicant to undertake work and the cost of that work being offset against the arrears of rent;
- 20. There was no basis for the Respondent to expect that work would continue to be provided to him by the Applicant. The Respondent had signed a lease in which he agreed to make payment of rent on a monthly basis and he was obliged to do so. He has been failing to do so for a number of years;
- 21. While the Applicant had been engaging the services of the Respondent to undertake work on its behalf, the Applicant should not be in a position where it feels obliged to provide work for this purpose. The Applicant should be in a position whereby, if it required to engage a contractor, it could engage a contractor of its choice. In that event, the rent due by the Respondent would still require to be paid each month;
- 22. Having regard to the significant period of time over which the Respondent had failed to make payment of monthly rent payments, the fact that the arrears in his rent account had not fallen below £1,600.00 at any point since January 2020, the Tribunal concluded that it was reasonable that an order for eviction should be granted;

23. The only information the Tribunal had in relation to the personal circumstances of the Respondent were provided by Mr Muirden. On the basis of the information provided, there is no information which enabled the Tribunal to conclude that it was anything other than reasonable to grant an order for eviction;

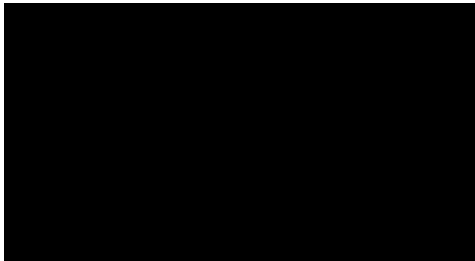
DECISION

The Tribunal grants order to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property at 10 Main Street, Rhynie, Huntly, Aberdeenshire, AB54 4HB and to make the same void and redd that the Applicant or others in their name may enter thereon and peaceably possess and enjoy the same.

Order not to be executed prior to 12 noon on 10th May 2023

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.



3rd April 2023

Legal Member/Chair

Date