



**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/19/1209 and FTS/HPC/EV/19/1212**

**Re: Property at 41 Wylie Crescent, Cumnock, KA18 1LU (“the Property”)**

**Parties:**

**Mr Sacha Sepehr, 35 Arthur Court, Charlotte Despard Avenue, London, SW11 5JA (“the Applicant”)**

**Miss Amie Louise Lockyer, 41 Wylie Crescent, Cumnock, KA18 1LU (“the First Respondent”)**

**Mr Scott Langfield, 41 Wylie Crescent, Cumnock, KA18 1LU (“the Second Respondent”)**

**Tribunal Members:**

**Melanie Barbour (Legal Member)**

**Decision (in absence of the Respondents)**

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

**Background**

1. Two applications had been received under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession under a private residential tenancy by the Applicant against the Respondents for the Property.
2. The applications contained:-
  - a copy of the tenancy agreement,
  - a copy of the notices to leave with evidence of service
  - a copy section 11 Notice

- a copy of the rent account
  - photographs of Property
3. The Applicants' representative Ms McFarlane from Cairn Estate Agents and Letting Agents, appeared on behalf of the Applicant. There was no appearance by the Respondents.
  4. Notice of the Hearing had been served on the Respondents by sheriff officers on 16 May 2019. As I was satisfied that the Respondents had been served with notice of today's hearing I was therefore prepared to proceed with today's hearing in their absence.

#### Hearing

5. The Applicant's agent referred me to the papers which had been lodged in support of the application, including the tenancy agreement, the notices to leave, rent account statement and photographs of the Property. She also confirmed that both notices to leave had been served by sheriff officers. She advised that she would wish to have the applications conjoined into one application, as they related to the same Property and tenancy agreement and in effect were the same eviction action. I agreed to allow the applications to be amended and to proceed as one application against both Respondents.
6. She advised that the notice to leave sought eviction under two grounds, "not occupying let Property" and "rent arrears for a period of more than 3 months", and the Applicant was seeking eviction under each ground.
7. She advised that the current level of arrears were £2630 as at 13 June 2019. When the application was made to the Tribunal the arrears were £930. She advised that the last payment received was paid in December 2018. That there had been arrears on the rent account for a period exceeding three consecutive months. She did not consider that the arrears were due in part or wholly due to a delay or failure in the payment of benefits, and she submitted that she had contacted the Council to find out about any benefit claim, and they had advised that there would be no further action by them to process a claim.
8. The Applicant's agent advised in summary that the Respondents were in rent arrears for a period of more than three consecutive months, and those rent arrears totalled more than one months' rent, and she did not consider that there were outstanding benefits issues causing the arrears.
9. The Applicant's agent advised that they had had no contact whatsoever with the Respondents since around December 2018. She advised that she had heard that the Respondents were now living down in England, she understood that the First Respondent had some on-going issues with child contact in England and the Respondents had therefore been going regularly to England regarding that matter. She thought that they had eventually decided to stay down there. She advised that she had attempted to contact them on numerous occasions by text and email, however they did not respond to her.

10. She advised that the letting agents had attended at the Property for the first property review in December 2018 and she had met the Respondents at that time, there were no problems noted with the Property and they appeared to be living there. Thereafter there had been a further two visits to the Property in January and February 2019, about 4 weeks apart, and they had found the Property to be in the same condition on each visit, with very limited personal belongings and furniture in it and the Respondents not there. She also advised that they had done the "fridge test" to see if any food in the fridge had changed during the two visits and there had been no change. They had also noted the same plates with mouldy food on them during each visit.
11. She advised that she was not aware of the Property needing any repairs in relation to matters failing under the repairing standard or otherwise. The Applicant was concerned about getting the Property back however to ensure that there were no issues needing to be attended to, in particular for the utilities. The Respondents had not raised any repairing issues when she had been in contact with them.
12. She therefore submitted that the Respondents were not occupying the let Property.
13. She advised therefore that the Applicant was seeking an order for recovery of the possession of the Property under each ground.

#### Findings in Fact

14. The Tribunal found the following facts established:-
15. There existed a private residential tenancy between the Applicant and the Respondents. It had commenced on 13 August 2018.
16. The tenancy was for the Property, 41 Wylie Crescent, Cumnock.
17. The tenants are Amie Louise Lockyer and Scott Langfield.
18. The landlord is Sacha Sepehr.
19. Clause 6 of the Tenancy Agreement provides that the tenant agrees to occupy the let Property as his or her home.
20. Clause 15 of the Tenancy Agreement provides that the tenant must tell the landlord if he or she is to be absent from the let Property for any reason for a period of more than 14 days.

34. Ground 10 Sub paragraph 1 states that "It is an eviction ground that the tenant is not occupying the let Property as the tenant's home."
35. Sub paragraph 2 provides that the Tribunal must find that the ground named in 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, and (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.
36. I found the terms of sub-paragraph 2 to have been met, it does appear from the photographic evidence submitted with the application and the verbal submission made by the Applicant's agent, that the Respondents are not occupying the Property as their home, and it appears that this has been the case since around January 2019. I have had regard to the lack of furniture and personal belongings within the Property; the lack of contact with the Respondents; the mould on the plates; the same food within the fridge; and that there appeared to have been no changes to the Property and its condition during each visit by the letting agent. I have also had regard to the fact that the letting agent advised that there were no known issues with repairs which would have prevented the Respondents from residing within the Property.
37. As I have found that the terms of sub-paragraph 2 are met, I consider that I must find that the ground in sub paragraph 1 applies; and therefore I am required to grant an eviction order in terms of ground 10 *not occupying let Property*.
38. The second ground which the Applicant seeks eviction under is ground 12 "rent arrears".
39. Sub paragraph 1 states that "It is an eviction ground that the tenant has been in rent arrears for three or month consecutive months."
40. Sub paragraph 2 provides that the Tribunal must find that the grounds named in sub-paragraph 1 applies if (a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant-(i) is in arrears of rent by an amount equal to or greater than the amount which would be payment as one month's rent under the tenancy on that day; and (ii) has been in arrears of rent ... for a continuous period, up to and including that day, of three or more consecutive months; and (b) the Tribunal is satisfied that the tenant's being in arrears is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
41. I found that the terms of sub-paragraph 2 were met as the arrears as advised by the Applicant's agent exceeded one month's rent, and there have been arrears for more than three consecutive months. I note as well that they do not believe that the rent arrears have been caused by any delay or failure in the payment of a relevant benefit. Accordingly, I consider that I must find that

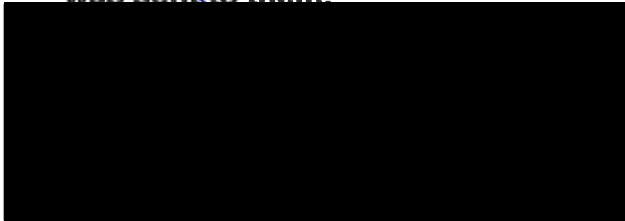
the ground in sub paragraph 1 applies; and therefore consider that I am required to grant an eviction order in terms of ground 12 rent arrears.

Decision

42. The Tribunal grants an order in favour of the Applicant against the Respondents for recovery of possession of the private residential tenancy under grounds 10 and 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

**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.**



\_\_\_\_\_  
Legal Member/Chair

18.6.19  
\_\_\_\_\_  
Date