



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber)**

Chamber Ref: FTS/HPC/CV/23/0339

Re: Property at 2 Imperial Drive, Airdrie, ML6 9EL (“the Property”)

Parties:

**Mr David Forsyth, Mrs Lorraine Bridges, 40 Lumsden Crescent, St Andrews,
KY16 9NQ (“the Applicant”)**

Ms Jean Devine, 2 Imperial Drive, Airdrie, ML6 9EL (“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 15th July 2015 the Applicants let the Property to the Respondent. The lease was for a period of six months. A notice in terms of s32 of the Housing (Scotland) Act 1988 (“the 1988 Act”) – commonly referred to as a form AT5 – was served on the respondent prior to the lease being signed. The lease is, therefore, a short assured tenancy.
2. Since December 2019 the Respondent has been in arrears of rent and arrears have consistently increased since then.
3. The Applicants served a notice to quit and a notice in terms of s33 of the 1988 Act on the Respondent, said notices being served on 26 May 2022 and requiring vacant possession as at 15 January 2023.
4. A notice in terms of s11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the local authority.

5. As at the date of service of the notice to quit and notice in terms of s33 of the 1988 Act, arrears or rent amounted to £3,220.50
6. Applications seeking an order for eviction (EV/23/0338) and an order for payment of rent arrears (CV/23/0339) were presented to the Tribunal on 1st February 2023. As at that date the arrears of rent amounted to £4,735.50.

THE CASE MANAGEMENT DISCUSSIONS

7. The Applicants did not personally participate in the Case Management Discussions but were represented by Miss C Mullen of Messrs TC Young, Solicitors, Glasgow.
8. The Respondent did not participate in the Case Management Discussions. The Tribunal, however, was in receipt of a certificate of intimation by Sheriff Officers confirming that the proceedings had been intimated upon the Respondent. In the circumstances, the Tribunal was satisfied in terms of Rule 24 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the FTT Regs”) that the respondent had received intimation of the date and time of the Case Management Discussion and considered that it was appropriate to proceed with the Case Management Discussion in the absence of the Respondent in accordance with Rule 29 of the FTT regs;
9. In addition, Miss Mullen advised she had been contacted by Legal Services Agency on behalf of the Respondent. They provided information to the following effect:-
 - Neither they nor the Respondent intended entering an appearance at the Case Management Discussions;
 - The Respondent could no longer afford the tenancy;
 - The Respondent was obtaining debt advice from an agency local to her;
 - Her intention was to vacate the Property;
 - The Respondent has mental health difficulties – not further specified;
 - The respondent has a 4 year old son who suffers from autism.

Rent Arrears

10. As at the date of the Case Management Discussions the arrears of rent had increased to £5,335.00. Miss Mullen, however, had no instructions to vary the amount originally claimed. She moved the Tribunal to grant an order for payment in the sum of £4,735.50. The Tribunal, in the absence of any opposition, did so.
11. Miss Mullen sought interest on that amount at the rate of 5% per annum. That had been requested in the application to the Tribunal. The Tribunal awarded interest at that rate.

Eviction / Reasonableness

12. The Respondent has been consistently in arrears of rent since December 2019. The arrears were significant and continually increasing. The last payment was an amount of £300.00 received on 31st May 2023.
13. In the last 12 months payments of £5,700.00 ought to have been made. Only £3,660.00 had been paid, that being a shortfall of £2,040.00, equivalent to over 4 months rent.
14. The age of the Respondent is not known. From information received from the Legal Services Agency the Applicants understand the Respondent has a 4 year old child who suffers from autism.
15. The respondent suffers from unspecified mental health difficulties.
16. The Respondent does not engage with the Applicants. She does not respond to letters. She has requested communication by text but does not respond to text messages either.
17. The Applicants have concerns about the condition of the Property but, in the absence of engagement by the Respondent, are unable to advise fully in relation to any such issues.
18. The Applicants are brother in law and sister in law. They own 5 properties jointly and Mrs Bridges owns one property herself. Both are looking to retire and divest their portfolio of properties and realise funds for their retirement.
19. They are hoping to sell the property the subject of these applications as part of this process. The Property is now difficult for them to manage given the lack of communication by the Respondent and, as indicated above, rent is paid inconsistently and is not paid in full.
20. Having regard to the submissions on behalf of the Applicants, the absence of any submissions from the Respondent, and also having regard to the information provided to Miss Mullen by the Legal services agency, the Tribunal concluded that it was reasonable to grant an order for eviction.
21. The eviction application is affected by the Cost Of Living (Tenant Protection)(Scotland) Act 2022 and Miss Mullen accepted that, in the circumstances the date of enforcement of an order for eviction will be delayed subject to the provisions of that act.

FINDINGS IN FACT

22. The Tribunal found the following facts to be established:-
 - a) By lease dated 15th July 2015 the Applicants let the Property to the Respondent. The lease was for a period of six months.
 - b) A notice in terms of s32 of the 1988 Act was served on the respondent prior to the lease being signed. The lease is, therefore, a short assured tenancy.

- c) Since December 2019 the Respondent has been in arrears of rent and arrears have consistently increased since then.
- d) The Applicants served a notice to quit and a notice in terms of s33 of the 1988 Act on the Respondent, said notices being served on 26 May 2022 and requiring vacant possession as at 15 January 2023.
- e) A notice in terms of s11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the local authority.
- f) As at the date of service of the notice to quit and notice in terms of s33 of the 1988 Act, arrears or rent amounted to £3,220.50
- g) As at 1st February 2023, the date of the applications to the Tribunal, date the arrears of rent amounted to £4,735.50.
- h) As at 30th June 2023 – the date of the Case Management Discussions – the arrears of rent amounted to £5,335.00.
- i) An amount of at least £4,735.50 is due, resting and owing by the Respondent to the Applicants.
- j) It is reasonable in the circumstances that an order for eviction be granted.

DECISION

The Tribunal grants an order against the Respondent for payment of the sum of FOUR THOUSAND SEVEN HUNDRED AND THIRTY FIVE POUNDS AND FIFTY PENCE (£4,735.50) STERLING to the Applicants, with Interest thereon at the rate of five per cent per annum (5%) running from the date of the decision of the First-tier Tribunal to grant this order, being 30th June 2023 until payment.

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.

Virgil Crawford

30 June 2023

Legal Member/Chair

Date