



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 and Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/EV/21/2137

**Re: Property at 3 Shields Avenue, St Andrews, Fife, KY16 8BJ
 (“the Property”)**

Parties:

**Mr John Cuthill, Cherrybank, Brunton, Cupar, KY15 4NB
 (“the Applicant”)**

**Thistle Property and Letting Limited, 9 Aikman Place, St Andrews, Fife, KY16 8XS
 (“the Applicant’s Representative”)**

**Mr Kai Guo, 3 Shields Avenue, St Andrews, Fife, KY16 8XS and Ms Frederique Gomes, present whereabouts unknown, previously residing at 3 Shields Avenue, St Andrews, Fife, KY16 8BJ
 (“the Respondents”)**

Tribunal Members:

**Ms. Susanne L. M. Tanner Q.C. (Legal Member)
 Ms. Eileen Shand (Ordinary Member)**

Decision (in absence of the Respondents)

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

(1) was satisfied that Ground 12(1) in Schedule 3, Part 3 to the 2016 Act was established by the Applicant, in that on the day the tribunal considered the application for an eviction on its merits the Respondents were in rent arrears greater than one month’s rent and had been in arrears of rent for a continuous period of more than three consecutive months up to and including that day; that

rent arrears were not wholly or partly a consequence of a delay or failure in payment of a relevant benefit; that it was reasonable to make an order for eviction in the circumstances of the case; and made an order for eviction in terms of Section 51 of the 2016 Act.

The decision of the tribunal was unanimous.

Statement of Reasons

Procedural Background

1. The Applicant's Representative made an application to the tribunal on 1 September 2021 in terms of Section 51 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act") and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules").
2. The Applicant seeks the Respondents' eviction from the Property in terms of Section 51 of the 2016 Act on Ground 12 of Schedule 3 to the 2016 Act.
3. The Applicant's Representative provided the following documents in support of the Application:
 - 3.1. Private Residential Tenancy Agreement dated 19 September 2019;
 - 3.2. Notice to Leave to the Respondents dated 3 February 2021;
 - 3.3. Rent statement to 20 July 2021; and
 - 3.4. A Section 11 Notice sent to the local authority;
 - 3.5. Letter to Respondents dated 14 January 2021 regarding rent arrears; and
 - 3.6. Letter of authority to act.
4. On 6 September 2021, the tribunal's administration obtained a copy of the Title Sheet for the Property which showed the Applicant as registered proprietor of the Property.
5. On 21 September 2021 the tribunal requested further information from the Applicant's Representative and in response the Applicant's representative provided proof of service of the Notice to Leave by email dated 3 February 2021; and proof of service of the Section 11 notice.
6. The Application was accepted for determination by the tribunal. A Case Management Discussion ("CMD") teleconference was fixed for 29 November 2021 at 1000h.

7. The tribunal sent letters of notification to all parties dated 25 October 2021 with the date, time and arrangements for joining the Case Management Discussion (“CMD”) in relation to the Application to take place at on 29 November 2021 at 1000h by teleconference. The Respondents were invited to make written representations in response to the Application by 15 November 2021. All parties were advised that they were required to attend the CMD. The parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application which may involve making or refusing an eviction order. The parties were also advised that if they do not attend the CMD this would not stop a decision or order being made if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair.
8. Service of the Application paperwork and notice of the CMD on the Respondents at the Property by Sheriff Officers was unsuccessful.
9. The Respondents did not submit any representations in the specified time period.
10. The CMD was postponed due to failed service and the tribunal fixed a new CMD. The tribunal served both Respondents by advertisement on the tribunal’s website from 25 November 2021 to 11 January 2022.

CMD: 11 January 2022, 1000, Teleconference

11. Mr Jim Sinclair from the Applicant’s Representative attended on behalf of the Applicant.
12. Neither of the Respondents attended. The tribunal was satisfied that the requirements of Rule 24(1) regarding the giving of notice of a hearing have been duly complied with and proceeded with the application upon the representations of the party present, in term of Rule 29.

Applicant’s Representative’s submissions

13. Mr Sinclair stated that the Applicant’s Representative first got involved with the Property in August 2021, when they took over as letting agents. He stated that they have inspected the flat on a monthly basis. The first Respondent, Mr Guo has been in the Property every time they have attended and they have spoken to him. Mr Guo is aware that he is not paying his rent and he has told them that he has no money. He is from China and he came to the University on an exchange to do research. Some time during the first lockdown, he dropped out of the research course and the rent for the Property stopped getting paid. Mr Sinclair contacted the

University as the Applicant's Representative was concerned about non-payment of rent and also worried about Mr Guo's welfare. Mr Sinclair was told that the University presumed that when Mr Guo dropped out he had gone back to China. The University helped and they arranged for people to come and speak to Mr Guo in Mandarin to explain what would happen. The University then passed it onto the Chinese Embassy who have also been in contact with Mr Guo. Mr Sinclair stated that Mr Guo is very nice and clever but has just said to Mr Sinclair that he has no money and is waiting for someone to send him home. The University has indicated to Mr Sinclair that as Mr Guo came across from China to Scotland on a student visa, once he left the University his student visa expired.

14. The Applicant's Representative decided to proceed through the tribunal as well as continuing contact with Mr Guo at the Property. The Applicant's Representative sees Mr Guo once a month at inspections and they have also been going to see him every week to two weeks, partially to see if he was alright and to establish if there was any change to his financial circumstances. Mr Sinclair stated that it was strange that Sheriff Officers could not serve the notice of the proceedings on Mr Guo at the Property as Mr Guo has been there throughout the period. Mr Sinclair stated that Mr Guo does not seem to venture out of the Property at all. Mr Sinclair stated that Mr Guo is well aware of the eviction and civil proceedings and has all the paperwork about what to do. He stated that Mr Guo seems quite happy to sit in the Property until something happens.
15. Mr Sinclair stated that Mr Guo told him that his flatmate Ms Gomes left during Covid and that is all that they know as they took over the property in August 2021. The Applicant's Representative has been unable to make any contact at all with her. She has not paid any rent arrears or ongoing rent. There are guarantors and Mr Sinclair tried to contact them, without success.
16. Mr Sinclair stated that the landlord, Mr Cuthill, is paraplegic and the whole reason for letting the property was to pay for his care. The updated statement of December 2021 shows rent arrears of £14,900, including the payment due on 20 December 2021, which would cover the period until 19 January 2022.
17. Mr Sinclair submitted that for all of the above reasons it would be reasonable for the tribunal to make an eviction order.

18. The tribunal makes the following findings-in-fact:

- 18.1. The registered proprietor of the Property is the Applicant.

- 18.2. There is a Private Residential Tenancy between the Applicant and the Respondents.
- 18.3. The start date of the tenancy was 20 September 2019.
- 18.4. Rent is payable at the rate of £850.00 per calendar month on the 20th day of each month.
- 18.5. The Notice to Leave dated 3 February 2021, which was served on the Respondents by email on the same date, includes notice that the ground upon which eviction is sought is rent arrears over three consecutive months.
- 18.6. The Respondents had been in rent arrears for more than three consecutive months at the time that the Notice to Leave was served.
- 18.7. The Notice to Leave specified that an application to the tribunal would not be made before 6 August 2021.
- 18.8. The Application to the tribunal was made on 1 September 2021.
- 18.9. As at 11 January 2022, the Respondent is in arrears of rent of £14,900.00, which is greater than one month's rent under the tenancy.
- 18.10. As at 11 January 2022, the Respondent has been in arrears of rent for a continuous period up to and including 11 January 2022, of three or more consecutive months.
- 18.11. The rent arrears are not a consequence of delay or failure in payment to the Respondent of relevant benefits.
- 18.12. There have been rent arrears since in or around 20 January 2020.
- 18.13. The first Respondent, Mr Guo, came to Scotland on a student visa which expired when he dropped out of St Andrews University in or about 2021.
- 18.14. The first Respondent, Mr Guo, remains in the Property and no rent has been paid by him since 3 October 2020.
- 18.15. The first Respondent has repeatedly indicated to the Applicant's Representative since August 2021, that he has no money to pay rent arrears or ongoing rent.

18.16. The Applicant's Representative, representatives of the University of St Andrews and the Chinese Embassy have provided assistance to Mr Guo and carried out welfare checks.

18.17. The second Respondent, Ms Gomes, left the Property prior to August 2021 and has not been in contact with the Applicant or the Applicant's Representative since that time.

18.18. The second Respondent, Ms Gomes, has not made any rent payments since in or around April 2020.

18.19. The Applicant is disabled and relies on the income from the rental of the Property to pay for care needs.

19. Findings in fact and law

19.1. The tribunal is satisfied that the facts required in para 12(2) of Schedule 3 to the 2016 have been established.

19.2. The tribunal is satisfied it is reasonable to make an eviction order.

Discussion

20. The Respondents' eviction is sought on ground 12 in Schedule 3 to the 2016 Act.

21. Reference is made to the tribunal's findings in fact. The tribunal was satisfied that there are rent arrears as at 11 January 2022 in the sum of £14,900.00. There is at least one month's rent outstanding as at 11 January 2022 and there are at least three consecutive months of rent arrears. The arrears are not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

22. The Respondents have made no rent payments for a considerable period of time and there are substantial arrears as at 11 January 2022. The Applicant is disabled and relies on income from the Property to meet his care needs. The second Respondent, Ms Gomes had left the property prior to the Applicant's Representative taking over its management in August 2021 and has made no contact since then. She has paid no rent since in or around April 2020. The first Respondent remains in the Property despite his student visa expiring in or about 2021 and has indicated to the Applicant's Representative that he has no money to pay rent arrears or ongoing rent. The first Respondent has been made aware of the eviction proceedings and has been provided with assistance and welfare

checks by the Applicant's Representative, representatives of the University of St Andrews and the Chinese Embassy.

23. The tribunal was satisfied that it was reasonable to evict the Respondents in the circumstances of the case.

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.



11 January 2022

**Ms. Susanne L. M. Tanner Q.C.
Legal Member/Chair**