

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/22/4442

Re: Property at 45 Durward Street, Leven, Fife, KY8 4QT (“the Property”)

Parties:

Ms Jane Mitchell, 20 School Wynd, East Wemyss, Kirkcaldy, KY1 4RN (“the Applicant”)

Mr Thomas Robertson, 45 Durward Street, Leven, Fife, KY8 4QT (“the Respondent”)

Tribunal Members:

Virgil Crawford (Legal Member) and Mary Lyden (Ordinary Member)

Decision (in absence of the Respondent)

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

BACKGROUND

1. During February 2018, the Applicant let the Property to the Respondent. While the lease was signed it was undated. The tenancy agreement, however, confirmed that the agreement was made on 16th February 2018.
2. The tenancy agreement took the form of “short assured tenancy” and a notice in terms of Section 32 of the Housing (Scotland) Act 1988 (commonly referred to as a form AT5) was served also. As a matter of law, however, the lease to be regarded as a private residential tenancy in terms of the Private Housing (Tenancies) Scotland Act 2016.
3. It became apparent to the Applicant that the Property was in need of significant repairs. In particular, the timber flooring in 3 of the rooms within the Property had wet rot and work was required to replace floor timbers, undertake work to the solum and associated plasterwork. The need for the

work and relevant quotations obtained by the Applicant and provided to the Tribunal.

4. The Applicant served a Notice to Leave upon the Respondent.
5. A Notice in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 was intimated upon the local authority.

THE CASE MANAGEMENT DISCUSSION

6. The Applicant participated in the case management discussion. The Applicant was represented by Miss L Herbert, Solicitor.
7. The Respondent did not participate in the Case Management Discussion. 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.
8. Miss Herbert confirmed the Applicant was seeking an order for eviction. It was confirmed that the work at the Property was still required. It is understood by the Applicant that the Respondent is still resident at the Property.
9. The Tribunal made enquiry in relation to the Respondent’s personal circumstances, as far as known to the Applicant. The Tribunal was advised of the following:-
 - In terms of age, the Respondent is believed to be in his late 50’s.
 - He is single.
 - He lives alone with no other family members residing at the Property.
 - The Applicant believes that he may have “a drink problem”
 - The Applicant believes that he may have mental health problems.
 - He recently advised solicitors for the Applicant that he had secured employment. Whether he has commenced that employment is not known.
 - He had fallen into arrears of rent in recent times but had brought the rent up to date. As at the date of the case management discussion he had arrears amounting to approximately £400.
10. The Tribunal was advised that the Applicant has had no contact with the Respondent for several months. He does not answer his telephone. He does not answer the door if persons attend to engage with him.

11. The Respondent acknowledged that the application and any eviction order granted, is subject to the Cost of Living (Tenant Protection) (Scotland) Act 2022 and, accordingly, if an eviction order is granted it will not be able to be enforced for a period of 6 months, or the earlier suspension of said Act.

FINDINGS IN FACT

12. The Tribunal found the following facts to be established:-

- a) By lease dated February 2018 the Applicant let the Property to the Respondent. The lease took the form of a “short assured tenancy” but falls to be regarded as a private residential tenancy in terms of the Private Housing (Tenancies) (Scotland) Act 2016;
- b) A notice to leave was served upon the Respondent. The notice to leave intimated that possession of the Property was sought in terms of Ground 3 of schedule 3 of the 2016 Act, that being the landlord required possession to refurbish the Property.
- c) A notice in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the local authority.
- d) The Property is in need of refurbishment. The Property is affected by wet rot and the floor timbers in 3 of the rooms require replacement with associated work thereto.
- e) It is reasonable that an order for eviction is granted.

Decision

The Tribunal granted an order against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 3 of Schedule 3 to said Act.

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.

V Crawford

14 July 2023

Legal Member/Chair

Date

