



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 51 Private Housing
(Tenancies) (Scotland) Act 2016**

Chamber Ref: FTS/HPC/EV/21/2840

Re: Property at 28B Crown Street, Aberdeen, AB11 6AY (“the Property”)

Parties:

**Miss Karen Dinardo, Dr Lorraine Dinardo, Mr Mark Dinardo, Old School House,
5 Main Street, Killearn, G63 9RJ; Garsdale, 16 Sefton Park Road, Liverpool, L8
3SN; 84 Main Street, Killearn, G63 9ND (“the Applicants”)**

**Mr Brandon Kyle, Mrs Christina Kyle, Mr Geoffrey Kyle, 28B Crown Street,
Aberdeen, AB11 6AY (“the Respondents”)**

Tribunal Members:

Susan Christie (Legal Member) and Angus Lamont (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that determined that an eviction Order be granted against
the Respondents in favour of the Applicants over the Property**

Background

1. The application for an eviction order was made on 16 November 2021 and accepted by the tribunal on 30 November 2021. The Applicants seek an eviction Order under Ground 12 to the Schedule of the Private Housing (Tenancies) (Scotland) Act 2016 (‘the Act’).
2. The paperwork was served on the Respondents by letterbox by Sheriff Officers service on 21 December 2021.
3. Written representations were due by 10 January 2022, but this was extended to 21 January 2022 by the tribunal. A Direction was issued asking both Parties for any documentation they were relying on in addition. A postponement request by the Respondents was refused at that time.

4. Written representations were received along with copy e mails on 21 January 2022.
5. The Applicant provided further documents in response to the Direction on 18 January 2022.

The Case Management Discussion- 26 November 2022 at 10 a.m.

6. A Case Management Discussion (CMD) took place today by conference call. Two Applicants participated and were represented by Ms Morrison.
7. The Respondents participated
8. The paperwork submitted along with the Application was examined and discussed alongside the recently lodged documents and the written representations and e mails submitted by the Respondents.
9. The Applicants are the registered owner of the Property and landlord.
10. A Private Residential Tenancy (PRT) was entered into between the Applicants and the Respondents on or around 8 January 2020, with a start date of 14 January 2020.
11. The rent is £725 per calendar month payable in advance. The first payment was noted as £2175 for 14 January 2020 to 13 April 2020 then due £725 on 14 April 2020 and monthly by standing order.
12. A deposit of £825 was taken.
13. A Notice to Leave dated 29 April 2021 was served on the Respondents by e mail sent on that date.
14. A Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 was sent to Aberdeen City Council on 15 November 2021.
15. The rent account statements produced were considered along with three Orders for Payment granted in favour of the Applicants from the Housing and Property Chamber on 14 June 2021 for £2175,30 August 2021 for £1450 and on 23 November 2021 for £2651.60 and against the Respondents for unpaid rent. Ms Morrison stated that the arrears of rent as at the date of service of the Notice to Leave was £2,175, £7,250 at the date of the application and £8,700 as at today. She relied on Ground 12 being satisfied regarding the figures for unpaid rent. She submitted it was reasonable to grant the order having regard to the rent arrears figure outstanding; several attempts to seek an offer of payment and no engagement to pay; rent was not being withheld for any issues of disrepair regarding the period the rent arrears accrued; the pre- action requirements had been complied with; the last payment being £325 on 12 March 2021; the Respondents participating in at least some of the Case Management Discussions in the payment order cases therefore having been aware of the process.
16. No further payments have been received.
17. The Respondents set out their position with all Respondents speaking at various times, but in the main Mr Brandon Kyle taking lead. The members of the household were disabled. They were not disputing the rent was due. Repairs issues had been raised in the e mails produced and the rent had been paid notwithstanding the issues. It took a while for the repairs to be attended to. They had mentioned this at the payment order stage. They had also placed calls to the landlords. Issues were had with the boiler,

oven, and hob for example. They had been willing to go ahead and get a payment plan and made an intention to pay say £50 around 2021 but the landlord was looking for full payment. They could not apply for local authority or government grants because action was taken for recovery. They had been paying the rent from a lump sum pension payment received and disability/ employment benefits/ working tax credit. The difficulty came when the PIP payment was reduced and have made application to have the decision to reduce it reviewed with supporting medical evidence. There was no target date for a decision on that, but the review application had been acknowledged. Unfortunately, this also coincided with their health deteriorating and the challenges associated with that. One Respondent had also wished to apply for enrolment at university but was unable to do so. They accepted the current rent was not paid as they did not have the funds to do so having regard to their living costs, they were unable to secure any funds from grants, and they wanted to do a payment plan. The landlord had visited and was understanding but they did not come to an agreement. They were trying to do what they could but could not afford the rent. They had obtained some legal advice, firstly from a solicitor they were disappointed with, then basic advice from Shelter regarding the Notice to Leave. They had been contacting Citizens Advice also. They had not made any appointments now for advice and were aware of backlogs. They had spoken to the local authority regarding their housing options, but nothing could be done until after the hearing today they said. Their income was roughly £1460 per month as a household. The last payment to rent was agreed to be £325 paid into the rent account around 12 March 2021.

18. The Applicants responded and confirmed that they were not taking issue with the Respondents disability. Monthly invoices and reminders were sent regarding the rent due in addition to other steps. The repairs issues raised were for a period when they were paying the rent. The orders for payment were lawful determination of the rent arrears due for £6,276 for the periods to which they related. The Respondents had made it clear they were not withholding rent and that the Respondents stopped paying because of their financial circumstances and not repair issues. The Applicants whilst sympathetic were unable to defer seeking the order or enforcement as they had financial obligations to pay relating to the Property for the mortgage and factoring monthly costs that totalled £750 per calendar month. The normal timescales meant any order granted would not be enforced for around 6 weeks. They had already been without rent for a long time. An order was ought today.
19. A brief adjournment took place to allow discussion between the tribunal members. The Respondents indicated that they had further emails regarding the repairs and the tribunal agreed to consider them late, if produced then. The Applicants had no opposition so long as they were submitted at that point. No further documents were submitted.

Findings in Fact

- I. A Private Residential Tenancy (PRT) was entered into between the Parties on or around 8 January 2020, with a start date of 14 January 2020.
- II. The rent is £725 per calendar month payable in advance. The first payment was noted as £2175 for 14 January 2020 to 13 April 2020 then due £725 on 14 April 2020 and monthly by standing order.
- III. A deposit of £825 was taken.
- IV. A Notice to Leave dated 29 April 2021 was served on the Respondents by e mail sent on that date.
- V. Three Orders for payment of unpaid rent have been issued against the Respondents in 2021.
- VI. A Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 was sent to Aberdeen City Council on 15 November 2021.
- VII. The Pre Action Requirements have been complied with.
- VIII. The total arrears figure due today is £8,700.
- IX. The last payment to rent was £325 paid into the rent account around 12 March 2021.
- X. The tenant's being in arrears of rent over the period in question is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
- XI. The Tribunal is satisfied that it is reasonable that an eviction Order should be made.

Reasons for Decision & Decision

There was no issue over the facts that needed to proceed to a hearing. The tribunal had regard to all that was said and carefully considered it.

A Private Residential Tenancy (PRT) was entered into between the Parties. The Respondents had undertaken to pay rent.

The Respondents were called upon to pay the ongoing rent as well as the arrears or enter into a repayment agreement and had failed to make any payment after March 2021.

The rent arrears were steadily rising. The Respondents stated they could not afford the rent from their income and their income was not certain to increase any time soon.

A Notice to Leave dated 29 April 2021 was served on the Respondents by e mail sent on that date.

A Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 had been sent to the local authority. The Respondents had contacted the local authority for housing advice and were told that the outcome of today's CMD was awaited.

The Pre Action Requirements have been complied with. Monthly invoices were said to have been issued in addition.

The Tribunal had regard to the amendments made to the Act in relation to the Coronavirus (Scotland) Act 2020, particularly the discretion to be applied.

It had regard to the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. It considered the information given in the application and written response and the other documents produced; given orally by the Parties. Whether

all or part of the rent in respect of which the tenant is in arrears as mentioned in that eviction ground relates to the period during which paragraph 5 of schedule 1 of the Coronavirus (Scotland) (No.2) Act 2020 is in force and whether it is reasonable to issue an eviction order against the tenant. To consider the extent to which the landlord has complied with pre-action requirements before applying for the eviction order. It was satisfied they had been complied with.

The rent arrears have occurred over a long period of time.

It considered whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a 'relevant benefit', which it was not. Their income sources did not contain housing benefit elements or other benefits mentioned in Ground 12. The challenge they had made was for reinstatement of a mobility element of a benefit. Their income was currently more per month than the monthly rent. There had been no recent payments made at all and they had not made a firm proposal for payment of the ongoing rent, or to the arrears. Effectively the Respondents said they could no longer afford to pay the rent or the arrears.

They had health issues and disabilities that were unchallenged by the Applicants.

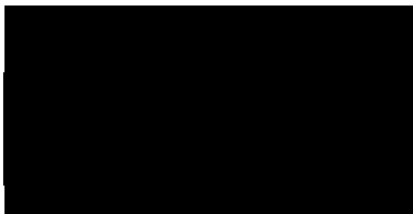
The health issues were ongoing. No further detail was given. They had obtained some money advice and had sought housing options from the local authority.

The Applicants had been without an income from the Property and substantial arrears had accrued with no end in sight. They too had financial obligations relating to the Property for the mortgage and factoring fees. They were not unsympathetic but sought an order for eviction.

The Tribunal was satisfied an Order should be made today and it was reasonable to do so. The decision is unanimous.

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: Susan Christie

Date: 26th January 2022