



Decision with Statement of Reasons of the 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/22/1561

Re: Property at The Coach House, Dalserf, ML9 3BJ (“the Property”)

Parties:

Dalserf Estate Limited, c/o Davidson and Robertson, Riccarton Mains, Currie, EH14 4AR (“the Applicant”)

Mr David Young and Mrs Claire Young, The Coach House, Dalserf, ML9 3BJ (“the Respondents”)

Tribunal Members:

Fiona Watson (Legal Member) and David Fotheringham (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondents for eviction of the Respondents from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 12 of schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

Background

1. An application was submitted to the Tribunal under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). Said application sought a repossession order against the Respondents on the basis of rent arrears accrued by the Respondents under a private residential tenancy, being Ground 12 under Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”).
2. An initial Case Management Discussion (“CMD”) took place on 7 October 2022 by conference call. The Applicant was represented by Mr Nicholson of Harper

Macleod LLP. The second-named Respondent, Mrs Young, was personally present and represented both Respondents.

3. The Applicant's representative moved for the Order to be granted as sought. The parties had entered into a Private Residential Tenancy Agreement ("the Agreement"), which commenced 7 April 2019. The Respondents had fallen into arrears of rent which amounted to £16,677.90 at April 2022. The monthly rent was £1,083.35. It was not believed that any further rent had been paid since then, however no updated rent statement had been lodged and the Applicant's representative could not confirm the up-to-date position. The parties had also entered into a separate contractual agreement relating to fuel costs which had accrued arrears of £7.590 at April 2022. The Applicant had obtained a Sheriff Court decree on 12 February 2021 for payment of arrears amounting to £26,274.30.
4. Mrs Young submitted that she had paid a sum of approximately £28,000 in January 2022 to clear the arrears due under the Sheriff Court decree. Some payments had been made since then but no specifics could be given. She had tried to speak to the landlord since then to ascertain what was due to be paid but he refused to speak with her, as did his agent. The rent has been withheld due to repairing standard issues with the Property. The landlord was notified of this in writing, and the rent was placed into a separate holding account. This has continued to be the case. The Property had no heating or hot water for a period of some months. There are holes in the roof, the house flooded and there is a damp problem. The landlord has refused to rectify the issues. The rent was withheld in the hope that this would force the landlord to carry out the necessary works to bring the Property up to standard but he has failed to do so. Mrs Young has tried to obtain the assistance of a solicitor to help her but has been unable to find anyone who will assist her. Two bedrooms in the Property are not habitable. Her mental and physical health is deteriorating as a result of the ongoing issues. She has three children in the household aged 15, 13 and 8. Her older son (23 years old) has moved out of the Property due to the living conditions. Mr and Mrs Young both work and own a funeral director business.
5. Mr Nicolson advised that he had no instructions in relation to the alleged repairing issues in the Property, nor that the rent was being withheld. He would require time to speak with his client and obtain instructions on the points raised by Mrs Young.
6. The CMD was adjourned to another date to enable the Applicant's representative to obtain instructions on Mrs Young's submissions, and for further documentation to be lodged as set out in a Direction to parties. Said Direction stated as follows:

"The Applicant is required to provide:

1. *A full and complete rent statement from the commencement of the tenancy to date, showing all payments due to be paid, and all payments made during the course of the tenancy agreement and with a running arrears balance. This must also include*

any payments made by the Respondents in relation to rent arrears which formed part of the Sheriff Court Decree.

2. *Evidence of any communications with the Respondents regarding repairing issues at the Property.*

The Respondents are required to provide:

1. *A written response to the application setting out their position;*
2. *Proof of the withheld rent being currently held in a bank account;*
3. *Evidence of written notice being give to the landlord of the Respondents' intention to withhold the rent;*
4. *Evidence of any ongoing rental payments made since the granting of the Sheriff Court Decree, and of any payments made in respect of rent in arrears;*
5. *Evidence of the repairing issues pertaining to the property and any communications with the landlord or the landlord's agents regarding same.*

All documentation should be numbered and lodged with a numbered inventory, and should be lodged with the Chamber no later than 14 days prior to the Case Management Discussion.

7. A further CMD took place on 20 January 2023 by conference call. The Applicant was again represented by Mr Nicholson of Harper Macleod LLP. The second-named Respondent, Mrs Young, was again personally present and represented both Respondents.
8. Prior to the CMD, the Applicant had lodged productions complying with points 1 and 2 of the Direction as it related to them. The day prior to the CMD, the Respondents lodged productions which appeared to only relate to points 4 and 5 of the Direction as it related to the Respondents. Mrs Young advised that she had not received any notification of the CMD and therefore had not been aware of the CMD or the deadline for submission of the Direction response until she had received the Applicant's productions by post a few days prior. Accordingly, she had not had time to comply fully with the Direction, but confirmed that she could produce evidence to comply with points 3 and 4, as well as provide a written response in terms of point 1.
9. The Applicant's representative moved again for the Order to be granted. It was submitted that the position had not changed since the last CMD other than an increase in the level of rent arrears due. The rent arrears now stood at £28,656.50. There were arrears of heating charges which stood at £8,470. Whilst it was accepted that there were some (unspecified) repairing issues with the property, repairs had been carried out when reported to the landlord. The Applicant's representative did not have instructions on the position of whether the property was wind and watertight.
10. The Respondent submitted that she was continuing to withhold rent due to the property not being wind and watertight. She and her family were unable to reside in the property over the winter due to inadequate heating and lack of hot

water. The roof was leaking and there was mould throughout. It was submitted that between December 2020 and March 2021 there was no heating or hot water and the property was not habitable and therefore no rent should not have fallen due. This should be addressed in the rent statement. The same has happened since December 2022 and the property is not able to be occupied fully. The Respondent stated that there were multiple payments due included in the heating charges table for April 2022, rather than just one charge for the month, and this required to be rectified. The Respondents were withholding their rent to try and force the Applicant to address the repairing issues, so that they and their children could enjoy living in the property.

11. The CMD was adjourned and a Hearing fixed for evidence to be heard in relation to:
 - (i) The repairing issues at the Property, the extent to which they have affected (and continue to affect) the habitability of the Property and the time taken for rectification of same by the Applicant;
 - (ii) Whether the Respondents have been withholding the rent, and how and when this was communicated to the Applicant; and
 - (iii) Whether it is reasonable to evict.
12. The Respondent was directed to comply in full with the terms of the Direction issued by the Tribunal dated 7 October 2022, and to do so by no later than 5pm on 3 February 2023.

The Hearing

13. The Hearing took place on 11 April 2023 by conference call. The Applicant was again represented by Mr Nicholson of Harper MacLeod. The second-named Respondent, Mrs. Young, again appeared personally and represented both herself and her husband, Mr. Young. Mrs. Young stated that she had not been notified of the hearing date and had only come across it by looking at the tribunal website. Mrs. Young stated that she had complied with the Tribunal's Direction of 20 January 2023 and had sent bank statements and a written response to the application within a few days of the last CMD. The Respondent stated that these documents had been sent by recorded delivery. The Tribunal clerk confirmed that no such documents had been received by the tribunal administration.
14. The Respondent stated that she had not received a copy of the Applicant's third inventory of productions and on that basis sought a postponement of the Hearing. This was opposed by the Applicant. The tribunal clerk confirmed that a hearing notification letter together with copies of the Applicant's inventory of productions were issued by post to the Respondents' address on 14 and 31 March 2023.
15. The Tribunal Chair asked the Respondent if she could re-send her written response and bank statements by e-mail to the tribunal administration this morning to allow the Hearing to proceed, and she indicated that she would require to travel to her office which was approximately 30 minutes away to do

so. Mr Nicholson confirmed that he would be prepared to proceed with the Hearing without reliance on the Applicant's third inventory of productions, if the Respondent's position was that she had not had sight of same, in order to minimise further delay and allow the Hearing to proceed today.

16. The Tribunal directed the Respondent to travel to her office and e-mail the written submissions and bank statements that she stated had been posted by midday, and thereafter the Hearing would re-commence at 2pm.
17. The Hearing was adjourned, and re-commenced at 2pm. The Respondent had emailed the written response and bank statements during the period of adjournment and Mr Nicholson confirmed that he had had sight of same and was content to proceed with the Hearing without requiring any further time to consider same. The Applicant's representative confirmed that he would not seek to rely on the third inventory of productions, in order not to prejudice the Respondent if her position was that she had not had sight of same.

The Applicant's evidence

18. The Applicant's witness was Amy Laird, an employee of Davidson and Robertson, the landlord's agents. Ms Laird stated that she had been employed as a surveyor with Davidson and Robertson and worked in the property and forestry department. She manages a variety of estates in Scotland, one of which is the Dalsarf Estate. She is the point of contact for tenants for all correspondence regarding repairs, emergencies and general questions. Ms Laird stated that she handled everything to do with repairs and maintenance and any projects on the estates. Ms Laird takes instructions from the directors of Dalsarf Estates Limited.
19. Ms Laird took over management of the Property in April 2022 from a former colleague, Sam Sykes. Ms Laird stated that Mr Sykes had told her that there was a rent arrears issue at the Property and that there was a strained relationship between the landlord's agents and the Respondents. Ms Laird stated that initially contact with the Respondents was very limited and that there had been an issue with the Respondents not raising issues at the time they occurred. Ms Laird stated that Mrs. Young had notified Sam Sykes that the heating had not worked for several weeks, however this was the first that Mr Sykes had been notified of this. If he'd been notified earlier, he could have helped earlier.
20. Ms Laird stated that there had initially been a commercial lease in place with the Respondents' company but they had decided that a private residential tenancy should be entered into instead and in May 2019 a lease for a private residential tenancy was sent to them for signature.
21. Ms Laird referred to a telephone conversation that she had with Mrs. Young on the 11 October 2022 to arrange an inspection of the property. Mrs. Young had agreed and access was taken on the 25 October 2022. There had been no contact from the Respondents between April and October 2022 and no repairs

reported during that time. Ms Laird stated that during that inspection of 25 October 2022 the property was in a good condition and appeared to have been cared for by the tenants. It was at this inspection that Mrs. Young raised a number of issues including a radiator not working. Flooring in the bathroom had been lifted by the Respondents to investigate drainage issues and there was an area where there was suspected water ingress in the bathroom. Ms Laird stated that the agents followed this up with roofing works. Ms Laird stated that Mrs Young was very amicable during this inspection and that this was a good first meeting. Ms Laird considered that she had a good working relationship with the Respondents at that point.

22. Ms Laird stated that she asked a contractor, Ross Sharp from Mains to Drainage, to visit the Property after that inspection to ensure all was in order in the bathroom. Following his visit Mr Sharp notified Ms Laird that Mrs Young had told him there was a broken toilet as well, but this had not been raised with Ms Laird at the inspection.

23. Ms Laird stated that she had instructed a plumber to attend at the Property in response to the notification of the broken toilet. Ms Laird stated that there was a drain inspection carried out on the 7 November 2022, and a roof survey carried out on the 18 and 27 November 2022.

24. Ms Laird stated that she called Mrs. Young on the 13 December 2022 as she had received a report from her neighbour that the heating was playing up. The two properties shared a biomass boiler system. She was contacting Mrs Young to ask if the heating was working in the Property and Mrs Young confirmed that it was.

25. Ms Laird referenced an e-mail from Mrs. Young of the 19 December 2022 in which she reported that there were burst pipes in the boiler room. Ms Laird stated that at the start of that week she had received an e-mail from Mrs. Young saying that the heating was working fine. The temperatures had plummeted and Mrs. Young had reported that the boiler room pipes had burst and there was water leaking. Ms Laird contacted a contractor who confirmed that Mrs. Young had also called him directly an hour beforehand. Ms Laird made arrangements for the contractor to go out to repair the issue. There had been a plumber working on the neighbouring property, which shares a biomass boiler heating system with the Coach House. There's a shared driveway and the biomass boiler system is located in a separate building.

26. Ms Laird referred to an e-mail of the 22 December 2022. Mrs Young had raised concerns that if the boiler had not been repaired properly this could lead to there being no heating or hot water over Christmas. Ms Laird had a conversation with the contractor who reassured her that he was confident that the system would be operational due to the temporary works that had been carried out on the boiler system. Ms Laird states that she had asked him if they could be extra vigilant if they experienced any issues anywhere and contact them as soon as possible. The contractor was to keep an eye on matters given the works had been a temporary measure.

27. Ms Laird referred to an e-mail of 23 December 2022 confirming that she had been in contact with Kenny Patterson, the biomass boiler heater engineer. Mr Patterson had said the contractor had isolated the two properties and he had confirmed that he was successful and that the boiler system should function as it should.
28. Ms Laird confirmed that between the 19 and 22 December 2022, steps had been taken to address any issues with the heating not working properly and that she had been in regular contact with the boiler engineer. Ms Laird confirmed that she made contact with the boiler engineer on the 23 December who reinstated the advice that he had given over the phone. Mrs Young had advised him that the Property had no heating and hot water and needed advice and help and asked him to attend as soon as possible. Ms Laird referred to an e-mail from Mrs. Young of the 26 December 2022 regarding the heating not working. Ms Laird had instructed the heating engineer to attend and stated that additional electric heaters had been available for use by the Respondents during that time. Ms Laird stated that the tenants had been advised that if they could show that their electricity costs had increased due to their requiring to use the electric heaters, then the landlords would be happy to reimburse the tenants any additional costs incurred. Ms Laird stated that no evidence was ever provided by the Respondents setting out any additional costs incurred, despite the landlord's agents requesting this.
29. Ms Laird stated that there was a general contractor for the Dalsarf Estate, Stuart Henderson. She had contacted him various times regarding carrying out roofing works and sourcing other local contractors for works required. It was Mr Henderson who sourced the emergency plumber and he was also on site whilst the plumber attended.
30. Ms Laird confirmed that the boiler house was contained within a wooden structure in the garden of the Property. One section contains the hopper with pellets and the other section houses the boiler itself.
31. Ms Laird stated that she received an e-mail from Mrs. Young of the 4 January 2023 and which had attached a video showing water ingress around the toilet within the Property. Ms Laird confirmed that Stuart Henderson attended the Property and carried out repairs to halt any water ingress. There were water marks on the toilet ceiling and Ms Laird asked Mr Henderson to look at this further. Ms Laird confirmed that there was a clear issue with water ingress when this was investigated at the inspection. Quotes were obtained from contractors which suggested a weakness in the roof area. Roof works were instructed and they should be finished this week to resolve all the issues.
32. Ms Laird stated that there had not been any occasions that she was aware of where the Respondents had raised issues which have not been responded to.
33. Ms Laird stated that the landlord's agents have never been informed that rent was being withheld by the Respondents. Ms Laird stated that the first time she

had had any awareness of rent being withheld was after the first CMD when this was raised by Mrs. Young. Ms Laird stated that she was surprised as it was the first that she had heard of it. After the CMD, Ms Laird had contacted Sam Sykes who had previously managed the Property and asked if he recalled any intimation of rent being withheld. Mr. Sykes confirmed that he had never been told this.

34. Ms Laird confirmed that the tenants have not paid any rent since she took over management of the property in April 2022. The last payment made by the tenants was on the 5 January 2022.

35. Ms Laird stated that the Respondents are also charged a separate heating charge in relation to heating payments due, under the tenancy agreement. The heating charges are calculated separately and set out in a separate statement. The landlords have fixed rate charges which were agreed by the tenants when they signed the lease of £330 per month. No payments have been made to the heating charges since Ms Laird took over management of the property in April 2022.

36. Under cross examination Ms Laird was asked by Mrs. Young why she first made contact in October 2022, when she had taken over management of the property in April 2022? Ms Laird stated that she had received advice from Sam Sykes that the relationship had been somewhat strained and advised her that it was best not to go knocking on the door. Ms Laird stated that with hindsight this would have been a great opportunity at the time of change in management to reach out and make amends but that she hadn't done so.

37. When asked why she contacted Mrs. Young on the 11 October 2022 to arrange an inspection, Ms Laird replied that during the CMD Mrs. Young had reported that the house was uninhabitable. As her records had shown that the Property was in a good condition, Ms Laird states that she was very concerned by this statement and she wanted to visit as soon as possible to inspect. Ms Laird stated that property inspections had been halted during the pandemic so no regular inspections had been done unless truly necessary. As no correspondence had been received from the Respondents during that time regarding any urgent repairs, inspections were not deemed necessary during that time.

38. Ms Laird confirmed that had seen correspondence in January 2021 where a flood had been reported and saw that Mr Sykes had replied to the correspondence from Mr. Young stating that a local contractor, Alan McLaughlin, would attend the property to make sure that the water was stopped and to resolve the issues. Ms Laird stated on the 3 March 2021 Stuart Henderson submitted an invoice for £5525 for the works carried out following the flood which included plastering and painting. Ms Laird stated that Stuart Henderson arranged these works for the landlord's agents and that she was aware that the Respondents were being kept up to date with who was attending and when. Ms Laird confirmed it was often the case that their contractors would contact tenants directly to arrange access, for efficiency.

39. Ms Laird was asked how she could describe the house as being in a reasonable repair when the roof was leaking and there was damp in the bedroom and the living room? Ms Laird stated that the dampness in the bathroom was discussed and roofing works were arranged as a response to that. Ms Laird stated that she did not receive notification from the Respondents of any concerns that the other areas of the property had dampness at the time of the inspection nor afterwards. Ms Laird stated that Mrs. Young had been advised to keep the bathroom window open as much as possible as ventilation was very important.
40. Ms Laird confirmed that they had concerns with the area above the bathroom and the bathroom which was lower down in the Property and which contained a tumble dryer. They arranged for roofing contractors to visit and quote and these works have been carried out over the last few weeks. The first step would be to carry out these works and then assess if they have been successful. Ms Laird stated that once they are content the dampness has gone following these roofing works then they will look at the damaged plaster on the bathroom wall. Ms Laird stated that the damaged plaster in the hall was caused by wear and tear and not connected to any dampness issue.
41. Ms Laird was asked why no plumber has attended to look at the bathrooms which are not working, following reporting of that issue by Mrs. Young. Ms Laird stated that she had understood that the plumbers who attended previously had dealt with this matter and if not that she would raise it with them again. Ms Laird stated she had thought that when the radiator was replaced that the issues with the toilet had been looked at as well. The issue had not been raised by the Respondents since then, so she was unaware it had not been dealt with. If this was not the case, she would instruct another contractor to attend.
42. Ms Laird was asked why the drainage problems had not been addressed, in that the Respondents were still unable to drain a bath in the Property. Ms Laird stated that their contractor, Ross Sharp, had confirmed that the drains were in good order and he saw no reason to do any further works. Ms Laird stated that Ross Sharp had used a camera to inspect the drains and whilst he reported minor issues with tree roots there was nothing major that was affecting use or that required any works.
43. Ms Laird was asked if she agreed that there were issues with the heating system at both of the properties when she took over the role of managing same, and that there had been four months in each year where the Property had no heating or hot water. Ms Laird stated that she did not agree with this. Ms Laird stated that Sam Sykes had passed on to her when she took over management, that previously the biomass boilers had been temperamental but that there had not been a report of such a big issue as claimed by Mrs. Young. Ms Laird confirmed that there was no e-mail correspondence within her records showing such issues being reported by the Respondents.
44. Ms Laird was asked why it took four days to respond to Mrs. Young's reports that the boiler had exploded, on 16 December 2022. Ms Laird explained that

she was on annual leave on the day when Mrs. Young sent her e-mail. Ms Laird stated that her out of office reply was on and that she was aware that Mrs. Young had the contractor's contact details if she was unable to get hold of Ms Laird in an emergency. Ms Laird stated that Mrs. Young should have contacted another colleague or contractor if she had been unable to get a response from Ms Laird while she was on holiday.

45. Ms Laird stated that she considered it reasonable that there would be ongoing repairing issues for a property of this age. Ms Laird stated that there had been no repairing issues reported between April and October 2022 and therefore there was no reason to inspect the Property during that period of time. Ms Laird stated that when she took over the management of the property in April 2022 she had no understanding of any reasoning behind the rent arrears which had accrued. Several chasers were sent to the Respondents regarding payment of the rent but no reason was given to the landlord's agents as to why rent was not being paid.

46. Ms Laird confirmed that she would be happy to live in the Property in its' current condition.

The Respondents' evidence

47. Mrs. Young stated that she and her family had lived in the property since June 2016. They had taken care of it to the best of their ability. Mrs. Young stated that the tenants who had lived in the property before them had lived there for around 20 years. The previous tenants had been left to their own devices and had not had any work done in the property. Mrs. Young stated that she was aware of that at the time that they moved in.

48. Mrs. Young stated that they too had been left to their own devices and had very little contact from the landlord's agents. There had been very minimal work undertaken in the house. There had not been any appliance testing, carbon monoxide testing or electrical testing, and there had been no routine maintenance work done in almost seven years. Works were only carried out when requested by the Respondents.

49. Mrs. Young stated that plaster was patched up on the walls within the house and the Property was in general disrepair. There was mould, dampness, rising damp, guttering falling down and tiles off the roof. Mrs. Young stated that while she appreciated the age of the Property, the landlord still needed to repair and upkeep the Property.

50. Mrs. Young stated that they had paid over £100,000 to the landlord in rent. The Property was in the same condition that it was in 2016. The heating constantly doesn't work and when the temperature goes below zero, the heating fails. The landlord does not top up the pellets regularly for the biomass heating system and they have to tell the landlord's agents to do so. If they don't order the pellets in time they can be without heating for a few weeks. Mrs Young stated that

since Ms Laird came on board things have gotten a bit better but they have still had to reset and maintain the boiler system themselves.

51. Mrs. Young stated that she met with Sam Sykes in December 2019 and told him that she didn't think the house was habitable. He told her that everything would be fine but nothing was ever done. Mrs Young stated that she told him that they couldn't pay for a service that was not being provided and at that point the relationship became strained.
52. Mrs Young stated that when Ms Laird got in touch in October 2022 she was amicable and approachable. Mrs Young stated that both she and her husband had suffered mental health issues as well as physical health issues due to the state of the Property and they had had to leave the Property over the Christmas period for four years in a row. Mrs Young stated that all they want is a house where they can come home and wash in warm water. It was a last resort for them to withhold the rent. They just want a comfortable, safe and wind and watertight house to come home to. They have no issues to pay what they owe, but they just need a safe place to wash and eat.
53. Mrs Young stated that they had had 56 weeks of no heating and hot water and the landlord still charged them the full rent. Mrs Young stated that she didn't have a figure in mind of what would be due, but just what is fair, and that they needed to take into account of the services that they've not had the benefit of such as heating and hot water.
54. Mrs Young stated that they have had to pay to use electric heaters to heat the house. Mrs Young stated that she had spoken to the landlord's agents regarding not having to pay for heating when it doesn't work, but that they won't agree that the costs should be reduced.
55. Mrs. Young stated that she understood that money was overdue for rent and that maybe things had gone too far but that this was a cry for help. She needed attention and had been ignored. The landlord's agents had not offered any mediation.
56. Mrs. Young stated that there had been no repairs carried out to the property unless they were an emergency.
57. Mrs. Young was directed to Clause 17 of the tenancy agreement which sets out the tenant's obligations and under which the tenant accepts that the property is let in a good and tenantable condition. Mrs Young was asked if she was happy when she moved into the property that it was in a good state of repair. Mrs Young answered that damp and plaster work were not the tenant's responsibilities. She accepted that they needed to keep the house maintained and that they had done that to the best of their ability. Mrs Young stated that she was talking about issues with the fabric of the house such as the roof letting in water, trees falling down, rising damp, mould, faulty guttering etc. Mrs Young stated that this is not the tenant's responsibility to repair or maintain the fabric of the house.

58. Mrs. Young confirmed that she had not applied to the tribunal for a Repairing Standard Enforcement Order.
59. Mrs Young stated that she had notified the landlord's agents in writing that she was withholding rent but that she had not had time to submit that as evidence with the tribunal.
60. When asked when the last time was that rent was paid, Mrs Young stated that she did not have that information to hand. Mrs Young agreed that there were significant rent arrears. Mrs Young was asked what would be a fair assessment of what she believed was due as regards rent and she replied that 70 or 80% would be fair.

Findings in Fact

61. The Tribunal made the following findings in fact:
- (i) The parties entered into a Private Residential Tenancy Agreement ("the Agreement") which commenced 7 April 2019;
 - (ii) In terms of Clause 8 of the Agreement the Respondents were due to pay rent to the Applicant in the sum of £1,083.35 per calendar month payable in advance;
 - (iii) The Applicant has served a Notice to Leave on the Respondents on the basis of Ground 12 of Schedule 3 to the 2016 Act, and which was served on 13 September 2021;
 - (iv) The Respondent has been in continuous arrears of rent since the commencement of the Agreement;
 - (v) The Respondent is in arrears of rent amounting to £21,178.10 as at the date of the Hearing;

Reasons for Decision

62. The Tribunal did not find Mrs. Young to be a credible or reliable witness. Mrs Young was often evasive in answering questions put to her. The Tribunal found it entirely unsatisfactory that after two case management discussions, the Respondents had still failed to lodge evidence that Mrs Young claimed to be in existence and which she claimed she wished to rely upon. In particular, evidence as regards the alleged intimation to the landlords' agents of withholding of rent and correspondence as regards repairing issues claimed by the Respondents now to have been dealt with appropriately and evidence as to the question of whether the Property meets the Repairing Standard and is wind and watertight. It was noted by the Tribunal that the bank statement lodged by Mrs. Young was a business bank account simply showing a balance of funds. There were no individual transactions disclosed on the bank statement. No evidence was provided showing that the rent had indeed been deposited into a separate bank account by the Respondent during the course of the Agreement,

nor any explanation given as to why a business bank account would be utilised for such a purpose.

63. It was noted by the Tribunal that the Property was of an age where it was likely that there would be ongoing repairs and maintenance issues with same. The Tribunal was satisfied that the Property, regardless of its age, required to meet the Repairing Standard as set down by the Housing (Scotland) Act 2006. However, the Tribunal was not persuaded by Mrs. Young that there had been such significant and ongoing issues with the Property to render it either uninhabitable or in such a state that rent would not fall lawfully due to be paid. There was no evidence before the tribunal as regards the Respondents reporting repairing issues to the landlord's agents which were not then attended to within a reasonable time. Whilst Mrs. Young alleged that repairs had been reported and not been dealt with, she did not lodge any evidence to support this nor provide any detail in her own oral evidence in this regard. There was no evidence before the tribunal to satisfy it that the Property did not meet the Repairing Standard.
64. It was noted by the Tribunal that Mrs. Young placed some reliance on the agent's failure to timeously deal with a leak from the boiler room in December 2022, as evidence of their failure to attend to repairing issues at the Property. The tribunal considered it somewhat odd that Mrs. Young would state that this was a serious repairing issue which required urgent attention, but would report same by way of email to Ms Laird and then claim this is not adequately dealt with when Ms Laird was on holiday. The tribunal would consider that if there was a serious issue with a leak from the boiler room requiring urgent attention, that the tenants would make phone calls to the landlord's agents to obtain urgent assistance, failing which, if the landlord's agents were not responding to such communication, that the tenant would call out their own contractor to deal with such an urgent repair and thereafter seek reimbursement from the landlord. The tribunal found Mrs Young's actions in this particular situation to be at odds with what a reasonable tenant would do.
65. The tribunal found Ms Laird's evidence to be both credible and reliable and preferred same to that of Mrs Young where there were disputes as to fact. The tribunal was satisfied that Ms Laird had responded timeously and appropriately to reports of repairs when received from Mr and Mrs. Young.
66. The tribunal noted that the rent arrears due by the Respondents were extremely high. Even if the tribunal was to give credibility to Mrs Young's claim that the Respondents had endured 56 weeks of no heating and hot water (which was denied by the Applicant and not founded in evidence) and that on that basis, no rent should fall due for those periods, the rent payable in those 56 weeks would amount to £14,000.22. This would still leave a rent arrear due to be paid of £7,177.78, which is still a figure due in excess of six month's rent. It should be made clear that the tribunal is not making a finding that this figure of rent is not due, but this figure is simply being stated as an indication of the extent of rent arrears which would remain due even if Mrs Young's claim had been found to be established in evidence, which it was not.

67. In her own evidence, Mrs Young stated that she thought perhaps 70 or 80% of the rent being due would be fair. This would still amount to a significant figure due, and well in excess of six month's rent.

68. It was noted by the tribunal that in her own evidence, Mrs. Young had stated that perhaps the rent arrears had "got out of hand". The tribunal considered this to be somewhat of an understatement. The tribunal noted that no explanation was given by Mrs. Young as to why the Respondents had never made an application to the tribunal seeking a Repairing Standard Enforcement Order, which would appear to have been a sensible course of action in a situation where a tenant claims that there are substantial repairing issues within a property. It was unclear why they would choose not to do so.

69. Section 51 of the 2016 Act states as follows:

51 (1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

70. Ground 12 of Schedule 3 to the 2016 Act states as follows:

12 (1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2)

(3) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) for three or more consecutive months the tenant has been in arrears of rent, and

(b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.

(4) In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider—

(a) 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, and

(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations.

(5) For the purposes of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971),

(ii) a payment on account awarded under regulation 91 of those Regulations,

(iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,

(iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,

(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.

(6) Regulations under sub-paragraph (4)(b) may make provision about—

(a) information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),

(b) steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,

(c) such other matters as the Scottish Ministers consider appropriate.

71. The Tribunal was satisfied that a Notice to Leave had been served on the Respondent and which specified ground 12, in accordance with the requirements of section 52 of the 2016 Act. The Tribunal was satisfied that the terms of Ground 12 of Schedule 3 to the 2016 Act had been met, namely that the Respondent has been in continuous arrears of rent for at least three months up to and including the date of the Hearing. The Tribunal was satisfied that there was no information before it to suggest that the tenant's being in arrears of rent over that period was either wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

72. The Tribunal was satisfied that it was reasonable to grant the Order sought. The Tribunal was satisfied that the applicant had reacted appropriately to issues of repair when notified by the tenants. The Tribunal was not persuaded on the evidence before it that the Property was uninhabitable, nor that it was not wind and watertight, nor that it did not meet the Repairing Standard. The Tribunal was not persuaded that the rent arrears had accrued due to the Respondents

lawfully withholding rent due to repairing issues in the Property. Given the significant level of rent arrears accrued by the Respondents, the Tribunal was satisfied that it would be reasonable in all the circumstances to grant the order for eviction.

Decision

73. The Tribunal granted an order against the Respondents for eviction of the Respondents from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 12 under schedule 3 to 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.

F. Watson

Legal Member/Chair

Date: 8 May 2023