



Decision with Statement of Reasons 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/22/1668

Re: Property at 482 Main Street, Camelon, Falkirk, FK1 4QJ (“the Property”)

Parties:

Mrs Juliana Aitken, Mr Martin Aitken, 70 Mountbatten Avenue, Bright, 3741 8006, Australia (“the Applicant”)

Mr Martin Ian Baxter, 482 Main Street, Camelon, Falkirk, FK1 4QJ (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make no order

Background

- 1 By application to the Tribunal dated 30 May 2022 the Applicant sought an eviction order against the Respondent. In support of the application the Applicant provided a copy of the private residential tenancy agreement between the parties, a rent statement dated 17 May 2022, Notice to Leave dated 6 April 2022 with proof of service, Section 11 Notice to Falkirk Council and correspondence in compliance with the pre-action requirements.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers from the Chamber President determined that there were no grounds to reject the application. A Case Management Discussion was therefore assigned for 26 August 2022.

- 3 A copy of the application paperwork was served on the Respondent by Sheriff Officers together with notification of the date and time of the Case Management Discussion and instructions for joining the teleconference.

The Case Management Discussion

- 4 The Case Management Discussion took place on 26 August 2022. The Applicant was represented by Miss Alexandra Wooley, Solicitor. The Respondent was present and accompanied by his mother as a supporter.
- 5 The Legal Member explained the purpose of the Case Management Discussion and asked parties to address the Tribunal on the application.
- 6 Miss Wooley invited the Tribunal to grant the eviction order. She explained that the private residential tenancy agreement between the parties had commenced on 2 June 2018. The rent payable was £380 per month however the Respondent had fallen into arrears at the end of 2021. After three months arrears had accrued the Applicant served a Notice to Leave on the Respondent on 6 April 2022 via email. The Notice to Leave was served on the basis of ground 12 of Schedule 3 of the Private Housing Tenancies (Scotland) Act 2016. The arrears were £1900 when the Notice to Leave was served. Miss Wooley explained that the current arrears were £3420. There had been no payments since November 2021. The Applicant had not received any explanation from the Respondent as to why he had ceased paying rent or whether he was in financial trouble.
- 7 Miss Wooley submitted that the Applicant had complied with the pre-action requirements by advising the Respondent of his obligations, the rent arrears and directing him to agencies for advice and support. She made reference to the letters lodged with the application in support of this. No response had been received from the Respondent. Miss Wooley submitted that the Applicant had acted reasonably. The arrears had been outstanding for more than six months. There was no indication that the Respondent intended on paying the rent. Miss Wooley advised that she understood the Respondent was concerned about an eviction order, however she noted that in the event of an order being granted the local authority would have a statutory obligation to rehouse the Respondent and he would be prioritised for emergency accommodation.
- 8 The Respondent addressed the Tribunal, supported at points by his mother. He had suffered from mental health problems for some time, which had not been helped by the condition of the house. He had communicated with the Applicant regarding repairs issues since August 2018 but had gotten nowhere. He therefore thought his only recourse was to withhold rent, using the extra money to dry out the house which suffered from water ingress due to problems with the roof. He had sent a number of emails to the Applicant for over two years regarding the ongoing issues with the roof and the repairs. The last email he received from the Applicant regarding the roof was in September 2020, when the Applicant advised he was chasing the roofer daily. The Respondent had heard nothing about it since. He was not sure how such a gap could occur. The problems with the roof had caused numerous issues in the property. The Respondent conceded that he probably should have communicated better with

the Applicant and that he had not advised him that he was withholding his rent. He had gotten fed up and decided to stop paying rent when he hadn't heard from the Applicant in over a year.

- 9 The Respondent confirmed that the roof was still leaking. In the living room it leaked next to the window and in the kitchen it leaked down the back wall where the cooker is plugged in. The Respondent was unable to use the cooker as a result and had to move the fridge into the living room. There were also leaks in the hallway. The Applicant was well aware of this. The Respondent advised that an officer from the local authority had visited the property as a result of the ongoing issues and said that it did not quite meet the Repairing Standard. The Respondent advised that he had put aside some of the money in unpaid rent, however some of it had been used over winter as it cost more money to heat a damp house.
- 10 The Respondent advised that the relationship with the Applicant had been cordial initially but had broken down due to his frustration that the problems with the roof were not fixed. In response to questions from the Tribunal the Respondent advised that he was not sure if he wanted to stay in the property. He was having a lot of issues mentally and didn't know what he was doing. His mother had spoken to someone at the local authority and he had been trying to bid and apply for other accommodation. He knew that the situation could not continue.
- 11 Miss Wooley confirmed that the Applicant was aware of the leaks and had been trying to get them fixed. They shared the Respondent's frustration. The roof had been harder to repair than they had hoped. The Applicant was still getting quotes from different roofers but had faced issues in securing contractors to do the work. This had been a common trend throughout the time the leaks had persisted. The Applicant had acted promptly but had been let down by contractors he had employed to examine and repair the roof. Miss Wooley advised that the Applicant would be amenable to postponing enforcement of the eviction order if that would be beneficial in assisting the Respondent in sourcing alternative accommodation. Miss Wooley pointed out that the Respondent had not advised the Applicant that he intended on withholding his rent until the repairs were effected. In response to questions from the Tribunal Miss Wooley advised that the Applicant had not discussed a rent abatement with the Respondent. He had gotten in touch with the Respondent shortly after the arrears began to accrue but received no response. The Respondent confirmed that the Applicant had been in touch but due to his mental issues he was not in a position to respond.

Relevant Legislation

- 12 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Private Housing Tenancies (Scotland) Act 2016, as amended by the Coronavirus (Scotland) Act 2020, the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020 and the Coronavirus (Extension and Expiry) (Scotland) Act 2021:-

1 - Meaning of private residential tenancy

1) A tenancy is a private residential tenancy where—

(a) the tenancy is one under which a property is let to an individual (“the tenant”) as a separate dwelling,

(b) the tenant occupies the property (or any part of it) as the tenant’s only or principal home, and

(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

(2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

51 First-tier Tribunal’s power to issue an eviction order

(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.

52 Applications for eviction orders and consideration of them

(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—

(a) subsection (3), or

(b) any of sections 54 to 56 (but see subsection (4)).

(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.

(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—

(a) is stated in the notice to leave accompanying the landlord’s application in accordance with subsection (3), or

(b) has been included with the Tribunal’s permission in the landlord’s application as a stated basis on which an eviction order is sought.

54 Restriction on applying during the notice period

(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.

(2) The relevant period in relation to a notice to leave—

(a) begins on the day the tenant receives the notice to leave from the landlord, and

(b) in the case of a notice served before 3 October 2020 expires on the day falling—

(i) 28 days after it begins if subsection (3) applies,

(ii) three months after it begins if subsection (3A) applies,

(iii) six months after it begins if neither subsection (3) nor (3A) applies.

(c) in the case of a notice served on or after 3 October 2020, expires on the day falling—

(i) 28 days after it begins if subsection (3B) applies,

(ii) three months after it begins if subsection (3C) applies,

(iii) six months after it begins if neither subsection (3B) nor (3C) applies

(3) This subsection applies if the only eviction ground stated in the notice to leave is that the tenant is not occupying the let property as the tenant's home. [ground 10]

(3A) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the tenant has a relevant conviction, [ground 13]

(iv) that the tenant has engaged in relevant anti-social behaviour, [ground 14]

(v) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour, [ground 15]

(vi) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(vii) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, [ground 17] or

(b) the only eviction grounds stated in the notice to leave are—

(i) the eviction ground mentioned in subsection (3), and

(ii) an eviction ground, or grounds, mentioned in paragraph (a)

(3B) This subsection applies if the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(a) that the tenant is not occupying the let property as the tenant's home, [ground 10]

(b) that the tenant has a relevant conviction, [ground 13]

(c) that the tenant has engaged in relevant anti-social behaviour, or [ground 14]

(d) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour. [ground 15]

(3C) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(iv) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or [ground 17]

(b) the only eviction grounds stated in the notice to leave are—

(i) an eviction ground, or grounds, mentioned in subsection (3B), and

(ii) an eviction ground, or grounds, mentioned in paragraph (a).

62 Meaning of notice to leave and stated eviction ground

(1) References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,

(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.

(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.

Schedule 3, Part 12

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

(3) The First-tier Tribunal may find that the ground named by subparagraph (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 subparagraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider 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.

- 13 The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 are also relevant to this application.

Findings in Fact and Law

- 14 The parties' Tenancy Agreement commenced on 2 June 2018.
- 15 In August 2018, the Respondent reported leaks from the roof to the Applicant.
- 16 The leaks persisted throughout 2018, 2019 and 2020.
- 17 In September 2020 the Applicant advised the Respondent that he was continuing to chase contractors to address the leaks.
- 18 The leaks have continued since September 2020. The property leaks from the roof in the kitchen, living room and hallway.
- 19 In terms of the Clause 18 of the said tenancy agreement, the Respondent's duty was to ensure that the Property met the Repairing Standard throughout the duration of the agreement. In particular the Respondent's duty was to ensure that the Property was wind and watertight and in all other respects reasonably fit for people to live in.
- 20 The Property was not fully habitable during the term of the parties' tenancy agreement. As a result of the leaks in the kitchen the Respondent has been unable to use the cooker and the fridge has been moved to the living room. The

Respondent has also had to live in damp conditions due to the water ingress from the roof.

- 21 The Respondent suffers from mental health issues.
- 22 The condition of the property has caused a deterioration in the Respondent's mental health.
- 23 The Respondent stopped paying rent in November 2021. The Respondent did not intimate to the Applicant that he was withholding rent.
- 24 The Applicant has been, and continues to be, aware of the problems with the roof.
- 25 It is not reasonable to make an eviction order.

Reasons for Decision

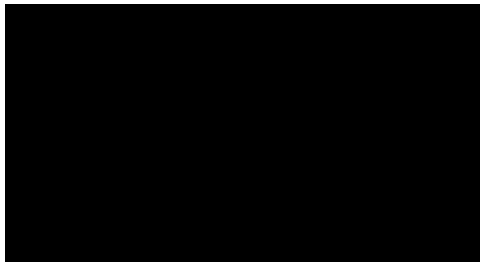
- 26 The Tribunal took into account the application paperwork together with the written representations and verbal submissions from the parties. The Tribunal noted that the substantive facts of the matter appeared to be agreed and therefore it did not consider there were any issues to be resolved that required a hearing to be fixed. The Tribunal was content that it had sufficient information upon which to reach a determination of the application.
- 27 The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicant's intention to rely upon ground 12 of Schedule 3 of the 2016 Act. The Tribunal was satisfied that the required notice had been given to the Respondents and therefore that application could be entertained.
- 28 The Tribunal accepted that there were rent arrears outstanding in the sum of £3420 and the rent statement reflected that no rent had been paid since November 2021. This was not disputed by the Respondent. Accordingly, the Tribunal was satisfied that rent had went unpaid for three or more months and there was at least one months rent arrears outstanding as at the date of the Case Management Discussion.
- 29 The Tribunal therefore had to consider whether it was reasonable in all the circumstances of the application to grant an eviction order. It was accepted by the Applicant that there had been ongoing problems with the roof which had yet to be repaired. The Tribunal further accepted that these issues had been notified to the Applicant in August 2018, four years prior to the Case Management Discussion. Whilst the Tribunal accepted that arranging roofing contractors to carry out repairs could be challenging, particularly during the pandemic, it seemed wholly unreasonable that it had taken such a significant period of time for the matter to be addressed.
- 30 The Tribunal also accepted that the condition of the property had negatively impacted on the Respondent's enjoyment of the house, and his mental health.

Although he had not intimated to the Applicant that he was withholding his rent, the Tribunal accepted that this would have been primarily a result of his mental state and the frustration that the issue had not been resolved.

- 31 Accordingly the Tribunal ultimately concluded that it would not be reasonable to grant an eviction order in this particular case, in view of the persisting disrepair at the property, the impact on the Respondent in terms of his mental health and the length of time the repairs had been outstanding.
- 32 The decision of the Tribunal was 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.



13 September 2022

Legal Member/Chair

Date