



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/22/2095

Re: Property at 2B Manor Place, Broughty Ferry, Dundee, DD5 2BZ (“the Property”)

Parties:

Mr Christopher Cotton, Mrs Darlene Drummond, 4 Yewbank Ave, Broughty Ferry, Dundee, DD5 2SG; 4 Yewbank Avenue, Broughty Ferry, Dundee, DD5 2SG (“the Applicant”)

Ms Claudia Hogan, 2B Manor Place, Broughty Ferry, Dundee, DD5 2BZ (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Sandra Brydon (Ordinary Member)

Decision in absence of the Respondent

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order against the Respondent

Background

- 1 By application to the Tribunal the Applicants sought an eviction order against the Respondent in respect of the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). In support of the application the Applicant provided the following documentation:-
 - (i) Private Residential Tenancy Agreement between the parties dated 13 August 2018;
 - (ii) Notice to Leave dated 22 December 2021 stating that proceedings for possession will commence no earlier than 26th June 2022 and citing ground 12, together with proof of service on the Respondent by email;

- (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Dundee City Council;
 - (iv) Rent Statement;
 - (v) Copy bank statements evidencing unpaid rent;
 - (vi) Copy email correspondence between the Applicants and SafeDeposits Scotland regarding the tenancy deposit; and
 - (vii) Copy letters and emails from the Applicants to the Respondent regarding the pre-action requirements.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for the 13th October 2022 to take place by teleconference. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondent by Sheriff Officers.
- 3 On 15 September 2022 the Applicants contacted the Tribunal by email to provide copy correspondence between the Applicants and Dundee City Council dated 14 September 2022. The correspondence from the Council's Council Tax section indicated that the Respondent had in fact vacated the property on 25 February 2022.

Case Management Discussions

- 4 The Case Management Discussion took place by teleconference on 13 October 2022. The Applicants were both in attendance and confirmed that Mr Cotton would address the Tribunal on their behalf. The Respondent was not in attendance. The Tribunal noted that she had been served with the application paperwork together with notification of the date and time of the Case Management Discussion and therefore determined to proceed in her absence.
- 5 The Legal Member explained the legal test to be applied in this case. She asked Mr Cotton to address the Tribunal on the Applicants' position regarding the matter.
- 6 Mr Cotton explained that they were seeking ownership of the flat again. It was believed that the Respondent had moved out. The tenancy had commenced in September 2018 and the first 18 months were really good. However when the Covid pandemic hit the Respondent fell behind in her rent payments which

was understandable. For around 14 months the Applicants had refrained from raising proceedings, mainly because of the ongoing pandemic. They didn't want to and were keen to support the Respondent. She was communicating well at the time and trying to pay the arrears. About a year ago the Respondent had informed them that she was very unwell and her partner, the father of her daughter, had died. The Applicants had been very understanding and didn't do anything immediately. It made things difficult with the increasing rent arrears but they wanted to support her. With the exception of one payment in September 2021 that was the end of any rent payments to the account.

- 7 Mr Cotton confirmed that the arrears now stood at £10,500. From August 2021 to November 2021 the Respondent continued to communicate with the Applicants by text message. However out of the blue they received a request for a tenancy reference for the Applicant from Dundee Housing. The Respondent stopped communicating after that. The Applicants tried to engage with her to no avail. They had taken advice from the Scottish Association of Landlords and started sending official correspondence to her, however these were always accompanied by a covering letter stating that they did not want to take such action and wanted to support her. There was Covid help available at the time and the Applicants were keen to help the Respondent fill in forms to obtain financial assistance to enable her to stay in the property. However they just couldn't communicate with her.
- 8 Mr Cotton explained that just after Christmas 2021 he had contacted SafeDeposits Scotland where the Respondent's tenancy deposit was lodged. He asked them to get in touch with the Respondent. However they subsequently advised that they had not had a response. The only reason the Respondent had given for her lack of rent payments was that she was ill. In text messages on other tenancy matters the Respondent had always been very complimentary about the Applicants' management of the tenancy. Mr Cotton therefore advised that he didn't think she had a reason for not paying rent on the basis that the Applicants were not complying with their landlord obligations.
- 9 Mr Cotton advised that he had been told by neighbours that the Respondent was no longer residing at the property. He had attempted to contact the DWP to check the position regarding her benefits however he had received no written response. After escalating the matter he had received a telephone call from the DWP advising that benefits could not be paid directly to the Applicants because the Respondent had registered a different address. The Applicants had then received an email on 14 September 2022 from Dundee City Council advising that the Respondent had moved out of the property on 25 February 2022.
- 10 In May 2022, approximately one month before the Notice to Leave was due to expire, Mr Cotton had attended the property. He was shocked when the Respondent's partner, who was believed to have died, answered the door. He had a civil conversation with the Respondent's partner, who confirmed that she was ill and suffering from "brain fog". This brought into question the

credibility of other statements made by the Respondent. It therefore felt reasonable that the Applicants should get the property back.

- 11 Mr Cotton advised that the Respondent was either receiving benefits or she was employed. Her partner would also be receiving benefits. There was no reason why the rent could not be paid. In response to questions from the Tribunal, he confirmed his belief that the Respondent's partner was still residing in the property. He clarified the comments from the neighbours, who had initially believed the property to be empty after walking past it over a period of two weeks and noting that the door was open. However one day the door was closed. The neighbours subsequently advised that the Respondent visited occasionally and the Respondent's partner was still residing there. Mr Cotton advised that he expected the Respondent to try and prolong matters. The situation was starting to feel grossly unfair and Mr Cotton outlined the financial impact this was having on the Applicants due to the significant loss of rental income.

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 entered into a Private Residential Tenancy Agreement dated 13 August 2018, which commenced on 15 September 2018.
- 15 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
- 16 On 22 December 2021 the Applicants delivered a Notice to Leave to the Respondent by email. The Notice to Leave cited ground 12 of Schedule 3 of the 2016 Act and confirmed that proceedings would not be raised any earlier than 26 June 2022.
- 17 The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 18 In terms of Clause 4 of the said Tenancy Agreement the Respondent undertook to make payment of rent at the rate of £640 per calendar month.
- 19 As at the date of service of the Notice to Leave arrears in the sum of £4040 were outstanding.
- 20 As at the date of the Case Management Discussion arrears in the sum of £10,500 were outstanding.
- 21 The Respondent has paid no rent since 29 September 2021.
- 22 It is reasonable to conclude that the Respondent is no longer occupying the property.
- 23 It is reasonable to conclude that the Respondent's partner continues to occupy the property.
- 24 The Applicants are severely impacted financially by the lack of payments by the Respondent.
- 25 The Applicants have complied with the pre-action requirements by advising the Respondent of her rental obligations and arrears outstanding, offering to enter into payment arrangements and directing her to advice agencies for support.
- 26 It is reasonable to make the order sought by the Applicants.

27 The provisions of ground 12 of Schedule 3 of the 2016 Act have been met.

Reasons for Decision

28 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. There were no substantive facts in dispute therefore the Tribunal did not consider there to be any requirement to fix a hearing in the matter as there were no issues to be resolved that required the hearing of evidence. The Respondent had been given the opportunity to participate in the proceedings but had chosen not to do so.

29 The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicants 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 Respondent and therefore that application could be entertained.

30 The Tribunal accepted that there were rent arrears outstanding in the sum of £10,500 and the rent statement produced reflected that no rent had been paid since September 2021, more than a year prior to the Case Management Discussion. The lack of payments to the rent account had resulted in a significant balance of arrears. On that basis the Tribunal was satisfied that ground 12 had been met, in 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.

31 The Tribunal then considered the question of reasonableness. The Tribunal accepted the submissions from Mr Cotton at the Case Management Discussion and found him to be wholly credible. It was clear that the decision to lodge the application had not been taken lightly by the Applicants and that extensive efforts had been made by them to support the Respondent in sustaining the tenancy. Unfortunately it appeared as if she had simply failed to engage and indeed had sought to mislead the Applicants regarding her circumstances, with the statement about the death of her partner being a particular example. Whilst the Tribunal had cognisance of the Respondent's illness, which was accepted by the Applicants, it was clear that offers of support and assistance had been made to her that she had not taken up.

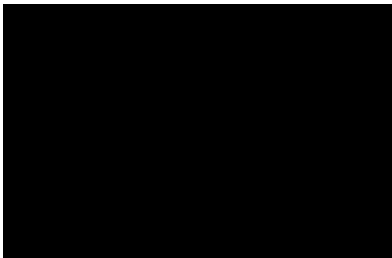
32 The Tribunal also accepted, based on the correspondence from Dundee City Council and the hearsay evidence of neighbour information, that the Respondent was no longer residing in the property. This was also supported by her ceasing communication with the Applicants following the request made to them for a tenancy reference. The Tribunal therefore considered that the granting of the order would be unlikely to cause any prejudice to her on the

basis that she was now residing in alternative accommodation. Whilst the Tribunal noted the position regarding the Respondent's partner he was not a tenant of the property and the Tribunal therefore considered it could give little weight to his circumstances. It appeared clear that he also had no intention of paying rent. It therefore followed that without the making of an eviction order it was likely that arrears would continue to accrue to the severe detriment of the Applicant.

- 33 Accordingly, having regard to the significant level of arrears, the length of time since any payments had been made, the extensive efforts by the Applicants in addressing the situation, the ongoing impact on the Applicants, and balancing that with the Respondents circumstances, the Tribunal ultimately concluded that it would be reasonable in all the circumstances of the case to make an eviction order.
- 34 The Tribunal therefore determined to make an order for eviction against the Respondents. 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.



13/10/2022

Legal Member/Chair

Date