

Housing and Property Chamber
First-tier Tribunal for Scotland



Decisions with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Sections 51 and 71 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Refs: FTS/HPC/EV/21/0932 and FTS/HPC/CV/21/0934

Re: Property at 131 Broad Street, Cowdenbeath, Fife, KY4 8JS (“the Property”)

Parties:

Mrs Lynne Carribine, 16 Broomfield Road, Cowdenbeath, Fife, KY4 9AE (“the Applicant”), and

Miss Abbi Gallagher, 131 Broad Street, Cowdenbeath, Fife, KY4 8 JS (“the Respondent”)

Tribunal Members:

G McWilliams- Legal Member

J Heppenstall- Ordinary Member

Decisions:

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determines as follows:

- 1) To grant an eviction order; and**
- 2) To grant an order for payment by the Respondent to the Applicant of the sum of £4858.10.**

Background

- 1. These are Applications for an eviction order in terms of Rule 109 (Application for an eviction order) and for a payment order in terms of Rule 111 (Application for civil proceedings in relation to a private residential tenancy) of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure (“the 2017 Rules”).**

Case Management Discussion 22nd June 2021

2. A Case Management Discussion (“CMD”) proceeded remotely by telephone conference call on 22nd June 2021. Reference is made to the Notes on the CMD and Notice of Directions, both dated 22nd June 2021, which were sent to the parties on 25th June 2021.

Hearing 2nd August 2021

3. An evidential Hearing was scheduled to take place on 2nd August 2021. The Hearing date, time and telephone conference joining details were intimated to the parties by recorded delivery post on 29th June 2021. The Applicant attended at the Hearing. The Respondent did not attend and was not represented. There was no explanation for her absence. However the Tribunal were unable to verify that the recorded delivery postal intimation had been successful due to a Royal Mail online technical fault. In the circumstances the Tribunal did not consider it just to determine matters and the Hearing was adjourned. Reference is made to the Notes on the Hearing.

Hearings 31st August and 17th September 2021

4. The fresh Hearing proceeded remotely by telephone conference call at 10am 31st August 2021 and was continued, and concluded, also remotely by telephone conference call, on 17th September 2021. Reference is made to the Notes on the Hearing on 31st August 2021 which were issued to the parties in advance of the continued Hearing on 17th September 2021. The parties attended on the Hearing calls on both 31st August 2021 and 17th September 2021. The parties gave oral evidence at the Hearing on 31st August 2021. Both parties lodged additional representations and papers in advance of the continued Hearing on 17th September 2021. They gave additional evidence, focused on those additional representations and papers, and made submissions, at the continued Hearing on 17th September 2021. The Applicant and Respondent confirmed that they did not wish to call any witnesses.

Evidence and Submissions

5. The parties gave evidence in respect of both Applications, and focused on the eight issues outlined in the Notes on the CMD dated 22nd June 2021.
6. The Applicant stated that she was relying on her Applications and the representations and papers which she had lodged.
7. The Applicant stated that the Respondent had been in considerable arrears of rent for many months. She said that a Notice to Leave was served on 7th August 2020 seeking arrears of £1,730.00. She stated that the arrears had accumulated since the beginning of the tenancy but had significantly increased between

October 2019 and August 2020. She said that she had tried to discuss and resolve matters with the Respondent, in particular at a meeting at the Property on 24th August 2020. She stated that an agreement was reached through SDS Resolution, on 15th January 2021, for the Respondent to pay the rent plus an extra amount of £100.00 (£105.00 in the first month) towards an agreed outstanding rental amount of £4,005.00. She stated that she received two or three payments after that agreement was reached but never the full rent. She stated that she had not received anything from the Respondent from June 2021 but had received four small payments directly from Universal Credit direct, of £39.54 on 3rd June 2021, £39.80 on 1st July, £39.80 on 29th July and £39.80 on 26th August. She stated that the Respondent was not sending her the Universal Credit Housing Element which had been awarded, of £305.00.

8. The Applicant said that she had properly notified the Respondent of the increase in rent, from the sum of £450.00 to the sum of £475.00, on 31st July 2019, which was effective from 1st November 2019, and that the emails and messages which she had lodged evidenced that the Applicant was certainly aware of the increase when the parties discussed matters in August 2020. She said that she did not receive responses to her e-mails or automated replies saying they had not been delivered to the Respondent. The Applicant said that at the discussion in August 2020 the £25.00 increase was mentioned and the Respondent said she was struggling to pay the £450.00 original rent.
9. The Applicant said that the Respondent had not notified her timeously of repairs. She stated that she had attended to repairs after they had been notified. The Applicant referred to the report of Moore Ross Chartered Surveyors dated 13th July 2021, which she had lodged, and said that the recommended roof repairs had been carried out. She said that she hoped that internal decoration, required as a result of previous water ingress in the living room in the Property, would be carried out in October 2021. The Applicant stated that the first repair to the roof was on 26th August 2020 following the parties' meeting on 24th August 2020. The Applicant referred again to the report of Moore Ross, Chartered Surveyors and submitted that Moore Ross had said that the Property was not damp. The Applicant stated that the surveyors identified that repairs had to be carried out on the roof, at the chimney, and at the living room ceiling.
10. The Applicant stated that she gave information to the Respondent, regarding housing help services, by e-mail. She referred to pages 14 to 25 of the papers she had lodged originally. She also stated that when she visited the Respondent in August 2020 she took her through the process regarding the Applicant's Application for her to leave the Property and recommended that the Respondent obtain independent advice. The Applicant stated again that she had been corresponding with the Respondent at her e-mail address of abbigallagher1@gmail.com.
11. She said that the arrears of rent were now in the sum of £5333.10. She acknowledged that she had not amended the payment order sought in time for the Hearing on 17th September 2021 and said that she may lodge a further Application for another payment order. The Applicant submitted that her Applications were lodged with the Tribunal as a last resort as she can no longer

sustain such a loss of rent monies. She submitted that she sought the grant of an eviction order and payment order.

12. The Respondent stated that she accepted that there were rent arrears owing. She said that she had had financial difficulties since losing her job in February 2020. The Respondent stated that the parties had reached an agreement for her payment of ongoing rent, and arrears, through SDS Resolution, in January 2021. She stated that she had agreed to pay the monthly rent amount plus £100.00 towards arrears. She said that she then paid a monthly amount of money which she could afford to the Applicant each month. She stated that in some months she could not afford to pay anything.
13. She stated that she had not been notified of the rent increase in August 2019. She said that she had received a Notice to Leave at that time and then realised that the Applicant had sought to increase the rent by £25.00 on 11th August 2019. She stated that she told the Applicant that she could not pay the increase and the Applicant said that they would leave the rent amount at £450.00 for the time being. The Respondent stated that she had not received any notice that the rent had gone up to £475.00 again. The Respondent said that when she signed the SDS Resolution agreement she still thought that the monthly rent amount was £450.00. The Respondent stated that she had not notified the Applicant of her change in e-mail address, in 2019, because the parties were in contact through Facebook and on Social Media.
14. The Respondent said that the Applicant had not carried out repairs at the Property. She acknowledged that she had not notified the Applicant of water ingress in the living room until the parties met there in August 2020. The Respondent said that she had obtained housing law advice from the Citizen's Advice Bureau ("CAB") and Frontline Fife after the meeting. She stated that she had not told the Applicant that she was withholding rent due to the condition of the Property. She said that CAB and Frontline Fife had told her that could withhold rent until repairs were done but that she did not tell the Applicant this. The Respondent stated that she was not clear as to why she had not said anything to the Applicant in this regard.
15. The Respondent stated that she had a family member, who was a roofer, look at the roof around September 2020. She acknowledged that she had not reported her family member's opinion to the Applicant. She stated that her reason for not telling the Applicant was that the Applicant, she thought, had her own roofers coming out to deal with matters.
16. The Respondent stated that the property was still damp. The Respondent said that she had sent e-mails and various messages to the Applicant about problems with the property. She said that she could not lodge these as they were connected to a previous mail account which was no longer in use.
17. The Respondent said that she had been suffering health issues and that her GP was trying to manage her chronic migraines. The Respondent also said, at both Hearings on 31st August 2021 and 17th September 2021, that she had tried to get

her medical records for lodging with the Tribunal, from her GP but had been unsuccessful.

18. The Respondent stated that she had received the Applicant's e-mail, regarding the rent arrears and which also stated that she should seek independent advice, on 27th July 2020. She also stated that she received an e-mail with a Notice to Leave in August 2020. The Respondent reiterated that she had obtained advice from CAB and Frontline Fife.
19. The Respondent stated that she hoped to pay off the arrears when she starts work again. She said that she was not forwarding her Universal Credit Housing Element monies, of £305.00, to the Applicant as she needs to spend those monies on other living costs. The Applicant said that she has applied for alternative accommodation through her local authority, who have told her to let them know the outcome of the Tribunal. She said that the Applicant was not telling the truth about matters. The Respondent submitted that the Applicant's recent notification of an increase in rent, to £525.00, did not reflect the value and condition of the Property and that she would not be paying such an increased rent.

Findings in Fact and Law

20. The parties tenancy agreement began on 1st September 2019 The Respondent is the sole occupant of the Property
21. The Respondent fell into considerable arrears of rent in early 2020 after she lost her employment, in February 2020.
22. An agreement was reached for the Respondent's repayment of rent arrears, as well as payment of ongoing rent due, through SDS Resolution, in January 2021 The agreement was not adhered to by the Respondent, who is suffering financial difficulties as she has not been in work since February 2020.
23. The Respondent is in arrears of rent in the sum of £5333.10 and has been in arrears for more than three consecutive months.
24. The Respondent accepts that there are considerable arrears of rent owing. The Respondent receives £305.00 per month Universal Credit Housing Element. She has not made any rental payments to the Applicant since June 2021. The Applicant continues to receive small direct payments from Universal Credit.
25. The rent due by the Respondent to the Applicant, including an increase in rent effective on 1st November 2019, was properly notified to the Respondent by the Applicant
26. The Respondent did not notify the Applicant that she was withholding rent due to the condition of the Property. The Applicant has carried out investigations regarding the condition of the Property when she has been notified of repairs by the Respondent. The Applicant has carried out, and planned, necessary repairs.

27. The Applicant discussed the issues of ending the parties' tenancy agreement and the rental arrears with the Respondent. The Applicant suggested that the Respondent obtain independent specialist advice regarding these issues.
28. The Respondent has received housing law advice regarding the Applicant's Applications. She has applied for alternative accommodation housing through her local authority.
29. The Applicant has complied with the rent arrears pre-action requirements (set out in the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020).
30. The Applicant is entitled to the grant of an order evicting the Respondent from the Property on the ground that the latter has been in arrears of rent for more than 3 consecutive months.
31. The Applicant is entitled to the grant of an order for payment to her, by the Respondent of rent arrears, in the sum of £4858.10.

Reasons for Decisions

32. In terms of Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act") the Tribunal is to issue an eviction order under a private residential tenancy if, on application by a landlord, it finds that one of the eviction grounds named in Schedule 3 applies.
33. Schedule 3 (12) (1) of the 2016 Act provides that it is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.
34. Section 71 of The Private Housing (Tenancies) Act 2016 provides as follows:
 - (1) In relation to civil proceedings arising from a private residential tenancy-
 - (a) the First-tier Tribunal has whatever competence and jurisdiction a sheriff would have but for paragraph (b),
 - (b) a sheriff does not have competence or jurisdiction.
 - (2) For the purposes of subsection (1), civil proceedings are any proceedings other than-
 - (a) the prosecution of a criminal offence,
 - (b) any proceedings related to such a prosecution.
35. Accordingly, the Tribunal has jurisdiction in relation to claims by landlords (such as the Applicant) for an eviction order and order for payment of unpaid rent against a tenant (such as the Respondent) in respect of a tenancy such as the tenancy agreement of the parties.

36. The Tribunal considered all of the documentary and oral evidence and submissions.
37. Having considered and weighed all of the evidence the Tribunal found, on a balance of probabilities, that the Respondent is in arrears of rent and has been in arrears for more than three consecutive months. This was accepted by the Respondent.
38. The Tribunal also found that the Applicant has complied with the pre-action requirements (set out in the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020). She met with the Respondent and discussed with her the issues of recovery of possession of the Property and rent arrears, after intimating a formal Notice to Leave the Property, in August 2020. The Applicant suggested that the Respondent obtain independent specialist advice in respect of eviction and arrears issues, and the Respondent did so.
39. The Tribunal carefully considered and weighed all the evidence regarding the reasonableness of granting an eviction order. The Respondent has health difficulties and has been out of work since February 2020. She previously reached an agreement for payment of ongoing rent and arrears, in January 2021, through SDS Resolution. She did not adhere to the agreement. The Respondent has been receiving Universal Credit Housing Element, but not paying any of it to the Applicant, since June 2021. She accepted that this was the case. The Respondent said that she will not pay increased rent if the tenancy agreement were to continue. She has applied to her local authority for alternative accommodation. The Applicant has carried out necessary repairs to the Property when these have been notified and/or discovered. She has previously sought to resolve matters by agreement. She said that her Tribunal Applications were lodged as a last resort as she cannot sustain such an arrears deficit. The Tribunal found that the Applicant has been fulfilling her obligations as a landlord by intimating and discussing matters with the Respondent, and carrying out necessary repair works. The Tribunal found that it is not reasonable to expect the Applicant to sustain such a continuing and increasing loss of rent. The Tribunal, whilst acknowledging that the Respondent has ongoing health and personal difficulties found, on a balance of probabilities, that it is reasonable that an eviction order be granted. The Respondent is liaising with her local authority in relation to her application for alternative housing and it is to be hoped that her application will be granted in early course
40. The Tribunal also carefully considered and weighed all the evidence regarding the amount of the arrears of rent, and, in particular, the issues of the Applicant's increase in the rent in November 2019 and whether or not the Respondent was entitled to withhold rent due to the condition of the Property. Having done so, the Tribunal found that it is unclear whether or not the Respondent received notification by email of the increase, in July 2019. The Tribunal found that the parties did discuss the arrears, which included increased rent from November 2019, in August 2020 and reached agreement for payment of arrears due, which also included the increased rent, in January 2021. Accordingly the Tribunal found that the Respondent, whether or not she had received the original rent increase notification, in July 2019, was certainly aware of the increase from August 2020

and, moreover, accepted the increase when she reached agreement for repayment of rent arrears in January 2021. The Tribunal also found that the Respondent did not notify the Applicant that she was withholding rent due to the condition of the Property, notwithstanding that she had obtained independent specialist advice. The Respondent stated that this was the case. The Tribunal had found that the Applicant has carried out necessary repairs to the Property when these have been notified and/or discovered. The Tribunal, having considered all of the evidence, found that the Respondent was not entitled to withhold rent due to the condition of the Property.. Accordingly the Tribunal found, on a balance of probabilities that the arrears of rent claimed by the Applicant at the commencement of the evidential Hearing, on 31st August 2021, of £4858.10, were due and that it was appropriate, and just, that a payment order in that sum should be granted. .

Decisions

41. Accordingly, the Tribunal make an order for eviction of the Respondent from the Property and, also, an order for payment by the Respondent to the Applicant of the sum of £4858.10.

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.

G McWilliams

23rd September 2021

Legal Member

Date