



**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/23/0237**

**Re: Property at 2 North Mains of Auchleuchries, Hatton, Peterhead, AB42 0TQ (“the Property”)**

**Parties:**

**Dr Gordon Machray Masson, Hill Farm, Sutton Scotney, Winchester, Hampshire, SO21 3NT (“the Applicant”)**

**Mr Mark Robert Taylor, Ms Samantha Stephen, 2 North Mains of Auchleuchries, Hatton, Peterhead, AB42 0TQ; 5 Queens Lane, Boddam, Peterhead, Aberdeenshire, AB42 3JA (“the Respondent”)**

**Tribunal Members:**

**Jan Todd (Legal Member) and Mike Scott (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction should be granted.**

**Background**

1. This was a case management discussion to consider the application made by the Applicant dated 20<sup>th</sup> January 2023 for an order for possession of the Property in terms of Rule 109 of the Tribunal Rules. The CMD took place by teleconference.
2. The Applicant is the owner of the Property and Landlord in a Tenancy with the Respondents who are the tenants, which tenancy commenced on 31<sup>st</sup> October 2019.
3. The Applicant has lodged and the Tribunal had sight of and considered the following documents:-
  - a. Application for eviction dated 20<sup>th</sup> January 2023 which named initially only one Respondent Mr Taylor

- b. Copy Tenancy Agreement between the Applicant and the Respondents in respect of the Property dated 3<sup>rd</sup> and 4<sup>th</sup> October 2019
  - c. Rent statement dated from 30<sup>th</sup> February 2022 to 30 December 2022 showing a sum due of £9,625.
  - d. Copy Notice to leave dated 12<sup>th</sup> August 2022
  - e. Copy e-mail to both tenants sending a copy of the notice to leave dated 12<sup>th</sup> August 2022
  - f. Copy section 11 notice to Aberdeenshire Council and evidence of service
4. The Tribunal sent a direction to the Applicant requesting further information namely:-
- a. "The Applications have been made against one of the tenant's in the lease only Mr Mark Taylor. With regard to the eviction application an application for eviction in terms of the 2016 Act needs to be made against all the tenants. The Applicant is required to advise how the application for eviction can be competent if raised against only one tenant and to advise if he wishes to add the second tenant as a Respondent?"
  - b. To advise if he has complied with the pre-action requirements in terms of Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 and if so to provide evidence of this."
5. The Applicant responded to the Direction on 12<sup>th</sup> May confirming that although Ms Stephen the second tenant named in the lease had left the property in January 2022 it was acknowledged that the lease was never formally varied to reflect this and that in view of the definition of tenant in terms S78 of the 2016 Act includes all tenants that it is prudent to amend the eviction application to include Ms Stephen as the second respondent. They also advised this would not prejudice Ms Stephen as she has not occupied the property since at least January 2022.
6. At the first CMD held on 18<sup>th</sup> May 2023 the Applicant was represented by his solicitor Mr Andrew Mackey and the Respondent Mr Taylor attended in person. Mr Mackey advised that the Applicant was seeking at that time an order for possession and an order for payment of rent arrears and stated that the arrears were then £13,125. He advised there has been no further payment from the Respondent since the actions were raised and no payment since February 2022.
7. Mr Mackey confirmed that although he was seeking to add Ms Stephen as a second respondent in the eviction application he would not seek to add her to the civil application as his client was aware she had not been living there for some time. The Tribunal indicated that Ms Stephen should be added a second Respondent but that intimation of the papers then required to be served on her and the application adjourned to allow her time to attend and express her views.
8. At the first CMD Mr Taylor advised that he has not paid any rent since losing his job in early 2022. He indicated that he agreed there were rent arrears although he was not wholly clear how much they were indicating the last statement he had was around £12,000. He indicated that he had to claim universal credit when he lost his job and did not have enough money to pay the rent as well as his living and other costs. He stated that after he got another job he tried to make an arrangement to pay with the landlord but he did not respond to him and so Mr Taylor confirmed he did not pay anything. He also advised

that he wants to leave the Property and has spoken on several occasions to the Council but they have advised him that they cannot or will not be able to help until the landlord gets an order of eviction.

9. The Tribunal notes that the application and accompanying papers have now been served on the second named Respondent by sheriff officers who served them by letterbox service on 14<sup>th</sup> June 2023.

### **The Case Management Discussion**

10. The second CMD took place by teleconferencing and the legal member made introductions and explained the purpose and order of proceedings also advising that the Tribunal could make a decision after a CMD which it could after a hearing if satisfied it was appropriate to do so.
11. Mr Andrew Mackey attended once again as the Applicant's representative and Mr Taylor and Ms Stephen the Respondents both attended in person on the call.
12. Mr Mackey confirmed that the first named Respondent, Mr Taylor is still living in the Property and has accrued arrears since February 2022 as shown on the most rent statement that he advised now amounts to £14,875. He explained that although the tenancy is in joint names with the second tenant Ms Stephen had admits she had left the property in January 2022 and although the tenancy had not been formally ended then, as both tenants would have required to terminate the tenancy, the Landlord accepts she was not living there and he was not pursuing her for the rent. He advised though because of the definition of tenant in the 2016 Act the application for eviction needs to be made against both tenants and he is seeking an order for eviction today.
13. Mr Mackey submitted that notices had been served on both tenants and that the rent statement now showed the rent arrears were substantial and he submitted therefore an order of eviction was reasonable.
14. Mr Taylor confirmed once again that he wished to leave the Property as the Council had told him they would not help him until he had an order for eviction. He also admitted the rent was due but blamed the landlord for not pursuing an application for eviction earlier on other grounds before rent arrears accrued suggesting that the landlord had wanted to sell the property but did not want to incur the costs of an eviction action. He regretted that Ms Stephen had to be brought into this and was aggrieved the debt was so much higher now although he admitted he had made no payments towards the rent.
15. Ms Stephen then spoke about how stressful it had been for her to receive papers for an eviction for a property she had left months ago but when asked, she advised that she did not want further time to seek legal advice. She explained that she was now in a council property and had thought the tenancy had ended when she left it and that Mr Masson the landlord had entered into a new tenancy with Mr Taylor. The Tribunal advised that unless a tenancy in joint names is ended by both tenants then it continues unless replaced with a new tenancy or it is ended by eviction.
16. Mr Mackey confirmed there is no new tenancy with just Mr Taylor and explained it is unfortunate but necessary that the application has had to be amended to include Ms Stephen.

## **Findings in Fact**

17. The Applicant and the Respondents entered into a lease of the Property which commenced on 31<sup>st</sup> October 2019.
18. The First Respondent, Mr Taylor is still occupying and in control of the Property and the tenancy is continuing.
19. A notice to leave dated 12<sup>th</sup> August 2022 was served on both the Respondents by e-mail confirming that no proceedings would be raised before 12<sup>th</sup> September 2022
20. These proceedings were raised on 20<sup>th</sup> January 2023 and the application included a copy of the Notice to Leave.
21. A Section 11 notice has been served on Aberdeenshire Council
22. There were at least 3 months' rent arrears outstanding at the date of service of the Notice to Leave.
23. The Rent due in terms of the lease is £850
24. The current rent outstanding is £14,875 including rent due on 30<sup>th</sup> June 2023.
25. No rent has been paid since February 2022.
26. The Second Respondent Ms Stephen left the Property on or around January 2022 and tried to terminate the lease by advising the landlord.
27. The lease has not been terminated by both tenants.
28. The first named Respondent Mr Taylor wishes to leave the Property and be housed by the Council.
29. The Tribunal finds it reasonable that an order for eviction is granted for the reasons stated below.

## **Reasons for Decision**

30. The Tribunal was satisfied that both Respondents had been served with a valid Notice to Leave under S52 (3) of the 2016 Act specifying Ground 12 of Schedule 3 of the Act as the relevant ground of eviction.
31. The Notice to Leave included evidence of how the ground was met namely a statement of what rent was due and owing.
32. Ground 12 requires 28 days' notice under the rules which now apply. The Notice sets out the notice period as expiring on 12<sup>th</sup> September 2022. This Application is therefore timeous.
33. The Tribunal is satisfied the application has been amended to add Ms Stephen as a second Respondent, and that this is necessary due to the fact the tenancy was in joint names and although she left in January 2022 the joint tenancy has not formally been terminated.
34. The Tribunal notes that the Respondent Mr Taylor admits that no rent has been paid since January 2022 and so notes that the rent arrears are now substantial. The Respondents both consider the Applicant could have acted sooner to stop the debt accruing by applying earlier for an eviction potentially on another ground. The Applicant has made it clear he does not hold Ms Stephen liable for the rent arrears. Unfortunately due to the fact that the original tenancy has not been terminated by both tenants and the First

Respondent admits he has been advised to stay in the Property until he gets an order of eviction the Tribunal accepts that the tenancy is ongoing, the grounds are met and given that Mr Taylor wishes to leave the Property and Ms Stephen was asked and did not wish any further time to get legal advice, the Tribunal accepts it would be reasonable to grant the eviction. There is no suggestion that the failure to pay is a consequence of any delay or failure in the payment of benefit.

35. The Tribunal is satisfied in terms of S 51 (1) of the Act that Ground 12 being an eviction ground specified in the application is met, and that it is reasonable for the Tribunal to grant the application. The Tribunal notes that the terms of the Cost of Living Act apply to this order and therefore the order for eviction cannot be enforced until the earlier of (a) the day following the end of a period of 6 months beginning with the day on which this order was granted as specified above, or (b) the expiry or suspension of Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022.

## **Decision**

Order for eviction is granted.

## **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.**

# J Todd

Jan Todd  
Legal Member/Chair

20<sup>th</sup> July 2023  
Date