



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/22/0558

Property at 61 Lamont Crescent, Cumnock, KA18 3DU (“the Property”)

The Parties:

Ajay Ahuja, 41 South Fens Business Centre, Fenton Way, Chatteris, Cambridgeshire, PE16 6TT (“the Applicant”)

Mr Liam Martin, 61 Lamont Crescent, Cumnock, KA18 3DU (“the Respondent”)

Tribunal Members:

Josephine Bonnar (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 that an eviction order should be granted against the Respondent in favour of the Applicant.

Background

1. The Applicant seeks an eviction order in terms of Section 51 and Ground 12 of Schedule 3 to the 2016 Act. A copy private residential tenancy agreement (PRT), Notice to leave and rent statement were lodged in support of the application. A copy of the application was served on the Respondent by Sheriff Officer on 5 May 2022. A case management discussion (“CMD”) took place on 16 June 2022. The Applicant was represented by Mr Matthews. The Respondent participated.

Summary of discussion at the CMD

2. Mr Martin told the Tribunal he wanted to remain at the property but that the Landlord had failed to carry out essential repairs. In particular, he said that the

property is not wind and watertight due to defective windows and a damaged roof. He had made many requests for repairs to be carried out and stopped paying rent because of the situation. In response to questions from the Tribunal he stated that he had not put his rent money aside, although could pay some of it. However, he did not believe that he should have to pay. Mr Martin confirmed that the agreement lodged with the application is his tenancy agreement and that he received the Notice to leave. He also confirmed that the rent is unpaid. He advised that he had been in receipt of universal credit for a while during the lockdown but is currently working. His children aged 6 and 9 stay with him 2 or 3 nights a week. Their mum also stays sometimes but has her own house.

3. Mr Matthews said that the arrears now stood at £4886.01, with no rent paid since May 2021. However, he disputed that the non-payment was related to repairs as the rent account was already in arrears when the payments stopped altogether. Mr Matthews told the Tribunal that roof, and window repairs have been carried out. These have addressed any defects, but Mr Martin says that the work is not to his satisfaction. For example, he wanted the whole ceiling replastered following a roof repair which had only affected a section of the ceiling. He confirmed that the Applicant wants to recover possession of the property.
4. Following a short adjournment, the Tribunal determined that the application should proceed to a hearing, to be conducted by telephone conference call as Mr Matthews said that he may not be able to facilitate a video conference. The Tribunal suggested that the Respondent may wish to take legal advice or consult a housing advisory service prior to the hearing.

Further procedure

5. Following the CMD, the parties were notified that a hearing would take place by telephone conference call on 31 August 2022 at 10am. The Tribunal issued a direction for the parties to provide further information and documents. The Applicant lodged a bundle of documents including emails, WhatsApp messages, an updated rent statement and photographs. The Respondent did not lodge any documents.
6. The Hearing took place on 31 August 2022. Mr Matthews again represented the Applicant. The Respondent participated.

Hearing on 31 August 2022

7. The Tribunal asked Mr Martin to explain why he had not complied with the direction. He said that he had a new phone and could no longer access his email. It had not occurred to him that he could lodge documents in hard copy. In any event, he had wanted to lodge video evidence.
8. The Tribunal asked Mr Matthews for clarification of some of the documents he had lodged, including dates, as the bundle had not been in date order or paginated. Mr Matthews explained that he was calling in from his car and did

not have a copy of the documents. He said that they had been compiled by a member of staff, Hayley Robinson. She had also dealt with the day-to-day management of the property, taking calls from, and sending messages to, Mr Martin. However, she was on annual leave and could not participate in the hearing to give evidence. Mr Matthews advised that he would not be able to speak to or answer questions about the documents lodged, although he thought the photographs had been taken in July 2021.

9. The Tribunal asked the parties for their views on the hearing being adjourned to a later date so that Mr Matthews could arrange for Ms Robinson to participate and Mr Martin to lodge his evidence. Mr Martin said that he would arrange to lodge evidence if the matter was postponed, although he was happy to proceed without it. Mr Matthews confirmed that the hearing should be postponed to allow his witness to attend.
10. Following a short adjournment, the Tribunal advised the parties that the hearing would be adjourned to a later date. Mr Martin was advised that the Tribunal has rules regarding video evidence, and he should contact the caseworker if he required to discuss how his evidence should be lodged.
11. The Tribunal issued a direction to the parties for further information and documents to be lodged. The parties were notified that a hearing would take place by telephone conference call on 28 November 2022. The Applicant lodged an updated rent statement and a chronology relating to repairs at the property prior to the hearing. The Respondent did not lodge any information or documents.

The Hearing on 28 November 2022.

12. The Hearing took place on 28 November 2022. The Applicant was again represented by Mr Matthews. The Tribunal also heard evidence from Ms Hayley Robinson. The Respondent did not participate and was not represented.
13. As a preliminary matter, Mr Matthews confirmed that the owner and landlord of the property is Ajay Ahuja, rather than Ahuja Holdings. The Tribunal agreed to allow the application to be amended to reflect this.
14. Mr Matthews told the Tribunal that there has been no contact from Mr Martin since the last hearing. His office has continued to issue emails regarding access to the property for inspection and the unpaid rent. Although Mr Martin has usually responded to emails in the past, he has not done so recently. It is thought that he may have moved out or be in the process of doing so. Mr Matthews has driven past the house on several occasions and the car, which is usually there during the day, has been absent. However, the keys have not been returned. Mr Matthews advised the Tribunal that no rent has been paid since the last hearing and that the arrears now stand at £6884.01. Following discussion, he confirmed that the sum due on 28 November 2022 is £6649.56. as rent is due to be paid in advance on the 20th of each month.

15. In response to questions from the Tribunal about the repair's chronology, Mr Matthews said that the last work to the roof was carried out in December 2021. In January 2022, the roofer re-attended because Mr Martin had complained about another leak. The roofer reported that there was no leak. There have been problems getting access since that time. Mr Matthews has not been in the property since July 2021. In response to a question about the process for dealing with repairs, Mr Matthews said that when a tenant reports a repair issue, the repair is logged and (depending on the nature of the complaint) a contractor instructed to attend. Timescales depend on contractors' availability. It can take a few weeks for a roofer to attend. During the pandemic, this could be longer. Mr Matthews advised the Tribunal that he attended at the property in October 2020 and filled in a hole in the ceiling. The roof had been repaired in March 2020. In July 2021, he went to the property with a contractor. The windows were checked, and they replaced the silicone round the rear bedroom window. Some roof tiles were replaced. Mr Matthews was unable to provide the date on which the photographs of the property were taken. However, he stated that all reported repairs have been carried out, even if Mr Martin was unhappy with them. He said that when complaints about repairs were received from Mr Martin, they would look at them. The Applicant would be notified and would decide whether to send a contractor. In relation to the windows, these were checked and were all fine except the rear bedroom window where the silicone had to be replaced. The windows are relatively new double-glazed units and are in good condition.
16. Ms Robinson told the Tribunal that most of the photographs were taken on 9 July 2021, when the window repair was carried out and the roof tiles replaced. The photographs of the ceiling were taken when the hole was filled in in October 2020. In response to a question from the Tribunal about the emails from Mr Martin, she stated that the last communication which referred to repairs was the email on 24 March 2022. Access has been a problem. A Right of Entry application was made to the Tribunal and a date fixed for access by a gas engineer arranged for October 2022. When the engineer attended with a member of staff, they found the door to be unlocked and entered the property to do the gas safety check. It appeared that the Respondent had either moved out or was in the process of doing so. In response to questions from the Tribunal about the emails from Mr Martin, stating that he was withholding rent because of repairs, Ms Robinson said that she notified Mr Matthews and the Landlord when these were received.
17. Mr Matthews told the Tribunal that the Applicant owns a number of rental properties. The lack of rental income from the property is likely to have had an impact but will not have caused financial hardship. Mr Matthews was unable to tell the Tribunal whether there is currently a mortgage over the property but indicated that the Applicant is currently trying to reduce secured debt, due to rising interest rates, and has sold some of his properties. However, it is anticipated that, if this property is recovered, any required repairs will be carried out and the property will be re-let.
18. Mr Matthews and Ms Robinson told the Tribunal that Mr Martin was on universal credit for a period during lockdown, but they understand he has been back in

work for most of the time that the rent has not been paid. Mr Matthews said that he understands that Mr Martin is in full time work with a roofing company based in Cumnock. The property is a two-bedroom property and was let to Mr Martin as a sole tenant and occupant. They have no knowledge of his family circumstances. Ms Robinson told the Tribunal that it is usual for some rent arrears to accrue when a tenant applies for universal credit as it can take 6 or 8 weeks for payments to start. For a while they received payments directly from universal credit before the Respondent went back into work. In response to questions about pre action requirements, Mr Matthews and Ms Robinson stated that they were unaware of the regulations and had not issued any information to the Respondent in terms of these. However, he had received a monthly rent statement with an email regarding his arrears

Findings in Fact

19. The Applicant is the owner and landlord of the property.
20. The Respondent is the tenant of the property in terms of a private residential tenancy agreement.
21. The Respondent is due to pay rent at the rate of £333 per month.
22. The Respondent has been in arrears of rent since February 2020.
23. The Respondent owes the sum of £6649.56 in unpaid rent. No rent has been paid since 20 May 2021.
24. The Respondent notified the Applicant on various occasions between March 2020 and March 2022 that he was withholding rent because repairs were required at the property in relation to the roof, ceiling, and windows.
25. The Applicant served a Notice to leave on the Respondent on 18 August 2021.
26. The Applicant did not issue information to the Respondent in compliance with the Rent Arrears Pre action Requirements (Coronavirus) Scotland Regulations 2020.

Reasons for Decision

27. The application was submitted with a Notice to Leave dated 18 August 2021. The Notice states that an application to the Tribunal is to be made on ground 12, rent arrears over three consecutive months. Part 4 of the notice indicates that the earliest date that an application to the Tribunal can be made is 21 February 2022. The application to the Tribunal was made after expiry of the notice period. The Tribunal is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a copy of the Section 11 Notice which was sent to the Local Authority. The Tribunal is

therefore satisfied that the Applicant has complied with Section 56 of the 2016 Act.

28. Section 51(1) of the 2016 Act states, “The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.” Ground 12 of Schedule 3 (as amended by Schedule 1 of the Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) (No 2) Act 2020) states “(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 in 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.”
29. Paragraph 3B states that, when considering whether it is reasonable to issue an eviction order, the Tribunal “is to consider the extent to which the landlord has complied with pre-action requirements before applying for the eviction order.” This provision applies where “all or part of the rent on respect of which the tenant is in arrears as mentioned in that eviction ground relates to the period during which paragraph 5 of schedule 1 of the Coronavirus (Scotland) (No 2) Act 2020 is in force”. This Act came into force on 7 May 2020. Regulation 4 of the Rent Arrears Pre-Action Requirements (Coronavirus) Scotland Regulations 2020 specifies the pre-action requirements which apply to the 2016 Act. These include the provision of clear information relating to the terms of the tenancy agreement, the level of the arrears, the tenant’s rights in relation to eviction proceedings and how the tenant can access information and advice.
30. Sub-Paragraph (4) states, “In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenants 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.” These are defined in sub-paragraph (5) and include housing benefit and universal credit.
31. The Tribunal is satisfied that the sum outstanding on the Respondent’s rent account is £6649.56 and that no payments have been made since May 2021. At the CMD and the first hearing, the Respondent told the Tribunal that he had been withholding rent since May 2021 because of the condition of the property, and the failure to carry out repairs. He said that the rent is not due because of this. Although he did not participate in the hearing or lodge any documents in support of his argument, the claim that he was withholding rent is supported by the documents lodged by the Applicant. These include emails and messages which clearly indicate that rent was being withheld.
32. The Applicant’s representatives were disorganised and poorly prepared for the hearing. They had difficulty providing the Tribunal with information about some of the documents they had lodged, including photographs taken at the property. These photographs are undated and show the property to be in a state of disrepair. In response to a series of questions, it was established that some of

the photographs had been taken in July 2021. Mr Matthews and a contractor had attended at the property. Windows were checked and one was repaired. Some missing roof tiles were replaced. From the chronology lodged, it appears that the Respondent had reported the windows in May 2021. The missing tiles had been reported in April 2020, a month after the roof had been repaired by a contractor. Two of the photographs lodged appear to show the ceiling at the property, before and after a repair was carried out. The first picture shows a hole in the ceiling, a crack across the ceiling and water staining. The second is the same, with the hole filled in. The repair is clearly incomplete. The Tribunal also noted that, although complaints about windows and the roof continued, no further inspections or repairs appear to have been carried out. The representatives claim that access was an issue and that they had to make right of entry application to the Tribunal. This resulted in access for a gas safety check in October 2022, although not for inspection of the property or any repairs. The Tribunal is concerned about the evident delays between repair issues being reported and being carried out. These seem excessive, even if some allowance is made for the impact of the pandemic. The Tribunal is also concerned about the representatives' apparent ignorance of basic tenants' rights. Access was taken to the property in October 2022 when the door was found to be unlocked, although the Respondent had not agreed to provide access. Furthermore, the representatives advised the Tribunal that they had not complied with pre action requirements because they were unaware of the 2020 Regulations.

33. The Tribunal is satisfied that the Applicant did not deal promptly with repairs reported in relation to the windows and roof at the property. From the documents lodged, it appears that there may have been periods when the house was not wind and watertight. However, in the absence of any evidence from the Respondent, particularly regarding the current condition of the property, it has not been established that the property was or is uninhabitable. A full abatement of rent for the whole period of the arrears would require this to be established. Furthermore, although there were complaints about repairs from 2020, the Respondent did not start withholding rent until May 2021. Prior to this, his arrears appear to relate to a period of unemployment. He was making payments, but these were erratic.
34. The Tribunal is satisfied that the Respondent withheld rent from May 2021 onwards because he was unhappy with the condition of the property. However, although his concerns might justify a partial abatement for periods when the property was not fully wind and watertight, most of the unpaid rent is due. The Tribunal is therefore satisfied that the Applicant has established that the Respondent has been in arrears for three or more consecutive months, both at the date of service of the Notice to leave and the date of the hearing
35. The Tribunal proceeded to consider whether it would be reasonable to grant the order.
36. The Tribunal is satisfied that the Applicant did not comply with the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. Although

the Respondent was issued with regular rent statements and emails about the arrears, he was not provided with a tenant information leaflet, details of sources of advice and assistance or proposals regarding repayment arrangements. However, the Tribunal notes that only a small part of the arrears may be due to financial difficulty. The Respondent is understood to be in full time employment and chose to stop paying rent from May 2021 onwards. It is therefore unlikely that the Respondent would have made use of the information, had it been issued to him.

37. Part of the arrears appear to have accrued when the Respondent was unemployed and in receipt of benefit. The Respondent did not participate in the hearing and did not provide the Tribunal with additional information about his circumstances. The Applicants representatives were only able to confirm that universal credit was in payment for a period and that this can take 6 or 8 weeks to start once it is claimed. There is no evidence to suggest that a delay or failure in the payment of universal credit contributed to the arrears.

38. In reaching its decision the Tribunal also had regard to the following: -

- (a) The arrears are substantial, and the account has been in arrears since June 2021.
- (b) The Respondent chose to stop paying rent in June 2021 but continued to reside at the property.
- (c) The Notice to leave were issued in August 2021. The Respondent has therefore had 15 months' notice that an eviction order is being sought.
- (d) The Respondent has stopped engaging with the Applicant and has refused to provide access.
- (e) There is no evidence that a delay or failure in the payment of benefit has been a relevant factor.
- (f) The Respondent appears to have moved out or be in the process of doing so.
- (g) The Respondent's family do not reside with him at the property.
- (h) The Respondent is understood to be in employment.

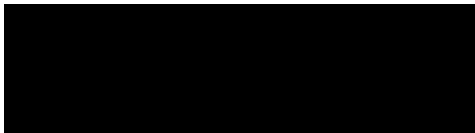
39. The Tribunal concludes that the Applicant has complied with the requirements of the 2016 Act and that the eviction ground has been established. The Tribunal is also satisfied that it is reasonable to grant an order for eviction.

Decision

40. The Tribunal determines that an eviction order should be granted against the Respondent.

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.



Josephine Bonnar, Legal Member

28 November 2022