

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**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/19/3839**

**Re: Property at 42 Grattan Place, Fraserburgh, AB43 9SB (“the Property”)**

**Parties:**

**Mr David Ritchie, Ankerhus, Invernorth, Rathen, AB43 8TR (“the Applicant”)**

**Miss Jade Mitchell, 42 Grattan Place, Fraserburgh, AB43 9SB (“the Respondent”)**

**Tribunal Members:**

**Petra Hennig-McFatridge (Legal 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.**

**Background**

[1] The application was made on 2 December 2019. The following documents were lodged by the Applicant: the tenancy agreement, photographs of the property before the start of the tenancy and photographs taken on 11 October 2019, copy Notice to Leave signed 31 October 2019 and recorded delivery proof of posting dated 31 October 2019, S 11 notice to Aberdeenshire Council and proof of sending, message to Housing Officer copying Notice to Leave and photographs.

[2] A Case Management Discussion (CMD) was fixed for 27 February 2020 at 10 am in The Credo Centre, Aberdeen. The application and notification were served on the Respondent by Sheriff Officers on 24 January 2020. The Respondent made no representations and did not attend the CMD.

[3] The Tribunal is thus satisfied that the Respondent had due notice of the application, the amendment and the notification of the CMD details. These included the statement that the tribunal may make a decision at a CMD.

**The Case Management Discussion**

[4] The Applicant attended in person. He moved for an order to be granted. He confirmed that there had been no contact from the Respondent. He referred to the

documents and photographs and explained that he appreciates that the lease was drawn up on a wrong form but that the tenancy must be a Private Residential Tenancy in terms of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act) and that the Notice to Leave had been served in the correct format.

[5] He stated that the property is situated above the property occupied by an elderly couple in their 70s . The Respondent had moved in on 25 May 2019 as an emergency housing measure and he had been contacted regarding the tenancy by the Housing Officer from the Council. Universal Credit payments for the rent are paid directly to him.

[6] He explained that as far as he was aware the Respondent has two children who are 4 and 7 but he is not sure if they still reside with the Respondent. He was very concerned for these children, given the state of the flat as shown in the photographs.

[7] On 11 October 2019 at 5 am he received a call from the downstairs neighbour who told him water was pouring down from the ceiling. The Respondent was present. It transpired that the Respondent had attached a punch bag to the pipe that feeds into the hot water tank in the attic. This had caused the pipe to become dislodged from the fitting and water was pouring into the property and the property below. On that occasion he took the photographs lodged with the application, which he had also attached to the Notice to Leave. He found the flat to be full of rubbish, rotting food, found mouse droppings and noticed that there were pizza delivery boxes which had clearly been set on fire. These are shown on one of the photographs of the state of the kitchen. There was a hole in one of the walls and one door had been broken. This is also shown on the photographs. He was so concerned that on the following Monday he went to the Housing Officer to advise of the state of the property and his concerns.

[8] On 27 October 2019 the mother of the Respondent had reported her missing and police came to the property and found it to be open and unlocked. They contacted the Applicant asking him to make the property secure, which he did. On that occasion he saw that the state of the property had further deteriorated.

[9] The downstairs neighbour complained to him about loud noise from the property and of many people coming and going at all hours. They also complained that the Respondent had not taken out her bin for 5 months. She had used their bin instead for a time until the downstairs neighbours had to chain their bin shut.

[10] He also gave evidence that the lead on the roof of the shed behind the property had been removed by the Respondent's partner. When he went to the flat to enquire about this, the Respondent's partner admitted he had removed the lead. He stated he had put it in the garden. Since then the lead had disappeared. No consent for taking the lead off the roof had been sought from or given by the Applicant.

[11] On 31 October 2019 he sent the Notice to Leave with the photographs to the Respondent recorded delivery. Recently one of the Respondent's friends told him the Respondent no longer resides at the property. He has passed the property on several occasions in the evening without seeing lights on.

[12] He stated that there was a lot of damage to the property as shown in the photographs. He had been a landlord for 15 years. He was concerned about the downstairs neighbours because of the potential for vermin being attracted by the rubbish in the property and about the state of the property creating a fire hazard, in particular if packaging is set on fire.

[13] The daughter of a neighbour was in the local police and told him the partner of the Respondent was well known to police. The Applicant was concerned about potential drug dealing from the property but had not provided any witness statements or other evidence regarding this.

#### **[14] Findings in Fact**

1. The parties entered into a Private Residential Tenancy commencing on 25 May 2019.
2. Clause 11.4 of the tenancy agreement states:  
"The Tenant agrees to take reasonable care of the accommodation and any common parts and in particular agrees to take all reasonable steps to v. avoid danger to the accommodation or neighbouring properties by way of fire or flooding and vi. ensure the property and its fixtures and fittings are kept clean during the tenancy. "  
Clause 11.5 states "The Tenant agrees not to make any alteration to the accommodation, its fixtures or fittings nor carry out any internal or external decoration without the prior written consent of the Landlord."  
Clause 11.8 states: "The Tenant agrees to dispose of all rubbish in an appropriate manner and at the appropriate time."  
Clause 12.3 states "In particular the Tenant those living with him/her and his /her visitors must not i. make excessive noise."
3. The Respondent has two children.
4. On 11 October 2019 the property and the property below it had been flooded due to the Respondent attaching a punching ball to the water pipe in the attic and the pipe becoming dislodged.
5. The Applicant's photographs of the state of the property in disarray were taken on that day.
6. The property was in good order prior to the Respondent moving in as shown on the photographs.
7. The property was damaged by a hole in the wall, a hole in one door and lead having been removed from the shed behind the property.
8. There is rubbish accumulating in the property including rotten food, cigarette buds on the floor.
9. Items had been burned in the property
10. Rubbish had not been correctly disposed of for 5 months.
11. The Respondent had not secured the property on 27 October 2019.
12. A Notice to Leave was served on the Respondent by recorded delivery.
13. The Respondent has not handed back the keys and had not been in touch with the Applicant since the action was raised.

#### **Reasons for decision**

[15] In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

(a) in any place where a hearing may be held;

(b) by videoconference; or

(c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

(a) identifying the issues to be resolved;

(b) identifying what facts are agreed between the parties;

(c) raising with parties any issues it requires to be addressed;

(d) discussing what witnesses, documents and other evidence will be required;

(e) discussing whether or not a hearing is required; and

(f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

Power to determine the proceedings without a hearing

However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,  
a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties

2016 Act

### **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 or must 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.

#### *Grounds under Schedule 3 of the 2016 Act*

##### *Breach of tenancy agreement*

11(1) It is an eviction ground that the tenant has failed to comply with an obligation under the tenancy.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) the tenant has failed to comply with a term of the tenancy, and

(b) the Tribunal considers it to be reasonable to issue an eviction order on account of that fact.

(3)The reference in sub-paragraph (2) to a term of the tenancy does not include the term under which the tenant is required to pay rent.

[16] The Respondent has not made any representations and did not attend the CMD. The facts of the case are not disputed. There was no opposition to the order being granted. The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case. The Respondent was made aware that the Tribunal could consider the case on its merits and make a decision at the CMD. No defence was lodged to the application.

[17] The Tribunal was satisfied that although the form of the tenancy agreement was not the required form for a Private Residential Tenancy, the tenancy was in fact a Private Residential Tenancy commencing on 25 May 2019. At the time the Notice to Leave was served the tenant had been entitled to occupy the property for less than 6 months and thus in terms of S 54 (2) and (3) of the Act a 28 day notice period applied. The Notice to Leave had been sent recorded delivery on 31 October 2019. In terms of S 62 (4) and (5) it was deemed to have reached the Respondent on 2 November 2019 and the date to be entered as the first day when proceedings could be raised was correctly identified as 1 December 2019 in the Notice to Leave.

[18] The Tribunal found that Ground 11 of Schedule 3 of the 2016 Act applies in this case. This is a discretionary ground of eviction. The Respondent has not raised any issues with the Tribunal which the Tribunal should consider when exercising its discretion in terms of ground 11 of Schedule 3 of the Act.

[19] The Tribunal considered that there had been several severe breaches of the tenancy agreement. The Respondent breached clauses 11.4, 11.4 v. and 11.4 vi. by causing significant damage to the property. A wall and a door were damaged, lead was removed from the roof of the shed behind the property and the property had water damage due to the actions of the Respondent affixing a punching ball to the pipe. The property has not been kept clean and is full of rubbish and rotten food, which has attracted vermin indicated by the mouse droppings clearly shown in the photographs. Items had been set on fire as shown in the photographs.

[20] There was a clear and ongoing breach of clause 11.8 of the tenancy agreement as the Respondent did not remove her rubbish through the proper process by using her bin but used the bin of the downstairs neighbour and left large amounts of rubbish in the property. This went on for 5 months or longer.

[21] There was a breach of clause 11.5 as the Applicant was not asked for and did not give permission for the Respondent's partner to remove the lead from the roof of the shed behind the property.

[22] There was a breach of clause 12.3 as the Respondent had made loud noise on several occasions which led to the neighbours complaining to the Applicant.

[23] All these matters had been identified in the Notice to Leave and application and had been properly intimated to the Respondent. The Respondent has not denied any of these actions.

[24] Although the Tribunal was mindful that the Respondent has two children, the extent and nature of the breaches of the tenancy agreement are such that the Tribunal considers the eviction order should be made. The Applicant as a landlord does not have to tolerate extensive damage to his property and suffer the danger of further deterioration of the property. The actions of the Respondent had affected not only the landlord and his property but also the downstairs neighbours, who are an elderly couple. The photographs show in particular that empty food and drink packaging has accumulated in the kitchen increasing the risk of vermin being attracted and that cigarette butts are accumulating on the floor and items had been burned in the flat leading to a potential fire risk. The breaches of the tenancy agreement continued over a significant part of the tenancy period. In those circumstances the Tribunal considered, having exercised its discretion in the matter, that ground 11 of Schedule 3 of the Act applies and that the Respondent can be evicted.

[25] The Notice to Leave also indicated as further grounds for eviction grounds 14 and 15, antisocial behaviour and associating with a person who has relevant conviction or engaged in relevant antisocial behaviour. The application stated potential drug dealing and antisocial behaviour as further reasons for making the application. The Applicant has not submitted any proof of criminal activity, no extract convictions and no Disclosure documents. There was only evidence about noise complaints but no evidence about the nature and duration and frequency of this behaviour and no evidence about specific antisocial conduct towards either the Applicant or the neighbours. The Tribunal considered that there was insufficient evidence to find that the Respondent or those visiting or living with her had engaged in relevant antisocial behaviour to another person.

[26] The Tribunal thus considered that Ground 11 of Schedule 3 of the Act applies and thus must issue an order for eviction in terms of S 51(1) of the Act. The Tribunal, having regard to the appeal period, determines that in terms of S 54(4) of the Act the tenancy ends on 2 April 2020.

### **Decision**

**The Tribunal grants an order for eviction in terms of S 51 of the Act on Ground 11 of Schedule 3 of the Act**

### **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.**

Petra Hennig-McFatridge

**02 March 2020**

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**Date**