



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber)**

Chamber Ref: FTS/HPC/EV/23/0730

Re: Property at 8 Cumbrae Drive, Millport, Isle of Cumbrae, KA28 0BU (“the Property”)

Parties:

Mr Eric Clifford, 8 Provosts Loan, Millport, Isle of Cumbrae, KA28 0BZ (“the Applicant”)

Mr Edward Murray, Miss Nicole MacKenzie, 8 Cumbrae Drive, Millport, Isle of Cumbrae, KA28 0BU; 8 Cumbrae Drive, Millport, Isle of Cumbrae, KA28 0BU (“the Respondent”)

Tribunal Members:

Virgil Crawford (Legal Member) and Eileen Shand (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

BACKGROUND

1. By Lease dated 1st December 2021 the Applicant let the Property to the Respondents. The copy lease lodged with the Tribunal was unsigned and undated but, at the Case Management Discussion on 10 July 2023 it was a matter of agreement between the parties that the lease has been in effect since December 2021.
2. The rent payable is £625.00 per calendar month.

3. The Respondents fell into arrears of rent. The only rent payments made were on 1st December 2021 and 1st January, 1st May, 1st June and 10th July 2022. As at the date of the Case Management Discussion, arrears of rent amounted to £9,375.00.
4. The Applicant presented two separate applications to the Tribunal, one seeking an Order for eviction (EV/23/0730) and one seeking an order for payment of rent arrears (CV/23/0731)
5. A Case Management Discussion was assigned for 10th July 2023. An earlier Case Management Discussion assigned by the Tribunal was postponed at the request of the Respondents.
6. The Respondents did not lodge any written submissions with the Tribunal prior to the Case Management Discussion assigned for 10th July 2023. The Respondents did not lodge any documents nor other information for the Tribunal.

THE CASE MANAGEMENT DISCUSSION ON 10TH JULY 2023

7. When the Case Management Discussion was convened, the Respondents did not participate. The Tribunal did not convene until approximately 2.05pm to afford an opportunity to the Respondents to dial into the teleconference. The Respondents did, however, dial in later, joining the teleconference after 2.10pm. The Tribunal, therefor, advised that it would recommence the Case Management Discussion.
8. The Respondents advised the Tribunal that the non payment of rent was not in dispute. The fact that £9,375.00 rent was unpaid was not disputed. The Respondents, however, suggested that no payment was required due to defects within the Property and an agreement previously reached between themselves and the Applicant.
 - a) The Respondents advised that when they commenced the tenancy they did pay rent. Shortly thereafter, however, the boiler providing hot water and heating to the Property “packed in”. The Applicant arranged for a trades person to attend and it was advised that the boiler required replacement.
 - b) The Respondents advised that, when a tradesman attended, he also advised that the electrical wiring within the Property was obsolete and the Property required a full rewire. It was suggested that the electrical certificate provided for the house was fraudulent.
 - c) The Applicant, Mr Clifford, met with the Respondents at the Property on 4th March 2022. According to the Respondents, he advised them that no further rent payments would require to be made by them until the boiler was repaired or replaced. That has not yet happened and, accordingly, the Respondents are of the view that no rental payments are required by them.

- d) The rewiring of the Property was undertaken between March and April 2022.
 - e) According to the Respondents, the “housing team” are in touch with the Applicant in relation to issues with the Property.
9. In the circumstances, the Respondents asserted that no rental payments have been due since March 2022 at least and, therefore, no order for payment of rent arrears should be made.
10. Separately, they argued that it would not be reasonable in the circumstances for an order for eviction to be granted.
11. They live on the Isle of Cumbrae. There are no other suitable properties on the island for them to rent. The Respondents require a Property on the island as they have a business on the island. It is a hospitality business. It requires late evening opening. If the Respondents were residing on the mainland the last ferry they can get back to the mainland would be at 8.30pm. Should they require to get that ferry it would require the early closing of their business and would affect them financially. They have two children aged 9 years and 7 years. Both attend Cumbrae Primary school on the island.
12. They have applied to the local authority for housing and are going through the usual procedures. They are on the “homeless register” but there are no suitable properties on the island for them to be rehoused in at present.
13. When enquiry was made by the Tribunal in relation to the alleged agreement made on 4th March 2022 that no further rent required to be paid, the Respondents were asked to explain why further payments were then made by them on 1st May, 1st June and 10th July 2022? Mr Murray intimated that this was to cover the rent which was due prior to that agreement being reached, or the undertaking being given by Mr Clifford that no rent was required until the boiler was repaired. When it was pointed out by the Tribunal that, as at 4th March 2022, only 2 rental payments had been due, he was unable to explain why 3 payments were made thereafter. The Tribunal advised that is a matter which can be further explored at the hearings which will be assigned.
14. When asked why, if the boiler is not working, and the Property apparently has no hot water and no heating, the Respondents have remained resident within the Property, Mr Murray advised that it was for the reasons already stated – the need to reside on the island for business purposes and the unavailability of any other property there.
15. When asked by the Tribunal if the rental payments had been set aside for payment if or when the boiler is replaced, the Respondents advised that the missed rental payments have not been set aside. Mr Murray advised the Respondents were “not in that financial position”. Mr Murray thereafter, however, again pointed out that, according to him, the Applicant had advised that rent did not require to be paid in any event.

16. Mr Murray advised that he had “vast amounts of emails” between himself and Mr Clifford, the Applicant, in relation to the Property. It is noted by the Tribunal that, particularly given that there had been a postponement of an earlier case management discussion, it was disappointing that such emails had not been lodged with the Tribunal in advance of the Case Management Discussion.
17. On behalf of the Applicant Mr Caldwell advised that he disputed what is being said by the Respondent. He has an extensive excel spreadsheet of communications between the Parties. It is of significance that, prior to the lease being entered into, the Respondents were made aware that work was required at the Property and the Respondents agreed to enter into the tenancy agreement in any event with a view to the work being done thereafter.
18. The rewiring of the Property was undertaken.
19. In relation to the boiler, it is accepted that there was a need to replace the boiler. A new boiler was purchased to be fitted but the Respondents thereafter refused access to allow that work to be undertaken. The reason, therefor, the boiler has not been replaced is entirely due to the Respondents.
20. It is disputed that the Applicant ever agreed that no further rental payments would be due.
21. When the notice to leave was served upon the Respondents information was also provided to them that the Applicant was wishing their co-operation to allow access for repairs required and the fitting of the boiler.
22. Mr Caldwell suggested that the Respondents were “playing the rental system” and pointed out that they had already delayed proceedings by having a previous case management discussion postponed. He asked that, in advance of any hearing to be fixed, written representations should be required from the Respondents.
23. Given the matters discussed, the fixing of a hearing for each case was inevitable. The Tribunal advised, however, that it would issue a direction to Parties requiring written representations and further information relevant to the facts to be determined by the Tribunal in due course.
24. Mr Caldwell moved the Tribunal to allow an amendment to increase the amount claimed for rent arrears. Given the arrears are in dispute the Tribunal continued consideration of this request until the Hearing to be fixed. The Applicant was to lodge an updated rent statement prior to the Hearings.

THE HEARING ON 16TH OCTOBER 2023

25. The Applicant participated in the Hearing. He was again represented by Mr Caldwell of Messrs Paton and Prentice LLP. The Respondents did not participate in the Hearing.
26. The Tribunal members were made aware, prior to the Tribunal convening, that the Respondents had not entered the teleconference to participate in the Hearing. The Tribunal members convened the Tribunal at approximately 10.08am. Having regard to the fact that, at the Case Management Discussion on 10th July 2023, the Respondents initially joined the teleconference but did so approximately 10 minutes late, the Tribunal advised Mr Caldwell and the Respondent, Mr Clifford, that it intended adjourning until 10.20am to afford a further period of time for the Respondents to participate.
27. When the Tribunal reconvened at 10.20am the Respondents had still not participated and, in the circumstances, the Tribunal determined that it was appropriate to proceed with the Hearing in the absence of the Respondents.
28. Mr Caldwell moved the Tribunal to grant the Orders sought.
29. He advised that rent arrears had continued to increase. Quite simply, there had been no further payment of rent by the Respondents at all. The arrears, as at the date of the Hearing, amounted to £10,953.76. Mr Caldwell moved the Tribunal to allow the amount claimed to be amended to that amount.
30. Given the arrears previously increased between the date of application and the Case Management Discussion on 10th July 2023, and given that, at the Case Management Discussion the Respondents were present and, while they were present, the Applicant indicated a desire to increase the claim by way of rent arrears, and given the terms of the case management discussion note issued thereafter in which reference made to the same and the fact that an updated rent statement should be submitted prior to any hearing assigned, and also having regard to the fact that the Respondents did not participate in the Hearing, the Tribunal allowed the amendment requested and thereafter granted a payment order in the amount of £10,953.76.
31. In relation to the eviction order, the Respondents had failed to provide any further submissions or other information to the Tribunal in support of the position advanced by them at the case management discussion. The Tribunal, following upon that case management discussion, issued a direction to parties and, in that direction, required the Respondent to provide the following:-

1. Written submissions detailing

- a) *the basis upon which the application to the Tribunal is opposed.*
 - b) *Full details of any alleged defects at the Property during the period of the tenancy.*
 - c) *Information in relation to the manner in which any such defect has limited or affected the Respondents' occupation and enjoyment of the Property.*
2. *Written submissions confirming whether the Respondents are asserting that no rent was to be paid by them since March 2022 or whether they are claiming an abatement of rent due to alleged defects in the Property.*
 3. *If the Respondents are claiming an abatement of rent,*
 - a) *the amount they are seeking to have abated,*
 - b) *the reasons for which they are seeking an abatement and*
 - c) *the separate amounts attributed to any particular matter giving rise to their claim for an abatement of rent.*
 4. *Copies of all emails exchanged between the Parties in relation to the Property, the defects therein and repairs required.*
 5. *Copies of any emails, text messages, social media messages or other communications in relation to the claimed agreement between the Parties that the Respondents did not require to pay rent.*
 6. *Submissions detailing the full nature of the business operated by the Respondents upon the Isle of Cumbrae to include the business name, location and opening hours.*
 7. *Copy business accounts and tax returns in relation to the business.*
 8. *Full details of the income and expenditure of both Respondents.*

The Respondent did not comply with the terms of the direction. The Respondents, as already stated, did not participate in the hearing and, in those circumstances no further information nor evidence to the Tribunal in support of their position.

32. Mr Caldwell, on behalf of the Applicant, had lodged further submissions with the Tribunal explaining the terms of the lease and giving further details in relation to the boiler which required replacement. The Tribunal was advised, significantly, that, while the boiler may have been defective, there were electric heaters within the property and, in addition, there was an electric shower. The property did, therefore, have the benefit of heating and a working hot water shower.

33. Having regard to the information available to the Tribunal and, in particular, having regard to the significant level of rent arrears, amounting to almost 18 months unpaid rental payments, the Tribunal considered that there was information to justify the granting of an order for eviction.
34. The Tribunal had no information before it, other than the bald assertions made by the Respondents at the Case Management Discussion on 10th July 2023, to justify any finding that
- there were defects in the Property which justified the withholding of rent;
 - there were defects in the Property justifying an abatement of rent;
 - There was an agreement between the Parties that rent did not require to be paid.
35. Prior to granting that order, however, the Tribunal made further enquiry in relation to the personal circumstances of the Respondents and their family. The Tribunal was advised as follows:-
- The Respondents continue to occupy the property.
 - The Respondents continue to operate their business on the Isle of Cumbrae, that business being a restaurant known as “The Harbour”.
 - The Isle of Cumbrae is a small island with a close knit community. The information available to the Applicant, from others within the community, is that the Respondents are in arrears of rent in relation to their business premises in addition to the arrears of rent on the Property.
 - The Second Respondent, Nicole McKenzie, was recently hospitalised for a period. She is, however, now discharged from hospital and is back working within the business. This has been confirmed by various Facebook posts in relation to the business.
 - No other health issues nor other relevant factors were known.
36. Having regard to the overall circumstances, the Tribunal was satisfied that it was, indeed, reasonable to grant an order for eviction.

FINDINGS IN FACT

37. The Tribunal found the following facts to be established:-
- a) The Respondents leased the Property from the Applicant, the lease commencing on 1st December 2021.
 - b) The rent payable was £625.00 per calendar month, payable monthly and in advance.
 - c) The Respondents made only five rental payments, those being on 1st December 2021 and 1st January, 1st May, 1st June and 10th July 2022.
 - d) As at the date of the Hearing, rent arrears amounted to £10,953.76.
 - e) The arrears of rent are substantial, amounting to almost 18 months rental payments.

- f) The sum of £10,953.76 is due, resting and owing by the Respondents to the Applicant.
- g) It is reasonable that an order for eviction be granted.

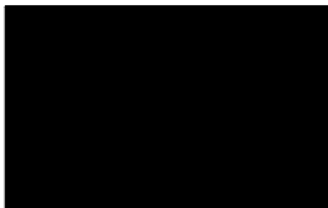
DECISION

The Tribunal granted an order against the Respondents for eviction of the Respondents from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 12A of Schedule 3 of said Act

Order not to be executed prior to 12 noon on 22nd November 2023

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.



16 October 2023

Legal Member/Chair

Date