

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/23/3250 and FTS/HPC/CV/23/3253

Re: Property at Kersland Lodge, Kerrix Road, Monkton, Prestwick, KA9 2QU ("the Property")

Parties:

Lord Ian Lang and Mrs Sandra Lang, both residing at Kersland House, Kerrix Road, Monkton, Prestwick, KA9 2QU ("the Applicants") and

Bannatyne Kirkwood France & Co, Solicitors, 16 Royal Exchange Square, Glasgow, G1 3AG ("the Applicants' Representative") and

Mr Stephen Barr, residing at Kersland Lodge, Kerrix Road, Monkton, Prestwick, KA9 2QU ("the First Respondent") and

Mrs Raiann Barr, residing at Kersland Lodge, Kerrix Road, Monkton, Prestwick, KA9 2QU ("the Second Respondent") and

Ayr Housing Aid Centre, 7 York Street, Ayr, KA8 8AN ("the Second Respondent's Representative")

Tribunal Members:

**G McWilliams- Legal Member
T. Cain - Ordinary Member**

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined as follows:

- 1) To grant an eviction order; and**
- 2) To grant an order for payment by the Respondent to the Applicants of the sum of £2700.00**

Background

1. The Applicants have applied under Rules 109 and 111 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the 2017 Rules") (Application for an eviction order EV/23/3250 and Application for civil proceedings in relation to a private residential tenancy CV/23/3253).

Case Management Discussion on 21st December 2023

2. A Case Management Discussion ("CMD") proceeded by remote teleconference call at 10.00am on 21st December 2023. Reference is made to the Notes on that CMD.

Evidential Hearing on 2nd April 2024

3. An Evidential Hearing proceeded by remote teleconference call at 10.00am on 2nd April 2024. The First Applicant, Lord Lang, and the Applicants' Representative's Ms A. Wooley attended. The First Respondent Mr S. Barr and the Second Respondent Mrs R. Barr, attended. Mr G. Tierney, of Ayr Housing Aid Centre, attended on behalf of the Second Respondent Mrs Barr.
4. Ms Wooley and Lord Lang stated that they sought that both Applications be granted. Mr Barr stated that he had recently made payment of the sum of £975.00 towards outstanding rent arrears and that the balance owing by the Respondents to the Applicants in this regard is now £2,700.00. Mr Barr said that he did not wish to continue residing in the Property and had made applications for social housing. He also said that he had the opportunity of obtaining a private residential tenancy.
5. Mr Tierney, referred to his e-mail sent to the Tribunal's Office on 18th March 2024. He said that having recently separated from Mr Barr, Mrs Barr had now been accepted as being homeless by South Ayrshire Council but does not yet have adequate qualifying points to obtain a tenancy for herself and her two young children, aged 3 and 1. He stated that Mrs Barr wants to move to reside in another property as soon as possible. Mr Tierney stated that Mrs Barr accepts that there are rent arrears owing of £2,700.00.
6. After a pause in the Hearing, Ms Wooley stated that she had checked with Lord Lang and Mrs Lang's letting agents, Galbraith, and that the amount of rent arrears currently owing is £2,700.00. She further said that Lord Lang and Mrs Lang do not wish interest to be applied to that amount in the payment order which they seek.
7. The Tribunal indicated that given the respective positions of the parties they were minded to grant an eviction order with a date of enforcement no earlier than 3rd June 2024 which would hopefully allow a further period of time for Mrs Barr and Mr Barr, and their children, to obtain new tenancies. The

Tribunal also indicated their intention to grant the payment order sought, in the sum of £2,700.00. Mr Barr said that he was content for the Tribunal to proceed in this way, as did Mr Tierney, on behalf of Mrs Barr. Ms Wooley stated that Lord Lang and Mrs Lang were content to leave matters in the hands of the Tribunal to make the determination that they considered most appropriate.

Findings in Fact and Law and Reasons for Decisions

8. The parties have a tenancy agreement which began on 13th July 2018. The monthly rent due in terms of the agreement is £800.00. Lord Lang and Mrs Lang, through agents, served a Notice to Leave (“NTL”) upon Mrs and Mrs Barr on 16th February 2023 when the arrears of rent owing were £3,200.00. When Lord Lang and Mrs Lang, through their Representative, submitted the Applications for an eviction order and the grant of a payment order, on 15th September 2023, the arrears of rent owing were £4,100.00. The rent arrears currently due are in the sum of £2,700.00.
9. Mr Barr and Mrs Barr accept that there are outstanding rent arrears in the sum of £2,700.00. They have recently separated and both have applied for alternative housing. They agree that it is reasonable for the Tribunal to grant an eviction order, as well as a payment order in the sum of £2,700.00, in favour of Lord Lang and Mrs Lang.
10. The Ground upon which Application EV/23/3250 proceeds, namely Ground 12 of Part 3 of Schedule 3.2 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”) is satisfied. Mr and Mrs Barr have had rent arrears in an amount exceeding the equivalent of 3 months’ rent since service of the NTL upon them.
11. It is reasonable that orders for possession and payment of the rent arrears due of £2,700.00 are granted.

Reasons for Decisions

12. 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 (“PRT”) if, on application by a landlord, it finds that one of the eviction grounds named in Schedule 3 applies.
13. Schedule 3 (12) (1) of the 2016 Act provides that it is an eviction ground that the tenant has been in rent arrears for 3 or more consecutive months.
14. Section 71 of the 2016 Act 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.

15. Accordingly, the Tribunal has jurisdiction in relation to claims by landlords (such as the Applicants) for an eviction order and order for payment of unpaid rent against tenants (such as the Respondents) in respect of a tenancy such as the tenancy agreement of the parties.

16. Having considered all of the Applications papers and the statements of Lord Lang, and Mr Barr, as well as the submissions of Ms Wooley and Mr Tierney, the Tribunal made the above findings in fact and law. The Tribunal found that the arrears of rent of £2,700.00 were accepted by Mr and Mrs Barr. These arrears are in a cumulative amount exceeding the equivalent of 3 months' rent. Mr and Mrs Barr also accept that it is reasonable that an eviction order be granted, given that they both seek to obtain alternative tenancies as soon as possible.

17. Having heard from Lord Lang and Mr Barr, as well as Ms Wooley and Mr Tierney, the Tribunal also found that it would be reasonable to defer the enforcement of the eviction order to 3rd June 2024 to allow time for Mr and Mrs Barr, and their children, to obtain new tenancies, in particular given the young ages of their children.

18. The Tribunal therefore decided that Ground 12 in Schedule 3 to 2016 Act was met and that it was reasonable that Lord Lang and Mrs Lang be found entitled to recover possession of the Property, given that there have been substantial rent arrears owing for a considerable period of time. They also decided that it was fair and just to grant an order for payment of the rent arrears currently due of £2,700.00.

Decisions

19. The Tribunal granted the Applications for an eviction order, which cannot be enforced until on or after 3rd June 2024, and for an order for payment of the outstanding rent arrears amount due of £2,700.00.

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

2nd April 2024

Tribunal Legal Member

Date