



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/22/3745

Re: Property at 58 Scott Place, Fauldhouse, West Lothian, EH47 9LH (“the Property”)

Parties:

Mr Brian Mitchell, Mrs Brenda Mitchell, 91 Rowan Drive, Blackburn, West Lothian, EH47 7PA; Pathways 91 Rowan Drive, Blackburn, West Lothian, EH47 7PA (“the Applicants”)

Mr Nicholas Anderson, 58 Scott Place, Fauldhouse, West Lothian, EH47 9LH (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Mr G Darroch (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.

Background

1. The Applicant leased the Property to the Respondent in terms of a Private Residential Tenancy Agreement (“the PRT”) that commenced on 1 May 2018. The rent payable in terms of the PRT is £545 per calendar month on the 1st day of each month. In terms of the PRT the Respondent required to pay to the Applicants a deposit of £545.
2. The Applicants sent to the Respondent correspondence dated 6, 12 and 21 July 2022 to comply with the pre-action protocol prescribed by the Scottish Ministers.
3. On 6 September 2022 the Applicants served on the Respondent by email a Notice to Leave seeking the Respondent’s removal from the Property on the grounds of rent arrears of £2,007.76 having accrued and alleged breaches of clauses 16, 17, 19, 20 and 34 of the PRT.

4. On 10 October 2022 the Applicants served on West Lothian Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
5. By email dated 10th March 2023, the Applicants lodged productions.
6. A Case Management Discussion (“CMD”) took place on 23 March 2023 by telephone conference. The Applicants and Respondent were in attendance. At that time, the rent arrears due by the Respondent amounted to £2,345.74. It was explained that Housing Benefit is paid directly to the Applicants monthly in a sum of £488.67, leaving a shortfall each month in a sum of £56.33. The Respondent is liable to pay the shortfall, and had made no payments of any amount since November 2020.
7. The Applicants alleged breaches of terms of the PRT, as follows:
 - (i) Clause 34 – The Applicants were aware that the Respondent had a dog at the start of the PRT and agreed with him that he could keep that dog but would not get any others. The Respondent previously had an advocate who advised that the Respondent no longer had the dog but now he has another dog in breach of the PRT.
 - (ii) Clause 16 – During the first week in December 2021 the heating in the Property was not working. The Applicants attended and topped up the pressure in the boiler. Damp was seen in the bathroom. Whilst there, running water could be heard, and on removing the bath panel, a broken pipe was found which the Applicants repaired. The Respondent had not reported this required repair. On 9 March 2022 during an inspection, it was discovered that there had been a leak from the flat above. The Council had attended and repaired the leak but the Respondent would not allow any consequential repairs to the Property. He failed to report that occurrence. The photos of the Property lodged with the Tribunal were taken on 26 October 2022. The condition of the Property has deteriorated over the last couple of years. The Applicants attended at the turn of the year. At that time the condition of half the kitchen was better but not the other half and they were not in any other room. The Applicants are worried the Property will continue to deteriorate and need entirely refitted.
 - (iii) Clause 19 – The Respondent refused access to the Property for over a year. The Applicants required to obtain a Gas Safety Record and Electrical Installation Condition Report and applied to the Tribunal for a right of access. Access was eventually taken on 26 October 2022 with the Tribunal member, security and a contractor in attendance. The contractor was not prepared to go into the kitchen within the Property, but did work on the fuse board.
 - (iv) Clause 20 – Details of the Respondent’s abusive behaviour can be found in the Applicants’ letter to the Respondent dated 12 July 2022.

8. At the CMD the Respondent made the following representations:

- (i) The Respondent is not working and lives alone with his dog. He previously paid to the Applicants £50 in cash relative to the shortfall between the Housing Benefit paid and the rent due. He asked for receipts for payments but “got stories” from the Applicants. When asked by the Tribunal whether the Respondent agreed with the arrears balance due, namely £2,345.74, the Respondent said he didn’t know. When asked whether he had made any payments that were not listed on the rent statement forming part of the Tribunal papers the Respondent said he couldn’t give any details of the date or amounts of payments. The Respondent referred to having suffered brain damage previously and to having no short-term memory.
- (ii) The Respondent said repairs to the Property were needed and he had been advised not to pay any sums until these were done. No details of these alleged repairs or the dates of intimation of these repairs to the Applicants were provided.
- (iii) The Respondent said the Applicants were abusing their position and threatening him. He said he had never received a copy of the PRT.
- (iv) The Respondent said he had tried to get help everywhere without success. He had tried the Citizens Advice Bureau, the Council a year or so ago, the Advice Shop, the Benefits Agency, the Mobility Centre and the Community Hub. He said he was not functioning due to his mental health and the lies.
- (v) The Respondent said the Applicants knew he had a dog at the start of the PRT even although he did not get written consent.
- (vi) The Respondent said the photos within the Tribunal papers were taken by the Applicants 2 years ago, maybe more. He noted the photos were not dated.
- (vii) The Respondent could not remember the leak referred to by the Applicants in December 2021. He said the Council had come in and found no dampness in the bedroom or the hall. He said there had been water trickling down in the hall from the floor above. He put a basin underneath.
- (viii) The Respondent said he hadn’t refused access to the Property.
- (ix) The Respondent said the suggestion he had made derogatory remarks was not true. He admitted to raising his voice as the Applicants would not leave after an inspection.
- (x) The Respondent is 56 years of age. He admitted to having mental health issues. He has no Mental Health Support Worker. He didn’t want help and wanted to get on with things himself. He said his parents died a couple of years ago and he did not appreciate how much they helped him. The

Respondent has no advocacy worker. They would not help him unless he started paying the rent arrears. The Respondent has been to the Council about alternative accommodation. They are very laid back about things.

9. The Tribunal was concerned that the Respondent was vulnerable, and the CMD was continued to a further CMD to allow the Respondent time to find representation and support.
10. By email dated 9th May 2023, the Applicants lodged further photographs taken at a visit to the Property.

The Case Management Discussion

11. A CMD took place by telephone conference on 24th May 2023. The Applicants were in attendance. The Respondent was not in attendance.
12. The Tribunal considered the terms of Rule 29. The Tribunal determined that the requirements of Rule 17(2) had been satisfied, and it was appropriate to proceed with the application in the absence of the Respondent.
13. The Applicants said they had attended at the Property on 2nd April 2023 to make a repair to the central heating system. They had found the Property to be in a worse condition, and had lodged photographs to support this. Mr Mitchell said he had to ask the Respondent to clean around the boiler to allow him to access it. The Applicants said the police had attended at the Property in December 2022 and were concerned about the state of it at that time. It is worsening, and the Applicants are concerned for the neighbours.
14. The Applicants said the rent arrears are now £2458.40. No payment has been made for two years. The Respondent has been in arrears since June 2018.
15. Responding to questions from the Tribunal regarding the Respondent's claim that he was withholding rent due to required repairs, the Applicants said they had never been notified by the Respondent that he was withholding rent. They had always attended to complete notified repairs within 48 hours. The Applicants said they had not had any contact from any social housing providers or other landlords. They had not heard anything further about any recent support for the Respondent. They had tried to ask the Respondent about his situation when they attended the Property on 2nd April 2023, but he blanked them and became abusive.

Findings in Fact and Law

16.
 - (i) Parties entered into a private residential tenancy agreement in respect of the Property that commenced on 1st May 2018.
 - (ii) The Respondent has been in arrears of rent for three or more consecutive months.

- (iii) At the date of the CMD, the Respondent was in arrears of rent by an amount greater than the amount payable as one month's rent.
- (iv) The Respondent's rent arrears are not due to a delay or failure in the payment of a relevant benefit.
- (v) The pre-action requirements for private residential tenancies have been met.
- (vi) The Respondent has failed to comply with his obligations under the tenancy agreement.
- (vii) It is reasonable to grant an eviction order.

Reasons for Decision

17. The Tribunal is satisfied that the necessary Notice to Leave has been correctly issued to the Respondent in terms of the Act.
18. Ground 11 of Schedule 3 of the Act provides that it is an eviction ground if the tenant has failed to comply with an obligation under the tenancy. The First-tier Tribunal may find that the ground applies if the tenant has failed to comply with a term of the tenancy, and the Tribunal considers it to be reasonable to issue an eviction order on account of that fact.
19. Ground 12 of Schedule 3 of the Act provides that it is an eviction ground if the tenant has been in rent arrears for three or more consecutive months. The Tribunal must find that this applies if (1) at the beginning of the day on which the Tribunal first considers the application for an eviction order, the tenant is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day; (2) the tenant has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months; and (3) the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
20. The Tribunal is satisfied that Ground 11 has been established. The Tribunal considered there has been a breach of clause 16 of the tenancy agreement. The Tribunal took into account the condition of the Property as evidenced in the photographs lodged, and the representations of the Applicants that the condition of the Property was worsening. The Tribunal noted that the Respondent had stated no defence to this allegation, other than to state that the photographs were not recent or dated. The Tribunal took into account the representations that the police had told the Applicants they were concerned about the condition of the Property in December 2022, and that it has not improved since that time.

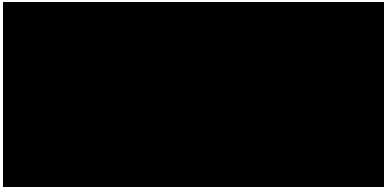
21. The Tribunal considered there had been a breach of clause 19 of the tenancy agreement, in that the Applicants were forced to apply to the Tribunal to gain entry to carry out safety inspections.
22. The Tribunal did not find there had been a breach of clauses 17, 20 and 34 of the tenancy agreement on the information before it.
23. The Tribunal is satisfied that Ground 12 has been established. The Respondent has been in arrears of rent since shortly after the commencement of the tenancy in 2018, and a sum amounting to more than one month's rent is outstanding. No evidence was provided to the Tribunal to show that the arrears were due to a delay or failure in the payment of a relevant benefit. The pre-action requirements were met.
24. In considering whether it was reasonable to grant the eviction order, the Tribunal took into account the circumstances of both parties. The Tribunal considered the fact that the condition of the Property has deteriorated. The Applicants have justifiable concerns about safety matters in relation to the Property, and about the general fabric of the building. This matter has been raised with the Respondent over a considerable period and no attempt has been made to improve matters. The Tribunal considered that the arrears are increasing each month, and no attempt has been made by the Respondent to make payment. Indeed, at his own admission, previous support was discontinued because he would not address the arrears.
25. The Tribunal considered the fact that the Respondent appears to be vulnerable due to a head injury and mental health issues. However, despite having been given an opportunity to attempt to access support and representations, he did not make any further submissions in this regard, and he did not appear at the CMD. No meaningful defence had been put forward by the Respondent at the previous CMD, other than to mention withholding rent in respect of repairing issues. The Tribunal noted that no evidence had been lodged to substantiate this claim. The Tribunal noted that the Respondent said he had discussed alternative accommodation with the local authority. The Tribunal considered the possibility that the Respondent may be in a position to get housing support which could assist with his vulnerabilities if he is housed by a social housing provider in due course.
26. In all the circumstances, the Tribunal considered it reasonable to grant the order sought.

Decision

27. An eviction order in respect of the Property 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.



Legal Member/Chair

24th May 2023
Date