



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/23/2140

Re: Property at 1 Newton of Rothmaise, Steading, Inch, AB52 6UR (“the Property”)

Parties:

Mr John Simpson Tanser, Mrs Kelly Anne Tanser, 1 Handpost Cottages, Basingstoke Road, Swallowfield, Reading RG7 1PY (“the Applicants”)

Mr Andrew John Smith Duncan, Ms Christina Mhairi Ledingham, 1 Newton of Rothmaise, Steading, Inch, AB52 6UR (“the Respondents”)

Tribunal Members:

Graham Harding (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 the Applicants were entitled to an order for the eviction of the Respondents from the property.

Background

1. By application dated 18 July 2023 the Applicants applied to the Tribunal for an order for eviction of the Respondents from the property under Ground 12A of Schedule 3 of the Private housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) in respect of alleged six months or more of rent arrears arising from the Respondents’ tenancy of the property. The Applicants submitted a copy of the tenancy agreement together with a Notice to Leave and proof of service, a rent statement and Section 11 notice with proof of intimation in support of the application.

2. By Notice of Acceptance dated 24 July 2023 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.
3. Intimation of the CMD was served on the Respondents by Sheriff Officers on 1 September 2023.
4. The Applicants submitted written representations by emails dated 5 and 10 October 2023

The Case Management Discussion

5. A CMD was held by teleconference on 12 October 2023. The Applicants attended in person. The Respondents did not attend nor were they represented. The Tribunal being satisfied that proper intimation had been given to the Respondents determined to proceed in their absence.
6. The Tribunal ascertained from Mr Tanser that the parties entered into a Private Residential Tenancy that commenced on 5 October 2022 at a rent of £1550.00 per calendar month and that the Respondents had fallen into arrears in December 2022 with no rent being paid since. The Tribunal was advised that the current rent outstanding after deduction of sums recovered under an earnings arrestment against Mr Duncan’s wages amounted to £16146.25.
7. The Tribunal noted that six months’ rent had been due at the date of service of the Notice to Leave on 26 May 2023 and that there was now ten months rent due with a further month due on 17 October.
8. The Tribunal noted that Aberdeenshire Council had been sent intimation of the proceedings by way of a Section 11 Notice.
9. The Applicants confirmed the Respondents had been sent pre-action letters in accordance with Scottish Government guidelines in February this year and had been advised to seek advice from the CAB or Shelter.
10. The Tribunal noted that the Respondent Mr Duncan had recently been charged by the police with fraud for fraudulently providing references and fictitious emails in order to obtain the tenancy of the property.
11. The Applicants explained that they had been badly affected by the Respondents’ failure to pay the rent as they had to meet the mortgage and insurance and other costs in respect of the property and it had proved very difficult for them to meet all their outgoings every month.

12. The Applicants advised the Tribunal that the Respondents were residing in the property with three school age children. They said the Respondents were no longer communicating with them. They also advised that the Respondents had caused damage to the oil tank and heating at the property and had carried out unauthorised alterations.
13. The Applicants submitted that in all the circumstances it was reasonable that the order was granted.

Findings in Fact

14. The Parties entered into a Private Residential tenancy that commenced in October 2022 at a rent of £1550.00 per calendar month.
15. The Respondents fell into arrears of rent in December '022 and have paid no rent except under an earnings arrestment since December 2022.
16. At the date of service of a Notice to Leave on 26 May 2023 the Respondents owed 6 months' rent.
17. At the date of the CMD the Respondents owed more than six months' rent.
18. The Applicants intimated the proceedings to Aberdeenshire Council by way of a Section 11 Notice by email on 27 June 2023.
19. The Applicants have experienced significant financial hardship as a result of the Respondents' failure to pay rent over a ten-month period.
20. The Respondents reside in the property with three school age children. They have not participated in the proceedings.

Reasons for Decision

21. The Tribunal was satisfied from the Written representations and documents submitted together with the oral submissions that the parties entered into a Private Residential Tenancy in October 2022 at a rent of £1550.00 per month. The Tribunal was also satisfied that the Respondents have accrued very substantial rent arrears with six months rent being due at the date of service of a Notice to Leave on 26 May 2023.
22. The Tribunal was also satisfied that the Applicants had complied with the Scottish government's pre-action requirements and had written to the Respondents prior to raising proceedings. The Tribunal was also satisfied that the Applicants had intimated the proceedings to the local authority by way of a Section 11 Notice.

23. The Tribunal took account of the difficult financial circumstances the Applicants found themselves in as a result of the Respondents failure to pay rent over a long period with arrears continuing to increase each month. The Tribunal also took account of the Respondents conduct and their failure to participate in the proceedings despite being given an opportunity to submit written representations and to attend the CMD. Although the Respondents have school age children residing with them in the property the Tribunal considers that on balance given the very considerable level of rent arrears and the impact this has had on the Applicants it is reasonable to grant the order sought.

Decision

24. The Tribunal having carefully considered the Written representations and documents together with the oral submissions and being satisfied that it has sufficient information before it to make a decision without the need for a hearing finds the Applicants entitled to an order for the eviction of the Respondents from the property under Ground 12A of Schedule v3 of the 2016 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.

Graham Harding

**Graham Harding
Legal Member/Chair**

**12 October 2023
Date**