



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

**Chamber Ref: FTS/HPC/EV/21/0116**

**Flat 2/2, 1 Ashburn Gate, Gourock, PA19 1NR (“the Property”)**

**Parties:**

**Mr John Robertson, Mrs Debbie Robertson, 36 Dunvegan Avenue, Gourock, PA19 1AE (“the Applicants”)**

**Ms Lynsay Robertson, Flat 2/2, 1 Ashburn Gate, Gourock, PA19 1NR (“the Respondent”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member)  
Andrew McFarlane (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 against the Respondent in favour of the Applicants.**

**Background**

1. By application received on 18 January 2021 the Applicants seek an eviction order in terms of section 51 Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). A copy tenancy agreement, Notice to Leave with Sheriff Officer certificate of service, rent statement and Notice in terms of Section 11 Homelessness etc (Scotland) Act 2003 were lodged in support of the application. The application is based on ground 12 of schedule 3, rent arrears over three consecutive months.
2. A copy of the application and supporting documents were served on the Respondent by Sheriff Officer on 16 February 2021. Both parties were advised

that a Case Management Discussion (“CMD”) would take place on 19 March 2021 by telephone conference call and that they were required to participate. They were provided with a telephone number and passcode. On 18 February 2021, the Applicants submitted an updated rent statement.

3. The CMD took place at 2pm on 19 March 2021. The Applicants were represented by Mr Caldwell and the Respondent participated. She advised the Tribunal that the application was opposed. She did not dispute that she has failed to pay the rent but stated that there are outstanding repairs at the property and that she has been withholding rent since January 2020, having received legal advice that she was entitled to do so. She advised that shortly after she moved in, the cooker stopped working. She reported this and other repairs issues, but they have not been addressed. She notified the Applicants that she was withholding rent until the repairs were carried out. The electrical appliances at the property are defective and dangerous and there is dampness and water damage round plug sockets. Ms Robertson also advised the Tribunal that she has paid her rent into a separate account throughout the relevant period.
4. Mr Caldwell advised the Tribunal that he was aware of complaints made by the Respondent in early 2020. He said that the Applicants were aware of their obligations and contacted Ms Robertson for access to investigate and carry out repairs. They made repeated attempts to get access, without success. He was instructed to write to the Respondent regarding the matter. He did this, giving notice of the time and date when access was required. A second attempt was made, again without success. The conclusion reached was that her complaints were not genuine.
5. Following discussion with the parties the Tribunal determined that the application should proceed to a hearing. The Tribunal issued a direction which required the Respondent to provide full details of her defence to the application, including information about the nature of the outstanding repairs, the reports made by her regarding same, the issue of access and the impact of the defects on her use of the property. She was also directed to provide evidence that she had paid the withheld rent into a separate account. This information was to be provided by 5 April 2021. The Applicants were directed to provide a response to the Respondent’s submission.
6. The parties were notified that a hearing would take place by telephone conference call on 29 April 2021 at 10am. The hearing took place on this date and time. The Applicants both participated and were represented by Mr Caldwell. The Respondent did not participate and was not represented. She did not contact the Tribunal in advance of the hearing and did not lodge the information or documents specified in the direction. Prior to the hearing the Applicants lodged submissions, an updated rent statement and copies of letter and emails to the Respondent.

### **The Hearing**

7. Mr Caldwell advised the Tribunal that the Applicants have had no contact with the Respondent since the CMD. He referred to the updated rent statement and

confirmed that no further payments have been made. The total outstanding is now £7920. Mr Caldwell stated that the Respondent's complaints about the condition of the property were first made when the Applicants intimated that they intended to end the tenancy due to non-payment of rent. The Applicants made a number of attempts to get access to the property in early 2020. When they were unsuccessful, they consulted him, and he wrote to the Respondent on their behalf. The Respondent telephoned him in response to the letter and made allegations regarding the property. However, she did not provide him with a date and time for access, as had been discussed. Mr Caldwell referred the Tribunal to three emails from Mrs Robertson to the Respondent in relation to access, sent since the CMD. These were also hand delivered to the property. There has been no response.

8. Mr and Mrs Robertson advised the Tribunal that they have made many attempts to get access to the property. On one occasion they had sent a message to say that they were coming. When they attended the key was in the lock inside the property. The Respondent did not open the door but sent them text messages from inside, telling them to go away or she would call the police. The last time either of them got into the property was October 2019, when Mr Robertson fixed a leaky tap. Although there were complaints about the boiler and water ingress in January/February 2020, they have not been able to investigate or arrange repairs, as access has been repeatedly refused. The gas safety check has not been carried out for the same reason. However, they are certain that she is still living at the property, as they pass it every day and can see it is occupied.
9. In response to questions regarding the Respondent's personal circumstances, Mr Caldwell said that she had previously indicated that she recently lost her job and that she had a child with a disability. Mr and Mrs Robertson confirmed that the Respondent resides at the property with her son who is aged 8 or 9. He attends a local school. They do not think that she is working but when they contacted the Council about 6 months ago, were told that she was not in receipt of benefits. When the rent was being paid, it came from her bank account and no direct payments from the DWP were ever received. Mrs Robertson advised that the Respondent had provided a fake employment reference from the Prison Service in connection with her application for the property. Beyond this, the Applicants advised the Tribunal that they have no information about her personal circumstances. With regards their own circumstances, they stated that the rent arrears have caused them financial difficulties as they are having to pay two mortgages, with no rental income. The lack of rental income and the access issues have also caused them a great deal of stress.
10. Mr Caldwell referred the Tribunal to a copy letter submitted by him with the application. It is dated 8 December 2020 and addressed to the Respondent. The letter advises the Respondent of the current arrears, details of the tenancy and the monthly rent due. It also provides information regarding the proposed application to the Tribunal. A copy of a Scottish Government guidance leaflet is referred to in the letter and was enclosed. This provides information and guidance for tenants during the pandemic. The letter also advises the Respondent about where she can get advice. Mr Caldwell confirmed that this letter was sent in connection with the pre action requirements for applications

based on rent arrears. Mr Caldwell also confirmed that the Applicants seek an order for eviction.

### **Findings in Fact**

11. The Applicants are the owners and landlords of the property.
12. The Respondent is the tenant of the property in terms of a tenancy agreement dated 12 July 2019.
13. The Respondent is due to pay rent at the rate of £495 per month.
14. The Respondent has been in arrears of rent since 12 January 2020.
15. The Respondent owes the sum of £7920 in unpaid rent to the Applicants.
16. The Applicant served a Notice to leave on the Respondent on 14 July 2020.
17. The Respondent has refused to provide the Applicants with access to the property for inspection and repair since January 2020.

### **Reasons for Decision**

18. The application was submitted with a Notice to Leave, together with a Sheriff Officer certificate of service which establishes that the Notice was served on the Respondent on 14 July 2020. The Notice states that an application to the Tribunal is to be made on ground 12, rent arrears over three consecutive months. Part 4 of the notice indicates that the earliest date that an application to the Tribunal can be made is 15 January 2021. The application to the Tribunal was made after expiry of the notice period. The Tribunal is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a copy of the Section 11 Notice which was sent to the Local Authority. The Tribunal is satisfied that the Applicant has complied with Section 56 of the 2016 Act.
19. Section 51(1) of the 2016 Act states, "The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies." Ground 12 of Schedule 3 (as amended by Schedule 1 of the Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) (No 2) Act 2020) states "(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. (3) The First-tier Tribunal may find that the ground named in sub-paragraph (1) applies if – (a) for three or more consecutive months the tenant has been in arrears of rent, and (b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order."

20. Paragraph 3B states that, when considering whether it is reasonable to issue an eviction order, the Tribunal “is to consider the extent to which the landlord has complied with pre-action requirements before applying for the eviction order.” This provision applies where “all or part of the rent on respect of which the tenant is in arrears as mentioned in that eviction ground relates to the period during which paragraph 5 of schedule 1 of the Coronavirus (Scotland) (No 2) Act 2020 is in force”. This Act came into force on 7 May 2020. Regulation 4 of the Rent Arrears Pre-Action Requirements (Coronavirus) Scotland Regulations 2020 specifies the pre-action requirements which apply to the 2016 Act. These include the provision of clear information relating to the terms of the tenancy agreement, the level of the arrears, the tenant’s rights in relation to eviction proceedings and how the tenant can access information and advice.
21. Sub-Paragraph (4) states, “In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenants being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.” These are defined in sub-paragraph (5) and include housing benefit and universal credit.
22. The Tribunal is satisfied that the Respondent currently owes the sum of £7920 in unpaid rent and that no payments have been made to the rent account since December 2020. She has therefore been in arrears for three or more consecutive months, both at the date of service of the Notice to leave (when the arrears were £3465) and the date of the hearing.
23. At the CMD the Respondent advised the Tribunal that she had been withholding rent since January 2020, because of outstanding repairs, and that she considered that she was entitled to a full abatement of rent for the whole period of the arrears. As rent was not due for this period, there were no arrears upon which to base an eviction application on ground 12. Prior to the hearing, the Respondent was directed to provide full details of the alleged repairs issues and the impact on her use of the property. She failed to do so. The Respondent also failed to participate in the hearing. No evidence has therefore been presented to the Tribunal to support the Respondent’s claim. The Applicants both gave evidence to the Tribunal. They stated that they have not been inside the property since October 2019, because the Respondent has refused all attempts by them to get access. They referred the Tribunal to copies of emails and letters to the Respondent requesting access. As all access requests have been refused or ignored, they are unable to comment on the current condition of the property. They confirmed that did receive complaints, but these were in early 2020.
24. The Tribunal is satisfied that the Applicants have made extensive efforts to access the property in order to investigate the complaints made by the Respondent and carry out any repairs which may be required. They have been unable to do this as a direct result of the Respondent's refusal to allow access. The Tribunal is therefore satisfied that the Respondent has failed to establish that she is entitled to an abatement of rent for the period of the arrears. Furthermore, even if she had established that there are outstanding repairs,

she has failed to establish that this is due to a failure or refusal by the Applicants to fulfil their obligations as landlords to carry out repairs. The Applicants clearly established that they have endeavoured to do this and that it is the Respondent who has prevented any repairs being carried out. The Tribunal therefore concludes that the Applicants have established the eviction ground.

25. The Tribunal proceeded to consider whether it would be reasonable to grant the order. The Tribunal noted that the Applicant issued a letter to the Respondent on 8 December 2020, in terms of the pre action requirements which apply to rent arrears cases. The Tribunal is satisfied that this letter meets these requirements and that the Applicants have therefore complied with the Regulations in relation to same.
26. The Respondent did not participate in the hearing and did not provide the Tribunal with any information regarding her personal circumstances. The Applicants were only able to provide the Tribunal with limited information. The Tribunal was therefore unable to establish whether the Respondent is currently working or in receipt of benefits and whether any delay or failure in the payment of relevant benefits have contributed to the non-payment of rent. However, the Applicants were provided with information several months ago which suggests otherwise. Furthermore, the Respondent stated at the CMD that she had deliberately withheld (and set aside) the rent. It therefore appears unlikely that problems with benefit payments are relevant.
27. The Tribunal had regard to the fact that the Respondent has a young child, who may have a disability, and that a large part of the arrears relates to the period of the pandemic, when many people have experienced financial hardship. However, there is no evidence available to suggest that this is case. Furthermore, the Respondent advised the Tribunal at the CMD that she deliberately failed to pay the rent. In addition, the Tribunal noted that the Applicants have experienced financial problems due to the substantial arrears, as they have had to continue making mortgage payments for the property with no rental income to cover these. In all the circumstances, the Tribunal is satisfied that it would be reasonable to grant the order for eviction.
28. The Tribunal concludes that the Applicants have complied with the requirements of the 2016 Act and that the eviction ground has been established. The Tribunal is also satisfied that it is reasonable that an eviction order is granted.

## **Decision**

29. The Tribunal determines that an eviction order should be granted against the Respondent.

## **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.**

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**Josephine Bonnar, Legal Member**

**29 April 2021**