

Housing and Property Chamber
First-tier Tribunal for Scotland



**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 (Act)**

Chamber Ref: FTS/HPC/EV/18/3471

**Re: Property at First Floor Right, 5 Grampian Place, Aberdeen, AB11 8ET (“the
Property”)**

Parties:

Mr James McGill, Flat 7, 213 Corbiehall, Bo'Ness, EH51 0AX (“the Applicant”)

**Mr David Brebner, First Floor Right, 5 Grampian Place, Aberdeen, AB11 8ET
 (“the Respondent”)**

Tribunal Members:

Alan Strain (Legal Member) and Mike Scott (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the order for eviction/recovery of possession be
granted.**

Background

This was an application for recovery of possession/eviction under Grounds 11 and
12 to Schedule 3 of the Act. The application had been lodged under Rule 109 of the
Tribunal Procedure Rules.

The case had called previously for a CMD where the issues had been identified as
whether or not the Respondent had notified the Landlord of necessary repairs and
that he was withholding the rent until these repairs had been rectified.

The Tribunal had regard to the following documents:

1. Application;
2. Private Residential Tenancy;
3. Statement of Rent Arrears;

Mr Alan Strain

4. Notice to Leave;
5. Text and Messenger messages between the Parties;
6. Universal Credit Documentation;
7. Photographs produced by both Parties.

Hearing

The Applicant appeared and was represented by his solicitor. The Respondent appeared and represented himself.

The Tribunal clarified at the outset that it was agreed the Respondent had entered in to the Private Residential Tenancy with effect from 5 February 2018. He had not paid any rent since June 2018 and the current arrears of rent were £4,480.

The Respondent gave evidence to the effect that he had notified the Applicant of damp issues in the living room, walls bubbling and a socket smoking a few days after moving in and 2 to 3 times subsequently. He did not recall how he had notified the Applicant but suggested that it may have been by phone or text.

The Respondent stated that he had been in receipt of housing benefit for the rent and had deposited almost £5,000 with his brother in respect of the withheld rent. He was unable to produce any proof of this.

The Respondent was able to fully use the Property notwithstanding the issue regarding damp and water ingress.

The Applicant stated that he had not been notified of any issues regarding the Property or that rent was being withheld until this Tribunal application. He referred to text exchanges and messenger exchanges with the Respondent all of which contained statements to the effect payment of rent was to be made.

The Applicant had the Property refurbished before the Respondent moved in.

Having heard the evidence the Tribunal made the following findings in fact:

1. The Parties entered in to a Private Residential Tenancy with effect from 5 February 2018;
2. The monthly rent was £440;
3. As at the date of the Hearing the amount of rent arrears were £4,480;
4. A valid Notice to Leave was served on the Respondent intimating Grounds 11 and 12;
5. A section 11 notice was issued to the local authority;
6. The Respondent did not notify the Applicant of any repairs or issues with the Property or that he intended to withhold the rent;
7. The Respondent represented throughout the tenancy that he would make payment of rent but failed to do so. He did this by various text and messenger communications.

The Tribunal accepted the evidence of the Applicant to the effect that he had not been notified of any necessary repairs or issues or that rent was being withheld. The

Mr Alan Strain

Tribunal did not accept the evidence of the Respondent that he had notified the Applicant and had withheld the rent. No proof of notification or of the existence of the withheld rent in an account with his brother was produced. The Respondent asked the Tribunal to accept his word for this. The Tribunal did not find the Respondent to be credible or reliable and accordingly rejected his evidence on these points.

The Tribunal accordingly found that the essential elements of Ground 12 were established given the amount of rent outstanding over the period of the tenancy. The arrears were not in any part due to a delay or failure to make payment of a relevant benefit.

The Tribunal granted the order sought.

Decision

Order for eviction/recovery of possession 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.

Mr Alan Strain

Legal Member/Chair

10 June 2019

Date