



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 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/23/3511

Re: Property at 37 Broomhall Avenue, Edinburgh, EH12 7LY (“the Property”)

Parties:

Christopher Sherry, 1 Causewayend, Linlithgow, EH49 6LW (“the Applicant”)

Ms Kris Ure, 37 Broomhall Avenue, Edinburgh, EH12 7LY (“the Respondent”)

Tribunal Members:

Martin McAllister (Legal Member) and Mike Scott (Ordinary Member) (“the tribunal”)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) determined that an eviction order be granted against the Respondent in respect of the Property.

Background

1. This is an application for recovery of the Property. The application is dated 4 October 2023. The Applicant is seeking recovery under Ground 12A, Part 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016. This ground states that it is an eviction ground that a tenant has substantial rent arrears.
2. A case management discussion was held by teleconference on 5 February 2024. Mr John Jarvie, trainee solicitor, represented the Applicant who was not in attendance. There was no appearance by the Respondent and the tribunal had sight of a Sheriff Officer’s Certificate of Intimation confirming that notice of the case management discussion had been served on the Respondent on 13 December 2023.
3. No written representations had been submitted by either party.

Preliminary Matters

4. Mr Jarvie said that the rent arrears as at the date of the case management discussion amounted to £12720. He said that the last payment of rent by the Respondent had been on 1 December 2022.
5. Mr Jarvie submitted that the application could be determined without a Hearing being fixed.
6. The tribunal decided that it had sufficient information to determine the application and that there was no requirement for a Hearing to be arranged.

7. Documents before the tribunal

- 7.1 Private Residential Tenancy Agreement between the Applicant and the Respondent showing the start date of the tenancy to be 1 July 2019 and the monthly rent to be £740.
- 7.2 Copy Notice to Leave dated 8 August 2023 and copy email confirming that it was served on that date.
- 7.3 Copy Notice to the local authority in terms of Section 11 of The Homelessness etc. (Scotland) Act 2003 and dated 4 October 2023.
- 7.4 Rent arrears statement dated 3 October 2023 showing the arrears of rent to be £9760.
- 7.5 Print of Title Sheet for MID85820 (the Property).
- 7.6 Email from the Applicant to the Respondent dated 1 August 2023 referring to attached pre-action protocol letters.

8. Findings in Fact

- 8.1 The Applicant is the owner of the Property.
- 8.2 The Applicant and the Respondent entered into a Private Residential Agreement for the Property with the tenancy commencing on 1 July 2019.
- 8.3 The monthly rent for the Property is £740.
- 8.4 As at the date of submission of the application, the rent arrears amounted to £9760.
- 8.5 The Notice to Leave which was dated 8 August 2023 referred to Ground 12A and stated that it was being relied on by the Applicant as the reason for seeking recovery of the Property.
- 8.6 The Notice to Leave indicated that any proceedings for eviction would not be commenced prior to 8 September 2023.
- 8.7 Proceedings for eviction commenced with submission of the application dated 4 October 2023.

9. Finding in Fact and Law

- 9.1 The Respondent has substantial rent arrears.

The Law

The following provisions of the Private Housing (Tenancies) (Scotland) (Act) 2016

S.51 First-tier Tribunal's power to issue an eviction order

- (1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.
- (2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.
- (3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.
- (4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

Schedule 3, Part 1 Ground 12A

Substantial rent arrears

- 12A (1) It is an eviction ground that the tenant has substantial rent arrears.*
- (2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—*
- (a) the tenant has accrued rent arrears under the tenancy in respect of one or more periods,*
 - (b) the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy when notice to leave is given to the tenant on this ground in accordance with section 52(3), and*
 - (c) the Tribunal is satisfied that it is reasonable to issue an eviction order.*
- (3) In deciding under sub-paragraph (2) whether it is reasonable to issue an eviction order, the Tribunal is to consider—*
- (a) whether the tenant being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit,*

(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers under paragraph 12(4)(b) (and continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022).

(4) For the purpose of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the Housing Benefit Regulations 2006 (S.I. 2006/213),

(ii) a payment on account awarded under regulation 93 of those Regulations,

(iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,

(iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,

(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.

Deliberations and Reasons

10. The tribunal had regard to the rent statement. The rent is £740 per month and, at 3 October 2023, the level of rent arrears was £9,760 which represented arrears equivalent to an amount equivalent to almost twelve months' rent. The statement also demonstrated that the rent arrears have accrued over more than one period and that there had been arrears as far back as June 2020.

11. The tribunal was satisfied that the rent arrears were substantial and had been when the application was made.

12. The tribunal was satisfied that the notice to leave was in order and that the appropriate notice had been given to the local authority in terms of the Homelessness etc. (Scotland) Act 2003.

13. The tribunal was satisfied that the Applicant is the owner of the Property, is the landlord in terms of the private residential tenancy agreement and is therefore entitled to make the application for an order of eviction.

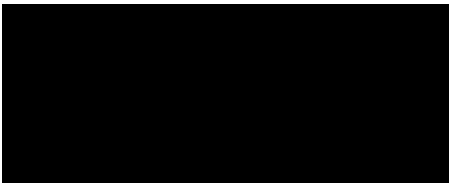
14. The tribunal considered that it required to take a two stage approach in considering the application. Having determined that Ground 12 A is met, it

then requires to have regard to sections (2) (c), (3) (a), (3) (b) and (4) of Ground 12A.

15. The tribunal was satisfied that the landlord had sent the necessary communications in terms of the pre-action protocol. Mr Jarvie said that the Respondent had not engaged with the Applicant in this regard and that the last information he had given the Applicant was that he could not afford to pay the rent because people had not paid him for work which he had carried out as a carpenter.
16. Mr Jarvie said that he had no information on the Respondent's position with regard to benefits. He said that, as far as the Applicant knows, the Respondent is a self employed carpenter.
17. Mr Jarvie said that, as far as the applicant is aware, the Respondent resides in the Property with his partner and child. He said that, if the eviction order were to be granted, the local authority would be obliged to provide emergency accommodation for the Respondent and his family.
18. Mr Jarvie said that the Applicant has a portfolio of six properties which he lets out. He said that all are mortgaged and that the total rental income from the portfolio is insufficient to meet all the mortgage payments. He said that the Applicant's financial position is being further prejudiced because of the Respondent's failure to pay rent.
19. In considering whether or not it is reasonable to grant the order, the tribunal required to consider all the circumstances. It is a balancing exercise. The Respondent had chosen not to engage with the Tribunal process and had not submitted written submissions or participated in the case management discussion. The information the tribunal had about his personal situation was limited. The level of rent arrears was considerable and the tribunal had no difficulty in finding that this would be causing financial prejudice to the Applicant. The Respondent has a contractual obligation to pay rent and has not done so over a considerable number of months.
20. The tribunal took into account the amount of the rent arrears, the period of time over which they had accrued, the Applicant's financial position as set out by Mr Jarvie and the fact that the Property was the family home of the Respondent. In weighing matters, the tribunal considered that it was reasonable to grant the order of eviction.

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

5 February 2024

Date