



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/23/2015

Re: Property at Flat 10, 7 Ellis Drive, Edinburgh, EH14 2AE (“the Property”)

Parties:

Places for People Scotland, 1 Hay Avenue, Edinburgh, EH16 4RW (“the Applicant”)

Mr Dale Zdrojewski, Ms Louise Wright, Flat 10, 7 Ellis Drive, Edinburgh, EH14 2AE; Flat 1, 11 Duncombe Road, Edinburgh, EH14 3JP (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for the eviction of the Respondent from the Property

Background

1. By application dated 20 June 2023 the Applicant’s representatives, Patten & Prentice LLP, Solicitors, Greenock applied to the Tribunal for an order for the eviction of the Respondent from the property in terms of Grounds 12 and 12A of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant submitted a copy of a tenancy agreement, Notice to Leave, Section 11 Notice, a rent statement and pre-action letters together in support of the application.
2. By Notice of Acceptance dated 21 August 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 Respondent by Sheriff Officers on 11 October 2023.

The Case Management Discussion

4. A CMD was held by teleconference on 15 November 2023. The Applicant was represented by Mr Kenneth Caldwell from the Applicant's representatives and the Respondent, Mr Dale Zdrojewski attended in person. The Respondent Ms Louise Wright did not attend nor was she represented.
5. The parties were in agreement that the tenancy commenced on 15 April 2021 at an initial rent of £680.00 per calendar month and that the current rent was £727.72 per month. It was also agreed that the Respondent had fallen into arrears from March 2022 and the Applicant had sent a pre-action letter to the Respondent on 8 December 2022. Mr Caldwell went on to say that his involvement began on 22 March 2023 when a Notice to Leave was served on the Respondent under Grounds 12 and 12A of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016. He said at that time the rent due by the Respondent amounted to £6625.20. Mr Caldwell went on to say the current rent due amounted to £9653.62.
6. The Respondent confirmed that he had been served with a Notice to Leave under Grounds 12 and 12A of Schedule 3 of the 2016 Act. The Respondent explained that following his separation from Ms Wright he had lost his job and had been in a bad state mentally. He said he had made a mistake by not communicating with Touchstone. He said that he had started a new job as a carpet fitter in July 2023 and was earning £2000.00 per month net and was able to afford to pay £1000.00 towards his rent and the arrears. He explained that his three-year-old son who was autistic lived with him three days one week and four days the next and that he really wanted to remain in the property to provide a home for himself and his son.
7. The Tribunal queried with Mr Caldwell the effect the granting of the order would have on the First Respondent if the tenancy was ended but he continued to occupy the property and there was some discussion around that. As a result, the First Respondent asked the Tribunal if he could have some time to seek legal advice. In the circumstances and given that Mr Caldwell considered there would be no prejudice to the Applicant if there was a continuation the Tribunal agreed to adjourn the CMD and continue the application to a hearing.
8. By email dated 26 February 2024 the Applicant's representative submitted further written representations together with a current rent statement.

The Hearing

9. A hearing was held by teleconference on 27 February 2024. The Applicant was represented by Ms Balham and also Mr Caldwell. Both Respondents attended in person.
10. Ms Wright explained that she did not really have a position with regards to the order for eviction being sought by the Applicant as she had moved out of the property prior to the rent arrears arising.
11. For the Applicant, Mr Caldwell submitted that on his own admission the First Respondent had, following his separation from Ms Wright, buried his head in the sand and allowed the very significant rent arrears to accrue. Mr Caldwell went on to say that now that the First Respondent was again in employment he had offered to pay £1000.00 per month towards rent and arrears. Mr Caldwell said that he had expressed concern that given the First Respondent's income such an amount may not be affordable. He said that at the CMD he had explained that he would on behalf of the Applicant give an undertaking to the Tribunal that if an order for eviction was granted the Applicant would not take any steps to enforce it as long as the Respondent maintained payments of £1000.00 per month. He said that the Tribunal had indicated it would be prepared to grant an order but as the First Respondent wished to seek legal advice continued the application to a hearing. Mr Caldwell went on to say that the Respondent had made payments of £1000.00 on 27 November and 22 December 2023 but had not made any payment in January 2024 although he had made a further payment of £1000.00 on 2 February 2024 and had advised the Applicant that this was the January payment that was late as it had been transferred over a weekend. Mr Caldwell submitted that even if the First Respondent maintained payments of £1000.00 per month it would take some 32 months to clear the debt and that this was not reasonable. He also explained that it was likely that a further 4% increase would shortly be applied to the rent. Mr Caldwell confirmed that the Applicant's offer not to enforce the order if the First Respondent maintained payments of £1000.00 per month remained.
12. For her part Ms Wright explained that she and the First Respondent shared the care of their son who was autistic and because of that she was not pushing for the tenancy to come to an end so that her name could be removed from the tenancy.
13. The First Respondent confirmed that he had taken legal advice and had been told that it was basically the Landlord's choice as to what happened next. He said that if he was evicted he would need to pay rent on a new property and pay off the arrears he would still be in the same position. The First Respondent said he was not struggling to meet the payments of £1000.00 per month but that it would be more difficult to pay towards the arrears if he was evicted. He explained that he shared the care of his son equally with Ms Wright. He confirmed that his son who will be four in March is autistic and requires consistency and stability and a move to another property would be disruptive. He also explained that the two-bedroom property was close to his son's nurseries and Ms Wright's home.

14. For the Applicant, Mr Caldwell spoke of the added costs and inconvenience that would be incurred if the Tribunal refused the application and the First Respondent then did not maintain the agreed payments. He submitted it could be a further six months before another Tribunal could hear a further application. In Response to a query from the Tribunal Mr Caldwell confirmed that the Applicant had a large portfolio of mid-market residential housing in addition to its social housing portfolio and would not suffer severe financial hardship if the order was not granted. Mr Caldwell went on to say that in the social sector arrears of the level accrued by the First Respondent did not occur and that court decrees with the sort of undertaking being offered by the Applicant were routinely granted and he submitted that the concession being made was to the Respondent's advantage.
15. The First Respondent advised the Tribunal that he was confident that he could maintain payments of £1000.00 per month. He said his other outgoings for gas and electricity, phone, Wi-Fi and council tax amounted to about £400.00 per month. He said he had no other debt and was provided with a company van and had no childcare costs other than food.
16. Mr Caldwell asked the Tribunal to grant the order sought subject to the undertaking offered that the Applicant would not enforce an order for eviction as long as the First Respondent maintained payments of £1000.00 per month towards the rent and arrears.

Findings in Fact

17. The Respondent commenced a Private Residential Tenancy of the property on 15 April 2021.
18. The initial rent was £680.00 per calendar month and the current rent is £727.72 per calendar month.
19. A Notice to Leave under Grounds 12 and 12A of Schedule 3 of the 2016 Act was served on the Respondent on 22 March 2023.
20. A Section 11 Notice was sent to Edinburgh City Council on 5 June 2023.
21. The First Respondent lives in the property and shares the care of his son who is autistic and who will be aged four in March with the Second Respondent.
22. The Respondent's son attends two local nurseries.
23. The Second Respondent lives near the First Respondent having moved out of the property in about December 2021.

24. Following the Second Respondent moving from the property the First Respondent started to accrue rent arrears that amounted to £10198.18 on 1 August 2023.
25. The Applicant's representatives served a Notice to Leave on the Respondent under Grounds 12 and 12 A of Schedule 3 of the 2016 Act on 22 March 2023.
26. The Applicant's representatives served a Section 11 Notice on Edinburgh City Council by email on 5 June 2023.
27. The First Respondent has maintained payments of £1000 per month since the end of October 2023 and has reduced the rent due to £8836.78.
28. The Applicant's representative has given an undertaking to the Tribunal that in the event of an order for eviction being granted the Applicant will take no steps to enforce the order as long as the First Respondent maintains monthly payments of £1000.00.
29. The Applicant has a large portfolio of mid-market residential properties and would not suffer severe financial hardship if an order for eviction was not granted but would incur expense and inconvenience if required to commence new proceedings.

Reasons for Decision

30. The Tribunal was satisfied from the documents submitted and the oral submissions of both parties that the parties entered into a Private Residential tenancy that commenced on 15 April 2021. The Tribunal was also satisfied that a valid Notice to Leave had been served on the Respondent under Grounds 12 and 12A of Schedule 3 of the 2016 Act and that proper intimation of the proceedings had been given to Edinburgh City Council by way of a Section 11 Notice. The Tribunal was also satisfied from the documents produced and the Applicant's oral submissions that appropriate pre-action letters had been sent to the Respondent.
31. The Tribunal was therefore satisfied that procedurally the criteria for granting an order for the eviction of the Respondent from the property had been met subject to it being reasonable for such an order to be made. In reaching a decision on reasonableness the Tribunal noted that neither party took any issue with the other party's position as stated by them. The Tribunal therefore had to balance the needs of the Applicant with the needs of the Respondent in arriving at a decision. On the one hand there was the Applicant who although not suffering severe financial hardship as a result of the debt accrued by the First Respondent had incurred not insubstantial legal costs and would incur further costs in the future if the application was refused and the First Respondent then defaulted on payment of the rent as he had done previously. The First Respondent had accrued arrears equivalent to one year's rent. That in many cases would justify the granting of an order for

eviction. On the other hand, the Tribunal also had to take account of the needs of the First Respondent who has to care 50% of the time for his soon to be 4-year-old son who is autistic and is attending two local nurseries. The Tribunal acknowledged that despite largely being the author of his own misfortune in the past it appeared that in recent months the First Respondent had managed to turn his life around and obtain employment and had over the previous four months been able to maintain payments of £1000.00 per month towards rent and arrears.

32. The Tribunal noted that the Second Respondent although no longer living in the property and having the tenancy of another property was prepared to remain as a joint tenant as long as she was not held liable for payment of rent as she too thought that it was important that the First Respondent remain in the property in order to share the care of their son.
33. In reaching its decision the Tribunal has placed considerable weight on the undertaking the Applicant's representative gave to the Tribunal that the Applicant would not take any steps to enforce an order for eviction as long as the First Respondent maintained payments of £1000.00 per month. The Tribunal is aware that Social Landlords frequently adopt this procedure following a court decree. It does seem to the Tribunal that given the extremely high level of rent arrears that the First Respondent has accrued and the relatively short time he has maintained regular payments that there may well be a risk that he may default in the future at considerable expense and inconvenience to the Applicant. On the other hand, as long as the First Respondent is able to maintain the payment of £1000.00 per month even if an order for his eviction is granted, he will be able to remain in the property and have a home for himself and his son.
34. After carefully considering the circumstances, the Tribunal was persuaded on the strength of the undertaking given by the Applicant's representative that the Applicant will not take steps to enforce the order as long as the First Respondent maintains payment of £1000.00 per month towards rent and arrears that it was reasonable to grant the order.

Decision

35. The Tribunal finds the Applicant entitled to an order for the eviction of the Respondent from the property.

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.

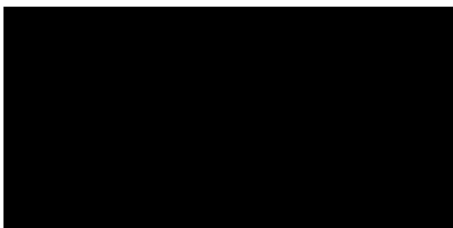
Graham Harding
Legal

27 February 2024
Date

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Legal Member/Chair

27 February 2024

Date