



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/23/2938

Re: Property at 27 Rosemount Buildings, Midlothian, Edinburgh, EH3 8DB (“the Property”)

Parties:

Ms Julie Clamp, C/O Clarity Simplicity Limited, 34 Woodlands Road, Glasgow, G3 6UR (“the Applicant”)

Mr Murat Oztas, 27 Rosemount Buildings, Midlothian, Edinburgh, EH3 8DB (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Ahsan Khan (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 24 August 2023 the Applicant’s representatives, Clarity Simplicity Limited, Glasgow, 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’s representatives submitted a copy of a tenancy agreement, rent statement, Notice to Leave with execution of service, Section 11 Notice with evidence of service and pre-action protocol letter in support of the application.
2. By Notice of Acceptance dated 11 September 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 26 October 2023.
4. The Respondent submitted written representations to the Tribunal by email dated 13 November 2023.
5. A Case Management Discussion was held by teleconference on 30 November 2023. The Applicant did not attend but was represented by Mr Scott Stevenson from the Applicant's representatives. The Respondent attended in person. Although the Respondent accepted that rent was due, he disputed the amount claimed by the Applicant as he said that cash payments had not been taken into account. The Tribunal continued the application to a video hearing as it considered that there was a number of additional pieces of information that could assist the Tribunal and there were disputed matters of fact. The Tribunal issued directions to the parties to lodge submissions and evidence on the issue of the rent account.
6. By email dated 27 February 2024 the Applicant's representatives submitted further written representations to the Tribunal.
7. By email dated 12 March 2024 the Respondent submitted further written representations to the Tribunal and also requested that the hearing be postponed in order that he could obtain a police statement, medical evidence, and bank statements.
8. The Tribunal considered the Respondent's postponement request but noted that the Respondent had been directed at the CMD on 30 November 2023 to submit such further evidence in support of his position and that at that time he had claimed to have bank statements that evidenced that further payments had been made. In the circumstances the Tribunal refused the Respondent's postponement request.

The Hearing

9. A hearing was held by video link on 19 March 2024. The Applicant attended in person and was again represented by Mr Stevenson. The Respondent also attended in person.
10. At the commencement of the hearing the Tribunal noted from the Respondent that it was not disputed that he had been validly served with a Notice to Leave in terms of Grounds 12 and 12A of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). The Tribunal also noted from the case papers that the Respondent had been sent a pre-action letter and that Edinburgh City Council had been sent a Section 11 Notice. The Tribunal also noted from the Respondent that he accepted that at the time of service of the Notice to Leave he had been due at least six months' rent. When asked how much rent was currently due the Respondent thought he was due £13500.00.

11. The Tribunal indicated that as it appeared that it was accepted that the terms of Grounds 12 and 12A had been met the purpose of the hearing was to establish whether in the circumstances it would be reasonable to grant the order sought.
12. The Respondent said that it would not be reasonable to evict him. He did not want to be homeless. He said he had not had a chance to submit medical evidence as he could not get a representative. He said as well as ongoing heart problems which required hospital admission, he suffered from high blood pressure and had been in an accident last September. He also said the Applicant had engaged someone who acted like "a mafia man" to threaten him. This had broken his mental health and contributed to his physical problems. He said that a "PC Elliot" is to call him tomorrow with details of the Police Scotland case against the alleged attacker.
13. The Respondent explained that he worked part-time for a catering company and earned between £700.00 and £800.00 each month. He also explained that he was in receipt of Universal Credit of £276.00 every four weeks. He said that if he was permitted to remain in the property, he would commence paying the rent of £400.00 per month and start to clear the arrears. He said he would be able to do this with some help from family members. The Respondent referred the Tribunal to his written representations and also to a statement prepared by his wife that was then emailed to the Tribunal and to the Applicant's representative.
14. For her part Ms Clamp confirmed in response to a question from Mr Stevenson that the Respondent owed rent of £22200.00 and that the last payments made by the Respondent had been £400.00 on 23 February 2022 and £400.00 on 27 April 2022. Ms Clamp went on to say that the Respondent had offered to enter into repayment plans several times in the past that had come to nothing and that she did not trust him. She said that she no longer communicated with the Respondent because she had been so angry with him.
15. When asked what impact financially the non-payment of rent had upon her, Ms Clamp said that she had been unable to spend as much time with her then terminally ill son as she would have wished and she had also been unable to work because of the stress the Respondent had put her under. Ms Clamp denied that she had employed anyone to threaten or assault the Respondent. She also denied changing the locks at the property and said that when she had tried to arrange a safety inspection at the property the engineer had been unable to gain access as the Respondent had himself changed the lock. The Applicant went on to say that her friend Susan who was a school teacher had only collected cash from the Respondent on one occasion.
16. In response to further questions from the Tribunal the Respondent said that he was no longer frightened to remain in the property. He said that if permitted to stay he would pay the rent of £400.00 together with a further £350.00 per month towards the arrears. The Respondent explained that his wife and children continued to live in London and that he owned a property there along with his

wife that was subject to a mortgage. He disputed that his principal home was in London as his job was in Edinburgh.

17. For the Applicant Mr Stevenson said that he had concerns given the Respondent's income about his ability to maintain payment towards the arrears at the rate proposed by the Respondent. He also spoke of the failure in the past on the part of the Respondent to adhere to payment agreements. Mr Stevenson referred the Tribunal to the lack of evidence that the Respondent had said he would provide and that he had never previously been involved in a case with such high amount of rent arrears and given the circumstances it was reasonable that the Tribunal grant the order sought.
18. The Respondent submitted that if he was permitted to remain in the property, he would commence payment from Monday and that if he failed to maintain payments he would accept being evicted.

Findings in Fact

19. The parties entered into a Private Residential tenancy that commenced on 28 June 2018 at a rent of £400.00 per calendar month.
20. The Respondent fell into arrears of rent not long after the commencement of the tenancy and has paid no rent since April 2022.
21. The Respondent has admitted he owes rent of £13500.00.
22. The Respondent was served with a Notice to Leave by Sheriff Officers on 22 May 2023 under Grounds 12 and 12A of Schedule 3 of the 2016 Act.
23. The Respondent was sent a pre-action letter by the Applicant's representatives on 3 August 2023.
24. Edinburgh City Council was sent a Section 11 Notice by the Applicant's representatives on 24 August 2023.
25. The Respondent is in part-time employment and has income of between £700.00 and £800.00 per month. He is also in receipt of Universal Credit of £276.00 every four weeks.
26. The Respondent is joint owner of a house in London along with his wife and the property is subject to a mortgage.

Reasons for Decision

27. 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 28 June 2018. 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.

28. 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 its decision the Tribunal carefully considered the written and oral evidence before it. Despite being given more than three months to submit the bank statements that the Respondent said he had along with medical evidence and a police report no such documentation was available prior to the hearing to lend any substantive weight to the Respondent's submissions. A statement provided by the Respondent's wife was made available to the Tribunal at the hearing and would tend to suggest that there was an altercation between the Respondent and another person on 21 November 2021 but does not have much greater evidential value than that. The statement is not directly from the Respondent's wife but has been sent from the Respondent. If the Respondent had been subjected to threatening behaviour from a person acting on behalf of the Applicant that would be a matter for the criminal court to determine rather than the Tribunal and whilst the Tribunal has to consider all the circumstances, given the length of time that has past since the alleged incident the Tribunal does not consider that it carries much weight. Similarly, the Respondent has submitted that he has health problems but has not provided any documentary evidence to support his claims and in recent written representations has said that his health has improved significantly. The Respondent has admitted that he owes rent of £13500.00 which is the equivalent of almost 34 months' rent and although the Respondent is in part-time employment and in receipt of Universal credit it is difficult to see given his past record of non-payment how the Respondent would be likely to be able to afford to pay rent and make significant contributions to the admitted arrears. Furthermore, on his own admission the Respondent is joint owner of a property in London that he owns with his wife and which is subject to a mortgage.
29. . The Tribunal noted that the loss of income from the property had an adverse financial effect on the Applicant who had been unable to afford specialised treatment for her son prior to his death. The loss of income had apparently also affected her health although no medical evidence to this effect was produced. Nevertheless, the Tribunal was satisfied that given the very high level of rent arrears it was likely that this would have impacted financially on the Applicant and the Tribunal also noted that it was now the Applicant's intention to sell the property.
30. Even at the reduced sum admitted as due by the Respondent the arrears of rent are exceptionally high and the Tribunal is satisfied that given the Respondent's past history of failed payment plans, his limited income and the fact that he owns another property in London that it is reasonable in the circumstances to grant an order under grounds 12 and 12A of Schedule 3 of the 2016 Act for his eviction from the property.

Decision

31. After carefully considering the written representations and documents and oral submissions the tribunal determined that the Applicant was entitled to an order for the eviction of the Respondent from the property.

32. The decision of the Tribunal is unanimous.

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.

G Harding

Legal Member/Chair

19 March 2024

Date