



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

Chamber Ref: FTS/HPC/EV/23/4113

Re: Property at Ugstonrigg Cottage, Haddington, EH41 3SU (“the Property”)

Parties:

Mr Simon Harrison, Mrs Alison Harrison, 1 Flat 91, Donaldson Drive, Edinburgh, EH12 5FA (“the Applicants”)

Mr Adam Symes, Mrs Camelia Symes, Ugstonrigg Cottage, Haddington, EH41 3SU (“the Respondents”)

Tribunal Members:

Neil Kinnear (Legal Member) and Eileen Shand (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

This was an application for an eviction order dated 15th November 2023 and brought in terms of Rule 109 (Application for an eviction order) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicants sought an eviction order in relation to the Property against the Respondents and provided with their application copies of the private residential tenancy agreement, notice to leave with proof of service, section 11 notice with proof of service, rent arrears statement, and various documents relating to conversion of the Property for non-residential purposes.

All of these documents and forms had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016* and the

Coronavirus (Scotland) Act 2020, and the procedures set out in those Acts appeared to have been correctly followed and applied.

Service was validly effected by advertisement in terms of Rule 6A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, and the Tribunal was provided with confirmation of service by advertisement. Service by sheriff Officer had been unsuccessful as access could not be obtained to the Property due to the front gate being locked.

After service by advertisement, the Respondents contacted the Tribunal by e-mail and asked for copies of the papers to be e-mailed to them. The Tribunal did so.

Thereafter, by e-mail dated 14th March 2024, the Respondents e-mailed the Tribunal. They stated that they wished to defend the application and asked for a postponement. They stated that they required to attend in person to advance a complicated defence concerning many matters including the validity of the lease agreement, the validity of notices, the management of the Property, and the absence of essential documents which they had requested from the Applicants. They stated that they would be abroad on business at the date of the Case Management Discussion and had been unable to engage a legal representative.

The Applicants strongly opposed the request to postpone. They noted that the Respondents had accumulated rent arrears of £31,500.00 and had made no payments of rent for nine months. They considered that the Respondents were simply seeking to delay the granting of an order by the Tribunal. They referred the Tribunal to a previous decision made by it on 20th October 2022, in which the Tribunal made an order for payment of £26,250.00 of rent arrears against the Respondents in respect of the previous property they had rented from a different landlord.

The Tribunal requested further details from the Respondents regarding their location. The Respondents replied that they would be in New York on business. They gave no further details, nor did they provide any vouching by way of airplane tickets or hotel bookings as evidence. They did not provide any details concerning their defence to this application. They did not explain in what respects they challenged the validity of the lease agreement and notices, nor provide any details concerning management concerns about the Property nor regarding any essential documents.

After careful consideration, the Tribunal refused the request to postpone. The Respondents appeared coy in revealing precisely where they were going and failed to provide any evidence in that regard. They also provided no explanation of the basis of their alleged defence to the application, nor of why they were unable to instruct someone to appear on their behalf as representative. In the absence of such details, the Tribunal considered the prejudice to the Applicants of postponing the Case Management Discussion outweighed the prejudice to the Respondents in proceeding. That was particularly so standing the high level of rent arrears incurred, which earlier e-mail correspondence from the Respondents lodged by the Applicants appeared to confirm the Respondents did not dispute that they were liable to pay to the Applicants.

Case Management Discussion

A Case Management Discussion was held at 14:00 on 21st March 2024 by Tele-Conference. The Applicants participated and were represented by Mr Gallagher, solicitor. The Respondents did not participate, nor were they represented.

The Tribunal was satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

Mr Gallagher invited the Tribunal to grant the order sought on grounds 6 and 12 of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*. At the date of the notice to leave of 16th August 2023, rent arrears were £10,500.00. As of 21st March 2024, the rent arrears had risen to £31,500.00. Planning permission and building warrants to convert the Property for non-residential use had been granted.

Mr Gallagher understood the Respondents to live at the Property with two children, but beyond that the Applicants knew little of the Respondents circumstances.

The notice to leave relied on ground 6 of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*. The Tribunal permitted ground 12 of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016* to be included in the application as a stated basis on which an eviction order was sought in terms of section 52(5) of the *Private Housing (Tenancies) (Scotland) Act 2016* upon the basis that the Respondents had been made aware in the application that substantial rent arrears had been incurred by them and that they appeared in e-mail correspondence with the Applicants to acknowledge that.

Rental of £3,500.00 per month was payable in advance in terms of clause 7 of the lease. The Respondent had been in arrears since 1st June 2023 and so had been in arrears of rent for a continuous period of more than three consecutive months. The amount of arrears exceeded an amount that is the equivalent of one months' rent.

Statement of Reasons

In terms of Section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* ("the Act") as amended by the *Coronavirus (Scotland) Act 2020*, the 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.

Para 6 of Schedule 3 to the Act provides that it is an eviction ground that the landlord intends to use the let property for a purpose other than housing. The Tribunal may find that this ground applies if (1) the landlord intends to use the let property for a purpose other than providing a person with a home, and (2) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.

The Tribunal was satisfied that ground 6 had been established. Evidence tending to show the Applicants' intention had been produced, including planning consents and building warrants granted.

Para 12 of Schedule 3 to the Act provides that it is an eviction ground that the tenant has been in rent arrears for three or more consecutive months, and that the Tribunal may find that the ground applies if it is satisfied that it is reasonable on account of that fact to issue an eviction order. In deciding whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenant's 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.

The Tribunal was satisfied that ground 12 had been established. The tenant was in substantial arrears of rent and had been in arrears for a continuous period in excess of three months. The Tribunal was further satisfied that the tenant being in arrears was not wholly or partly due to any delay or failure in the payment of a relevant benefit. There was no evidence to establish any such reason for rent arrears.

In the case of *City of Glasgow District Council v Erhaiganoma* 1993 SCLR 592, The Inner House of the Court of Session stated at page 594 that "Where prima facie reasonableness has been made out, we think that it is then for the tenant to put circumstances before the court to show otherwise."

In this application, the Respondents had not responded to this application advancing any arguments that it was not reasonable to issue an eviction order and had not participated in the Case Management Discussion. The Respondents had put forward no circumstances to show that it would not be reasonable for the Tribunal to issue an eviction order.

Having considered the whole circumstances, the Tribunal was satisfied that it was reasonable to issue an eviction order. The arrears of rent are substantial and the Applicants intend to convert the Property to non-residential use.

Decision

In these circumstances, the Tribunal made an eviction order as sought in this application.

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.



21 March 2024

Legal Member/Chair

Date