



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for eviction/ possession of a Rented Property in terms of Rule 109 of the Procedure Rules.

Chamber Ref: FTS/HPC/EV/22/3979

15 Granton Gardens, Edinburgh, EH5 1AX ("the Property")

Parties:

Gibbins Property Edinburgh Ltd, Easter Clatto Farm House, Blebo Craigs, Cupar, KY15 5UE ("the Applicant(s)")

Kjartan Behm, D J Alexander, John Cotton Centre, 10 Sunnyside, Edinburgh, EH7 5RA (The Applicant's Representative')

Miss Mhairi Irvine, 15 Granton Gardens, Edinburgh, EH5 1AX ("the First Respondent")

Mr James Stuart, 15 Granton Gardens, Edinburgh, EH5 1AX ("the Second Respondent")

Natasha McGourt, Housing and Money Adviser, Granton Information Centre, 134-138 West Granton Road, Edinburgh, EH5 1PE ("the First Respondent's Representative")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal")

Tribunal Members: Jacqui Taylor (Legal Member) and Ann Moore (Ordinary Member)

1. Background

1.1. The Applicant submitted an application to the Tribunal for eviction/ possession of the Rented Property under section 51(1) of the Private Housing Tenancies (Scotland) Act 2016, in terms of Rule 109 of the Procedure Rules.

1.2 The application was dated 1st November 2022. The application stated that the ground for eviction was as follows:

'PRT Notice to Leave served on basis of mandatory ground- the tenancy is in more than three months rent arrears'.

1.3 Documents lodged with the Tribunal were:-

- The Tenancy Agreement dated 6th January 2020. The commencement date of the tenancy was 6th January 2020.
- A rent statement for the period 6th June 2020 to 18th August 2022 which showed rent arrears of £5371 as at 19th October 2021.
- Notice to Leave dated 30th August 2022 advising the Tenants that an application will not be submitted to the Tribunal for an eviction before 30th September 2022.
- Email from the Applicant's representative to the Respondents dated 30th August 2022 sending them the Notice to Leave.
- Section 11 Notice addressed to The City of Edinburgh Council.
- Copies of Pre action letters sent to the Respondents dated 20th October 2021, 25th November 2020, 27th April 2022

2. Written Representations received on behalf of the First Respondent.

The Tribunal received written representations the First Respondent's Representative in the following terms:

'My client is a victim of domestic violence. Her ex-partner, Mr James Stuart, vacated the property on 14 Oct 22 following a domestic incident, involving police. This has had a detrimental effect on my client's mental health as well as on her finances. Mr Stuart mostly took control of the couple's finances before the split and although Miss Irvine was aware they were in some arrears, the extent of which was unknown to her. My client first sought advice from myself in April 22 as she was becoming increasingly concerned about the situation she may find herself in. Please note my client has given me express permission to share this information with the tribunal and is aware it may be made public via the HPC website following a hearing.* •*

My client did receive emails to her junk inbox from DJ Alexander but these had been ignored due to their apparent poor communications. My client was under the impression that Braemore were her agents and was not notified that they had been taken over by DJ Alexander. My client therefore thought these emails were spam and did not open at the time. It was only when my client came into our office that I informed her and she became aware of the merging / take over. This has also been the case with other Braemore tenants.

• My clients only income is Universal Credit (UC) and her full housing costs are covered. You can see that "late payment" charges of up to £70pcm have been added to arrears balance. This makes it near impossible for my client to reduce the balance. She is able to continue paying her full rent and make monthly payments of around £50 if these fees are waived.

• My clients UC award is still a joint claim with Mr Stuart and the money is paid into a joint account to which he has access. My client will notify UC that he vacated on 14 October 22 and ask for award to be paid into her own bank account but this could prove problematic if a) Mr Stuart does not confirm this change and / or b) Miss Irvine cannot show (by way of a new tenancy agreement) that she is the sole tenant. I do not believe Mr Stuart to have formally ended his tenancy with DJ Alexander.

• DJ Alexander has refused to issue a new tenancy in Miss Irvine's name (obviously given the level of arrears, this is perfectly understandable).

- 2 members of staff at PRS (private rented sector) team attempted to contact DJ Alexander last year to help resolve the matter and discuss the possibility of waiving late payment fees but had been advised they didn't hold consent to discuss Mhairi's matters. When this was queried, they failed to respond to either staff member.
- My client does not dispute the level of arrears or the validity of her NTL
- Granting an eviction order would mean my client and her young son would face homelessness and further stress and uncertainty. Although the local authority have a duty towards them, many families, even those with children, end up in unsuitable temporary accommodation which is sometimes out with the local authority area. My client has already experienced trauma and becoming homeless would have a detrimental effect on her already fragile mental health. My client wishes for a fresh start and is working with the local authority to access social housing. My client simply requires more time to ensure she and her young son secure suitable accommodation. If an eviction order is granted, we would be seeking to delay its enforcement. Taking into account the above, it would not be reasonable for the tribunal to issue an eviction order. We respectfully request that the tribunal refuses the applicants request and allows her to continue working with advisers as well as the Local Authority'.

3. Case Management Discussion

This case called for a conference call Case management Discussion (CMD) at 14.00 on 23rd February 2023.

The Applicant's Representative and the First Respondent's Representative attended the CMD.

The Second Respondent did not attend and was not represented. He had been notified of the CMD by Dale Barrett Sheriff Officer on 10th January 2023. The Tribunal were content to proceed with the CMD as the requirements of Tribunal Rule 29 had been satisfied.

4. The Tribunal made the following findings in fact:

4.1. The First and Second Respondents are Tenants of the Property in terms of the lease between the parties. The start date of the Tenancy detailed in the lease was 6th January 2020.

4.2. The lease is a Private Residential Tenancy in terms of the Private Housing Tenancies (Scotland) Act 2016 ('The 2016 Act').

4.3. The Applicants, Gibbins Property Edinburgh Ltd are Landlords of the Property. The Tribunal had a copy of the Applicants' title deeds being Land Certificate MID194031. Section B of the Land Certificate confirmed that the Applicants purchased the Property on 25th October 2018.

4.4 The rent detailed in the tenancy agreement was £795 per calendar month, payable in advance.

4.5 The Notice to Leave was dated 30th August 2022 and it was emailed to the Respondents on 30th August 2022.

4.6 Clause 4 of the lease states that the Landlord and the Tenant agree that all communications under the act, including Notices, will be made in writing using the email addresses set out in the lease.

4.6 The Notice to Leave stated that the Respondent was in rent arrears over three consecutive months, which is Ground 12 of Schedule 3 of the Private Housing (Tenancies) Scotland Act 2016 and that the Applicants would apply to the Tribunal for an eviction order before 30th September 2022.

5. Oral Evidence

5.1 Oral Evidence on behalf of the Applicants.

Mr Behm advised as follows:

5.1.1 The total arrears amount to £5738 or which the rent arrears mount to £3725 which equates to 4.68 months rent.

5.1.2 The rent account has not been in balance since August 2020.

5.2.2 A repayment plan would be beneficial to both parties.

5.2.3 It was reasonable to grant the eviction order. He does not accept that the Respondents were unaware of the level of arrears. They have a policy to contact all tenants by phone calls and emails monthly when rent accounts fall into arrears. The Appellants originally applied to the Tribunal for an eviction application in April 2022 on the basis that the Applicants wanted to sell the Property but the application was rejected by the Tribunal. The Respondents have been aware of the Applicants wish to sell the Property since that time. There has been ample opportunity for the Respondents to pay the arrears over the last two years but they have failed to do so.

5.2.4 He advised that until April 2022 all communications to the Respondents would have been sent from Braemore Letting. Communications would have been sent from D J Alexander after April 2022.

5.2.5 He accepts that the moratorium of evictions provisions within the Cost of Living (Tenant Protection) (Scotland) Regulations apply to this appeal as the application was made after 28th October 2022.

5.2.4 It is reasonable for the Tribunal to grant the eviction order.

5.2 Oral Evidence on Behalf of the First Respondent.

Miss McGourt advised as follows:

5.2.1 She agreed with the arrears figures provided by the Mr Behm.

5.2.2 Mr James Stuart has vacated the Property.

5.2.2 Her client made an offer to D J Alexander to start to pay off the arrears at the rate of £50 per month if the late payment charges were waived but as she did not receive a response to that offer she did not start to make the repayments.

5.2.3 She confirmed that the rent arrears have not arisen due to a delay or failure in the payment of benefits.

5.2.4 Ms Irvine was not aware that DJ Alexander took over the business of Braemore Lettings. Her client thought that emails from D J Alexander were spam. Her client is in a vulnerable position and needs to keep herself and her son safe.

5.2.5 Ms Irvine is trying to set up a full Universal Credit application. As soon as she has taken control of her financial situation she will be able to start to pay the arrears.

5.2.6 Ms Irvine lives in the Property with her son who is three or four years old.

5.2.7 Ms Irvine is in touch with the Private Sector Residential Team at the local authority. She is on their housing list but she has not been classed as a priority case.

5.2.8 Ms Irvine is obtaining advice from a solicitor and Granton Information Centre.

5.2.9 Ms Irvine wishes her situation to be clarified as soon as possible but wishes additional time to be able to arrange alternative accommodation.

6. Decision

6.1. Requirements of Section 109 of the Procedure Rules.

6.1.1 The Tribunal confirmed that the application correctly detailed the requirements of section 109(a) of the Procedure Rules namely:-

- (i) the name, address and registration number of the Landlords.
- (ii) the name and address of the Landlords' representative.
- (iii) the name and address of the Tenants.
- (iv) the ground of eviction. The ground stated in the application is that the tenant is in rent arrears over three consecutive months.

The Tribunal accepted that this is Ground 12 of Schedule 3 of the 2016 Act.

6.1.2 The Tribunal confirmed that the application complied with the requirements of Section 109(b) of the Procedure Rules:

- (i) evidence showing that the eviction ground or grounds had been met.

The rent statement for the period 6th June 2020 to 18th August 2022 had been provided.

- (ii) a copy of the notice to leave given to the Tenant as required by section 52(3) of the 2016 Act.

The Tribunal confirmed that the Notice to Leave was in correct form as set out in Schedule 5 of the Private Residential Tenancies Notices and Forms (Scotland) Regulations 2017.

The Notice to Leave was dated 30th August 2022 and advised the Tenant that the Applicant intends to apply to the Tribunal for an eviction order in respect of the property on the basis of Ground 12 (The Tenant is in rent arrears over three consecutive months). It also advised that an application would not be submitted to the Tribunal for an eviction order before 30th September 2022.

The Tenancy commenced on 6th January 2020. As at 30th August 2022 (the date of the Notice to Leave) the Tenant had resided in the property for more than six months the period of 28 days notice was required.

The Notice to Leave was sent to the Respondents by email on 30th August 2022 and consequently the Respondents had been given the required period of twenty eight days notice.

(iii) a copy of the notice given to the local authority as required by Section 56(1) of the 2016 Act.

The Tribunal confirmed that a copy of the required notice had been provided.

6.1.3 The Tribunal confirmed that the application form had been correctly signed and dated by the Landlords' representatives as required by Section 109(c) of the Procedure Rules.

6.2 The Tribunal acknowledged that the Respondents were due to pay the Applicants rent at the rate of £795 per month. The rent payments were due in advance. At (i) the date of the Notice to Leave (ii) the date of the Application and (iii) today's date the rent arrears exceeded £2385, being the amount of three months rent.

6.3 The Tribunal found that the rent arrears were not due to a delay or failure in payment of a relevant benefit.

6.4 The Tribunal considered the parties representations as to whether it was reasonable to grant the Eviction Order.

The Tribunal were mindful of the decision of Lord Greene in the case of *Cummings v Dawson* (1942) 2 All ER 653 on matters to consider when determining reasonableness:

'In considering reasonableness... it is my opinion, perfectly clear that the duty of the judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad, common sense way as a man of the world, and to come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or more weight, others may be decisive.'

6.6 The Tribunal weighed the respective positions of the parties. They found that it was reasonable for the eviction order to be granted given the considerable amount of the rent arrears owing, the fact that the arrears have been ongoing since August 2020, the fact that the Applicant had issued three preaction letters to the Respondents, which had been produced to the Tribunal, and the fact that the First Respondent is not opposed to the eviction application in principal but has requested time to obtain alternative accommodation.

6.7 Accordingly, the Tribunal found in law that the ground in Schedule 3(12)(1) of the 2016 Act was met.

6.8 The Tribunal found that the provisions of the Cost of Living (Tenant Protection)(Scotland) Act 2022 in relation to delaying evictions apply to this application as the application was received by the Tribunal after 28th October 2022.

6.9 The Tribunal granted the eviction but the Order should not to be executed prior to 12 noon on the earlier of (a) 24^h August 2023, or (b) the expiry or suspension of Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022.

7. 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.

J. Taylor

Legal Member

23rd February 2023