



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/23/0382

Re: Property at FLAT 9 1 Well Spring Close, Edinburgh, EH13 9FD (“the Property”)

Parties:

PFPC MMR 1 LP, 1 Hay Avenue, Edinburgh, EH16 4RW (“the Applicants”)

Ms Jade Elizabeth Aird, FLAT 9 1 Well Spring Close, Edinburgh, EH13 9FD (“the Respondent”)

Tribunal Members:

Rory Cowan (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it was reasonable to grant an eviction order in terms of ground 12A of schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.

- Background

By application dated 6 February 2023 (the Application), the Applicants sought an eviction order relative to the Property in terms of section 51 of the Private Housing (Tenancies)(Scotland) Act 2016 (2016 Act). With the Application, the Applicants, through their representatives, lodged the following:

- 1) Lease dated 14 and 19 April 2022 along with Form AT5;
- 2) Copy Notice to Leave dated 7 September 2022 along with copy intimation email;
- 3) Section 11 Notice;
- 4) Rent statement; and

- 5) Copy email and letters dated 11 January 2023 to the Respondent along with enclosures by way of purported compliance with the then in place pre-action requirements.

In response to a further information request, the Applicants' representative withdrew ground 12A from the terms of the Application and lodged a replacement "paper apart" to go with the Application. This was done by email dated 13 March 2023. Following acceptance of the Application, a Case Management Discussion (CMD) was fixed for 12 June 2023 to be heard by way of conference call.

In advance of the CMD, by email dated 17 May 2023 the Applicants' representatives lodged an amendment application to amend the Application to include Ground 12A again and to base the Application on a more recent Notice to Leave dated 20 March 2023, which had been served on the Respondent by email of the same date. A copy of the intimation email and proof of delivery of same were produced as was a further amended "paper apart". Despite intimation of the Application by sheriff officers to the Respondent, no response was received from or on behalf of the Respondent.

- The Case Management Discussion

The Applicants were represented by Mr Kenneth Caldwell, Solicitor. The Respondent did not appear and was not represented. Notwithstanding, the Tribunal was of the view that she was aware of the CMD and her requirement to attend and that if she failed to do so, the Application could be dealt with in her absence. Mr Caldwell made a motion under Rule 14A of the Tribunal's rules of procedure to amend the Application to base recovery on Ground 12A and the Notice to Leave dated 20 March 2023. The notice period for same had expired on 19 April 2023. He explained that, when the original Notice to Leave had been served, ground 12A had not existed. Following that, the new Notice to Leave dated 20 March 2023 had been served and had expired. The arrears were £8,075 when this Notice to Leave had been served and were now £10,550. Standing the position outlined by Mr Caldwell and there being no opposition to same despite the proposed amendment being intimated to the Respondent, the Tribunal acceded to that request and amended the Application accordingly. Mr Caldwell, for the sake of completeness, confirmed that no order was now sought under ground 12 of schedule 3 of the 2016 Act.

The Notice to Leave included a rent statement showing the level of arrears as at the date of service. The Tribunal was satisfied that, as a result of the level of arrears, Ground 12A had been made out. The next issue was to consider the reasonableness of the request for an eviction order. Mr Caldwell outlined that, despite the tenancy only commencing on 14 April 2022, the arrears were substantial. That from the outset, the Respondent had only made 2 payments to account one of which was her first payment of partial rent to the end of April 2022. The next payment of rent was not made until a few days after the first Notice to Leave had been served on her. He also stated that the Applicants and their agents had been in touch with the Respondent regarding her arrears and she had promised various repayment proposals and adhered to none of them. The last contact they had with the Respondent was on 22 February 2023 where she had "promised" to make a payment of £1,000 that day and then start making payments at the rate of "£400-500" per week thereafter to clear the arrears but had again failed to do so.

In terms of the Respondent herself, Mr Caldwell indicated that she was 32 Years old. She lived alone and had no dependents. At the time she entered into the tenancy she had been a self-employed taxi driver. It seems she lost her employment at some point and then claimed she had secured alternative employment but had not disclosed what that new employment was. He also indicated there was no suggestion of her being entitled to any state benefits. The Tribunal also considered the terms of the letter dated 11 January 2023. Mr Caldwell explained that this had been issued with a copy of the tenancy agreement, a current rent statement and a copy of the "Private Rented Sector Tenant Support" document that had been prepared for use under the then in place pre-action requirements. Mr Caldwell indicate that similar letters had been sent on 7 September 2022 and 20 March 2023 with the Notices to Leave although these were not produced with the Application.

- Findings in Fact and Law

- 1) That the Applicants are the heritable proprietors of the Property.
- 2) That the Applicants and Respondent, entered into a tenancy for the Property which commenced on 14 April 2022.
- 3) The monthly rent was £825.
- 4) By Notice to Leave dated 20 March 2023 intimated by way of email the Applicants gave notice to the Respondent of their intention to recover possession of the Property in terms of Ground 12A of the Private Housing (Tenancies)(Scotland) Act 2016 and confirmed that proceedings would not be raised before 19 April 2023.
- 5) That, as at 20 March 2023, the Respondent was in arrears of rent to the extent of £8,075, which amounted to more than 6 months total rent arrears.
- 6) That the Respondent had made only 2 payments to account of rent following commencement of her tenancy for the Property.
- 7) That, as at 12 June 2023, the arrears had risen to £10,550.
- 8) That the Applicants have sought to engage with the Respondent to address her arrears.
- 9) That, the Respondent did not adhere to any payment plans.
- 10) That attempts to engage with the Respondent included the letter dated 11 January 2023 which included details of terms of the tenancy and included a copy of the tenancy agreement, the rent, the level of rent arrears and included a rent statement as at that date. That the said letter also included a copy of the Private Rented Sector Tenant Support" resource prepared by the Scottish Government, which provided information as to tenant's rights in relation to possession proceedings and how to access support and further information.
- 11) The Notice to Leave dated 20 March 2023 was in the prescribed format.
- 12) That the Applicant has complied with all notice requirements in terms of the Private Housing (Tenancies)(Scotland) Act 2016 and that Ground 12A of Schedule 3 has been made out.

- Reasons for Decision

The Applicants have complied with the notice requirements under the 2016 Act. Standing the level of arrears as at 20 March 2023, the arrears were "substantial" and the requirements of Ground 12A of Schedule 3 were also made out. The only issue

remaining for the Tribunal was whether it was reasonable to grant an Eviction Order in the circumstances. Having heard Mr Caldwell and having considered the relevant circumstances before them, the Tribunal was satisfied that it was reasonable to grant an Eviction Order. Whilst there was no appearance by or on behalf of the Respondent, the Tribunal did seek information from Mr Caldwell about her circumstances. There was nothing in the circumstances of the Applicants that Mr Caldwell wished to put before the Tribunal. It was noted that she was relatively young and had no dependents. That she had been working although she may have lost her employment for a period of time. It was also noted that there was no suggestion of an entitlement to any form of benefits that might assist with payment of her rent. The arrears are substantial and continue to accrue. It appeared from the rental statements that the Respondent had made little or no attempt to pay her rent. Mr Caldwell detailed various times when promises had been made by the Respondent to clear the arrears, but that had not been adhered to. It therefore appeared to the Tribunal (in the absence of a contra position advanced by the Respondent) that she had been given a number of opportunities to address the issue of her arrears and had not done so. Whether this was “deliberate” non-payment as suggested by Mr Caldwell, is not something the Tribunal require to opine upon. The main factors that weighed against the Respondent were the scale of the arrears, that they continue to accrue and that they had arisen over such a short period of time with only 2 payments towards rent being made from the start date of the tenancy.

The Tribunal also considered the terms of the letter dated 11 January 2023. It was not in the form of the template letter produced by the Scottish Government. However, it did advise of the monthly rent, it did specify the arrears at that stage (including providing a rent statement), it did include a copy of the tenancy agreement and it was also sent with a copy of the “Private Rented Sector Tenant Support” resource that had been prepared for use under the then applicable pre-action requirements. The Tribunal had regard to the terms of regulation 4 the Rent Arrears Pre-action Requirements (Coronavirus)(Scotland) Regulations 2020. Whilst it was noted the template letter had not been used, there was no requirement to do so under the regulations. The Tribunal thereafter considered the terms of the letter dated 11/1/23 and its enclosures and determined that, there had, at very least, been substantial compliance with the pre-action requirements.

- Decision

That an Eviction Order should be granted.

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.

Rory Cowan

Legal Member/Chair

Date

12 June 2023