



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/21/2419

Re: Property at 10 Crewe Grove, Edinburgh, EH5 2JY (“the Property”)

Parties:

Mr Stephen Rose, 31 Barnton Avenue West, Edinburgh, EH4 6DF (“the Applicant”)

Mr Laurentiu Pledea, Mr Constantin Plesea, 10 Crewe Grove, Edinburgh, EH5 2JY (“the Respondents”)

Tribunal Members:

Fiona Watson (Legal Member) and Melanie Booth (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondents for eviction of the Respondents from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 12 under schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

- Background
- 1. An application was submitted to the Tribunal under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). Said application sought a repossession order against the Respondents on the basis of rent arrears accrued by the Respondents under a private residential tenancy, being Ground 12 under Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”).

- Case Management Discussion
2. A Case Management Discussion (“CMD”) took place on 25 March 2022. The Applicant was represented by their letting agent, Mr Kerr of IME DJK Group Lt. The Respondents did not attend nor were they represented. The papers had been served on the Respondents by Sheriff Officer on 10 February 2022. The Tribunal, was satisfied that the Respondents had received notification of the CMD and that the CMD could proceed in their absence.
 3. The Applicant’s representative moved for the Order to be granted as sought. The parties had entered into a Private Residential Tenancy Agreement (“the Agreement”), which commenced 15 March 2020. The Respondents had fallen into arrears of rent. The monthly rent was £850. A Notice to Leave had been served on the Respondents on the basis of Ground 12 of Schedule 3 to the 2016 Act, on 24 February 2021. The Respondents had been in continuous arrears for at least 3 months and the arrears at the date of the CMD stood at £13,780. The rent statement lodged with the application was only to 15 February 2021 and nothing further had been lodged to show any update on the rent account.
 4. A letter sent to the Respondents and dated 11 February 2021 had been lodged with the application to show compliance with the Pre-Action Requirements (“PARs”) in terms of the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. Said letter highlighted the arrears due and signposted the Respondents to advice agencies for help and support with financial matters. When asked what further correspondence had been had with the Respondents since then, the Mr Kerr was unable to confirm.
 5. Mr Kerr submitted that there were not believed to be any children in the household, and at least one of the Respondents had been known to be in employment some time ago, albeit the current situation was not known. They were believed to still be residing in the Property.
 6. The CMD was adjourned firstly to allow the Applicant’s representative to produce an up-to-date rent statement showing the current balance of arears and secondly, for further information to be provided as to what steps, if any, had been taken to contact the Respondents since the letter of 11 February 2021 was issued.
 7. When the CMD reconvened, the Applicant’s representative had provided the Tribunal with an up-to-date rent statement showing that the current arrears stood at £13,780 and that nothing had been paid at all since June 2021. Mr Kerr further submitted that since the letter of 11 February 2021, they had been advised by the Respondents that they did not use email as they had no internet access, so text messages were sent to them from the letting agent’s system advising them of the arrears and asking if they had vacated the Property. There was a record on their system of this happening in September 2021 but not since. There had been no reply from the Respondents.

8. The following documents were lodged alongside the application:

- (i) Copy Private Residential Tenancy Agreement
- (ii) Copy Notice to Leave
- (iii) Proof of service of the Notice to Leave
- (iv) Section 11 notification to the local authority under the Homelessness etc. (Scotland) Act 2003
- (v) Rent statement
- (vi) Letter to the Respondents of 12 February 2021

- Findings in Fact

9. The Tribunal made the following findings in fact:

- (i) The parties entered into a Private Residential Tenancy Agreement (“the Agreement”) which commenced on 15 March 2020;
- (ii) In terms of Clause 8 of the Agreement the Respondents were due to pay rent to the Applicant in the sum of £850 per calendar month payable in advance;
- (iii) The Applicant has served a Notice to Leave on the Respondents on the basis of Ground 12 of Schedule 3 to the 2016 Act, and which was served on 24 February 2021
- (iv) The Respondents have been in continuous arrears of rent since May 2020;
- (v) The Respondents are in arrears of rent amounting to £13,780 at the date of the CMD;

- Reasons for Decision

10. Section 51 of the 2016 Act states as follows:

51 (1) The First-tier 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.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may or must find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

11. Ground 12 of Schedule 3 to the 2016 Act states as follows:

12(1) *It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.*

(2) *The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—*

(a) *at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant—*

(i) *is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day, and*

(ii) *has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, and*

(b) *the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.*

(3) *The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—*

(a) *for three or more consecutive months the tenant has been in arrears of rent, and*

(b) *the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.*

(4) *In deciding under sub-paragraph (3) 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.*

(5) *For the purposes of this paragraph—*

(a) *references to a relevant benefit are to—*

(i) *a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971),*

(ii) *a payment on account awarded under regulation 91 of those Regulations,*

(iii) *universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,*

(iv) *sums payable by virtue of section 73 of the Education (Scotland) Act 1980,*

(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.

12. The Tribunal was satisfied that a Notice to Leave had been served on the Respondents and which specified that ground, in accordance with the requirements of section 52 of the 2016 Act. The Tribunal was satisfied that the terms of Ground 12 of Schedule 3 to the 2016 Act had been met, namely that the Respondents had been in continuous arrears of rent for at least three months up to and including the date of the CMD and further that the arrears of rent are an amount which is greater than the amount due to be paid as one month's rent. The Tribunal was satisfied that there was no information before it to suggest that the Respondents being in arrears of rent over that period was either wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

13. Schedule 1 of the Coronavirus (Scotland) Act 2020 which is in force at the time of determining this application, sets out at section 1 as follows:

1(1) The Private Housing (Tenancies) (Scotland) Act 2016 applies, in relation to a notice to leave within the meaning of section 62 of that Act served on a tenant while this paragraph is in force, in accordance with the modifications in this paragraph.

(2) Section 51(2) (First-tier Tribunal's power to issue an eviction order) has effect as if the words "or must" were repealed...

(3)...(i) (in paragraph 12 (rent arrears), sub-paragraph (2) were repealed.

14. The Tribunal is accordingly required to determine the reasonableness of the Order being sought, regardless of the level of arrears.

15. The Tribunal was satisfied that in all of the circumstances, it was reasonable to grant the Order sought. The Respondents had been in arrears of rent since May 2020. No explanation had been given by them as to the reason for falling into arrears. The arrears were now very high, sitting at £13,780 at the date of the CMD. Whilst the Tribunal was satisfied that the Applicant's representative had taken some steps to try and engage with the tenant, offer them assistance and signpost to appropriate advice agencies, the Tribunal did consider that they could have done more. Only one letter appeared to have been sent to the

Respondents, on 12 February 2021. Since then, some text messages were sent, but nothing was done after September 2021. Whilst it's noted at that point that the arrears were already substantial (£8,680) this should not result in a letting agent stopping contact with the tenants. The Tribunal noted that a letting agent should have a procedure in place for dealing with a tenant in arrears and it appeared that that may not have been followed in this case. This is something that the Applicant's representative should review going forward. However, given that some steps had been taken at least, and weighed against that the considerable level of rent arrears accrued and lack of payments for a long time, the Tribunal was satisfied that the Order should be granted.

- Decision

16. The Tribunal granted an order against the Respondents for eviction of the Respondents from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 12 under schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

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.

Fiona Watson

Legal Member/Chair

Date: 25 March 2022