



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 (Act)

Chamber Ref: FTS/HPC/EV/23/0476

Re: Property at 1/6 Hutchison Park, Edinburgh, EH14 1RG (“the Property”)

Parties:

Miss Shona Hogg, 12 Robertson Avenue, Prestonpans, EH32 9AL (“the Applicant”)

Mr Christopher Derwin, Miss Chantelle Brown, 1/6 Hutchison Park, Edinburgh, EH14 1RG (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for eviction and recovery of possession be granted

Background

This is an application under Rule 109 and section 51(1) of the Act for eviction and recovery of possession on Grounds 12 & 12A of Schedule 3 to the Act.

The Tribunal had regard to the following documents:

1. Application received 14 February 2023;
2. Private Residential Tenancy Agreement (**PRTA**) commencing 25 July 2020;
3. Notice to Leave dated 1 November 2022 and served by email on 31 October 2022;
4. Pre-Action Letters of 5 September 2022 and 20 October 2022;
5. Section 11 Notice to Local Authority and confirmation of receipt;
6. Rent Arrears Statements at date of service of Notice to Leave and CMD;

7. Sheriff Officer Certificate of Service of Tribunal CMD Notification on Respondent dated 17 April 2023;
8. Written Representations from the Applicant dated 27 March and 7 May 2023 enclosing up to date statement of rent arrears.

Case Management Discussion (CMD)

The case called for a CMD by conference call on 19 May 2023. The Applicant did not participate but was represented by her father. The Respondents did not participate and were not represented.

The Tribunal delayed the start of the CMD to see if the Respondents would participate but they did not.

The Tribunal were satisfied that the Respondents had received notification of the Case Management Discussion and that the Tribunal could determine the matter if it considered it had sufficient information to do so and the procedure was fair. The notification also advised the Respondents that they should attend and the Tribunal could determine the matter in absence if they did not.

The Applicant's Representative confirmed that the amount of arrears had increased to £4,350 (under deduction of the amount an order had already been obtained for in the sum of £2,815). As far as the Applicant is aware the Respondents are still living in the Property. The Applicant's Representative described the lack of engagement the Respondents had with the tenancy. He had made attempts to contact them and discuss the arrears. The Applicant's belief is that the Respondents live on their own with no dependents in the Property and they are both working.

This Property is the Applicant's own Property which she is paying a mortgage on. She doesn't have any other rental Properties.

The Applicant's Representative submitted that it was reasonable to amend the application to include Ground 12A and to grant the eviction order having regard to the significant arrears.

The Tribunal had regard to Ground 12A of Schedule 3 to the Act which provides:

substantial rent arrears

12A(1) It is an eviction ground that the tenant has substantial rent arrears.

(2) The First-tier Tribunal may find that the ground named by [sub-paragraph \(1\)](#) applies if—

(a) the tenant has accrued rent arrears under the tenancy in respect of one or more periods,

(b) the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy when notice to leave is given to the tenant on this ground in accordance with section 52(3), and

(c) the Tribunal is satisfied that it is reasonable to issue an eviction order.

(3) In deciding under [sub-paragraph \(2\)](#) whether it is reasonable to issue an eviction order, the Tribunal is to consider—

(a) whether the tenant being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit,

(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers under paragraph 12(4)(b) (and continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022).

(4) For the purpose of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the Housing Benefit Regulations 2006 ([S.I. 2006/213](#)),

(ii) a payment on account awarded under regulation 93 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.

The Tribunal then considered the documentary and oral evidence it had received from the Applicant and in so far as material made the following findings in fact:

1. The Parties let the subjects under a PRTA commencing 25 July 2020;
2. The monthly rent was £695;
3. Notice to Leave had been served on the Respondents on 1 November 2022;
4. As at the date of service of the Notice to Leave the Respondents were in arrears of rent and had been in arrears for a continuous period of three or more consecutive months;
5. As at the date of the CMD the Respondent was in arrears of rent in the sum of £4,350 (in excess of 6 months arrears);
6. The rental arrears were not due to any delay or failure in the payment of a relevant benefit;
7. Section 11 notification had been served on the local authority;
8. The Respondents live in the Property on their own and has no dependents in the Property;
9. The Respondents both work;
10. The Property was owned by the Applicant and subject to a mortgage. She had no other rental Properties.

The Tribunal was satisfied that it was reasonable in the circumstances of this case under section 52(5)(b) to allow the amendment of the application to include Ground 12A despite the Ground not having been included in the Notice to Leave. The application to include Ground 12A had been made within the application form in

respect of this case and had been served on the Respondents. The Respondents had not lodged any opposition to this.

The Tribunal considered that Ground12A had been established and it was reasonable to grant the application for eviction and recovery of possession given the significant rent arrears which continued to increase.

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.

Alan Strain

19 May 2023

Legal Member/Chair

Date