

**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**

**Chamber Ref: FTS/HPC/EV/23/0939**

**Re: Property at Flat 4, 18 Castlevue Drive, Edinburgh, EH16 4BF (“the Property”)**

**Parties:**

**Places for People Homes Ltd, 1 Hay Avenue, Edinburgh, EH16 4RW (“the Applicant”)**

**Mr Stuart Davis, Mr John Davis, Flat 4, 18 Castlevue Drive, Edinburgh, EH16 4BF “the Respondents”)**

**Tribunal Members:**

**Valerie Bremner (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision (in absence of the Respondent Stuart Davis)**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted against both Respondents in terms of Ground 12A of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 in that the tenants are in rent arrears of an amount which exceeds six months’ rent at the time the Notice to Leave was served and at the date of the hearing and it is reasonable to grant the order.

**Background**

1. This application for an eviction order was first lodged with the tribunal on 22<sup>nd</sup> March 2023 and accepted by the tribunal on 11th August 2023. A case management discussion was fixed for the 24th of November 2023 at 10:00 am. A related application for payment with reference (CV/23/0936) also called against the Respondent.

2. The application was made originally against the Respondent Stuart Davis only but by letter of 16th June 2023 the Applicant’s representatives requested that the

application be amended to include John Davis as an additional Respondent in the application. The tribunal accepted that due to an administrative error the application and papers were not initially served on the respondent John Davis.

3. At the case management discussion on 24th November 2023 the tribunal had sight of the application, a tenancy agreement, Notices to Leave in respect of both of the Respondents, a notice in terms of section 11 of the Homelessness etc (Scotland) Act 2023, a rent statement, an updated rent statement, a pre action protocol letter sent to the Respondent Stuart Davis, papers apart giving information, a series of emails between the Applicant's representative and the tribunal and emails between the Applicant's solicitor and Mr John Davis.

4. The case management discussion was attended by Mr Caldwell solicitor of Patten and Prentice LLP, as representative for the Applicant which at that time was said to be Places for People (Scotland)Ltd. There was no appearance at that stage by or on behalf of the Respondent Stuart Davis. The tribunal legal member noted that the application and supporting papers had been served on him by sheriff officer and was satisfied that he had been given fair notice of the application for eviction and the time and date of the case management discussion. The tribunal legal member explained to Mr Caldwell that the tribunal papers had not been served on John Davis and the application appeared to be calling in relation to Stuart Davis only.

5. Mr Caldwell intimated that he had been in contact with Mr. John Davis by email and noted that in relation to an email with notification of updated rent arrears that Mr John David had responded suggesting he wanted the matter to be over and had been trying to get his name of the tenancy for around 4 years.

6. Mr Caldwell asked the tribunal to allow him time to see if he could bring Mr. John Davis on to the call-in order to have the matter dealt with.

7. The tribunal adjourned for a short period of time and reconvened via the teleconference. At that time Mr Caldwell was joined on the call by Mr. John Davis, the second tenant in relation to the tenancy agreement between the parties. The tribunal legal member explained why Mr Caldwell had asked Mr Davis to come on the call. It was also explained in full to Mr. John Davis what the application concerned and why he had been asked to attend. Mr. John Davis gave an e-mail address and permission for the tribunal to contact him on that address and was sent the application and supporting papers by e-mail. Mr. John Davis did not wish time to consider the papers or indeed to request an adjournment in order to take legal advice on his position. His main concern was the large sum outstanding by way of rent arrears and that he would not be held accountable for that legally. He understood that the eviction action as ongoing and had received a Notice to Leave by email. Mr Caldwell gave him an undertaking that the related payment order application which was due to call at the same teleconference was in relation to Mr Stuart Davis only and that no sums would be sought against him. Mr John Davis did not object to the application being amended to include his name, he gave a current address to the tribunal and did not object to an eviction order being granted it having been explained to him that because the tenancy was a joint tenancy that the only way to end the tenancy in this circumstance was to proceed against both tenants.

8. Mr Caldwell clarified that the tenancy agreement was in the name of touchstone in error. Touchstone where the letting agents and the landlords were Places for People Scotland Limited and this had been explained to the tenants at an earlier stage. Mr Caldwell further intimated that from the 1st of November 2023 the assets of Places for People Scotland Ltd had been acquired by Places for People Homes Ltd. He said these were a group of companies and he requested to amend the name of the Applicant to reflect that. He advised that correspondence had been sent to both Respondents intimating the change of landlord. There was no objection to this change by Mr John Davis.

9. The Respondents had entered into a tenancy agreement at the property with effect from the 18th of June 2018. The rent, payable four weekly, had started out at £675 per calendar month and had increased in April 2019 to £695.25. The rent had increased to £716 per month with effect from March 2020 and had been increased again with effect from April 2021 to £731.04. In June 2022 the monthly rate had been increased to £759.55. These increases had been properly intimated to the Respondents. On 16th January 2023 a Notice to Leave was served on the Respondent Stuart Davis based on rent arrears which at that date stood at £17,479.21. Rent arrears at the property at that stage had started to accrue in October 2019 and no rent had been paid at all since August 2021.

10. It was accepted that the second Respondent John Davis had ceased to occupy the property before the rent arrears had accrued in terms of the tenancy agreement. The remaining Respondent Stuart Davis, Mr John Davis's brother had remained at the property and was known to be working at the start of the tenancy and was not eligible for benefits. He had refused to engage regarding the rent arrears over a lengthy period and it was not known in detail why these arrears had reached £25186.49 in terms of an updated rent statement lodged with the tribunal.

11. In March 2023 the Applicant's solicitor sent a pre action protocol letter to the Respondent Stuart Davis, also sending him information regarding sources of support if in financial difficulty.

12. On 2<sup>nd</sup> June 2023 a Notice to Leave was emailed to the Respondent Stuart Davis setting out the eviction would be sought in terms of ground 12 and 12A of Schedule 3 of the 2016 Act and setting out the level of rent arrears accrued. On 14<sup>th</sup> June 2023 a Notice in the same terms was sent to the Respondent John Davis. Mr Davis acknowledged that he had received this notice.

13. On 5th July 2023 a notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 was sent to Edinburgh City Council naming both tenants.

14. Mr Caldwell advised that was seeking an eviction order in terms of ground 12A of the 2016 Act only given that it was not affected by the terms of the Cost of Living (Tenant Protection) (Scotland) Act 2022

15. The tribunal was satisfied that it had sufficient information upon which to make a decision and that the proceedings had been fair.

## **Applicable Law**

### **Section 52 of the Private Housing (Tenancies) (Scotland) Act 2016**

Applications for eviction orders and consideration of them

(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—

(a) subsection (3), or

(b) any of sections 54 to 56 (but see subsection (4)).

(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.

(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—

(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or

(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

## **Findings in Fact**

16. Places for People Scotland Ltd entered into a tenancy agreement at the property with the Respondents Stuart and John Davis with effect from the 18th of June 2018.

17. The rent at the start of the tenancy was £675 to be paid four weekly in advance but this was properly increased on an annual basis and with effect from June 2022 the four weekly rent payable was increased to £759.55.

18. Rent arrears started to accrue at the property with effect from October 2019 and by January of 2023 stood at £17,479.21.

19. The Respondent John Davis left the property before the rent arrears accrued but as there were joint tenants the tenancy agreement continued.

20. In March 2023 agents for the landlord wrote to the Respondent Stuart Davis setting out the level of rent arrears and referring him to sources of financial help.

21. A Notice to Leave dated 2<sup>nd</sup> June 2023 giving proper notice of the intention to apply for eviction in terms of grounds 12 and 12A of Schedule three of the Private Housing (Tenancies) (Scotland) Act 2016 was intimated to Stuart Davis indicating that the earliest date that an application would be made to the tribunal for an eviction order would be 3<sup>rd</sup> July 2023.

22. A notice to leave dated 14<sup>th</sup> June 2023 giving proper notice of the intention to apply for eviction in terms of grounds 12 and 12 of Schedule three of the Private Housing (Tenancies) (Scotland) Act 2016 was intimated to John Davis by e-mail indicating the earliest date that an application will be made to the tribunal for an eviction order would be 15<sup>th</sup> July 2023.

23. A notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 was intimated to Edinburgh City Council in respect of both Respondents by e-mail of 5<sup>th</sup> July 2023.

24. At the time the Notices to Leave were served on the Respondents rent arrears had accrued to the level of £21,276.96 in terms of this tenancy.

25. As at the time that the Notice to Leave was intimated to both Respondents and at the date of the case management discussion substantial rent arrears exist in terms of the tenancy agreement and these are well in excess of the value of six months' rent.

26. The Respondent Stuart Davis was known to be working at the start of the tenancy agreement and is believed not to be in receipt of benefits.

27. It is not known why the rent arrears at the property have accrued as the respondent Stuart Davis has not engaged with attempts to communicate with him regarding the rent arrears.

28. In November 2023 the assets of the landlord including this property were transferred to a related company Places for People Homes Ltd and this was intimated to both Respondents.

### **Reasons for Decision**

29. The tribunal was satisfied that the proper procedures had been carried out in relation to the service of Notices to Leave and a notice in terms of the Homelessness etc (Scotland) Act 2003. The tribunal allowed John Davis to be added as a party with his consent and he waived the right to notice of the papers and case management discussion, the papers being served on him by email during the call. In relation to the

application and supporting paperwork. This was explained to him, and he declined to seek to adjourn the case management discussion to obtain advice. The full import of what was happening in relation to the eviction action was explained to him. He was keen to bring the tenancy to an end as his name has been on it for a number of years after he ceased to occupy the property.

30.The Tribunal considered that the only way to bring the joint tenancy to an end given the terms of the legislation was to grant an order against both tenants. The tribunal decision of *Tadakamalla v Jardine* EV/19/3532 is in point here.


31.In terms of reasonableness the rent arrears which had accrued in relation to this application were very substantial and no rent had been paid since August 202. The Respondent Stuart Davis had failed to engage with the tribunal or to attend the case management discussion so his circumstances are unknown. The tribunal therefore had little in the way of information to balance in relation to the Respondents' position as against the landlord's desire to seek an eviction order due to the large sum of accrued rent arrears. In all the circumstances before the tribunal it was considered reasonable to grant the order.

## **Decision**

The Tribunal determined that an eviction order be granted against both Respondents in terms of Ground 12A of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 in that the tenants are in rent arrears of an amount which exceeds six months' rent at the time the Notice to Leave was served and it is reasonable to grant the order.

## **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.**



**Legal Member/Chair**

24.11.23

**Date**