



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 (“the Act”)

Chamber Ref: FTS/HPC/EV/23/1776

Re: Property at Flat 3, 3 Seacole Square, Edinburgh, EH16 4ZF (“the Property”)

Parties:

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

Demi Gillespie, Ben Potter, Flat 3, 3 Seacole Square, Edinburgh, EH16 4ZF (“the Respondents”)

Tribunal Members:

Ms H Forbes (Legal Member) and Miss E Munroe (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted.

Background

1. This is an application for an eviction order made on 31st May 2023 in terms of Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) under ground 12 and 12A of Schedule 3 of the Act. The Applicant lodged a copy of the private residential tenancy agreement between the parties, which commenced on 3rd September 2021 with a monthly rent of £785, copy rent increase notifications, a rent statement, section 11 notice with evidence of service, copy notices to leave with evidence of service and pre-action requirement correspondence.
2. Notification of the application and the forthcoming Case Management Discussion upon the Respondents was carried out by Sheriff Officers on 12th September 2023.
3. An updated rent statement showing arrears in the sum of £10,608.71 was lodged by the Applicant’s representative on 13th September 2023.
4. A Case Management Discussion (“CMD”) took place by telephone conference on 19th October 2023. Mr Kenneth Caldwell, Solicitor, was in attendance on

behalf of the Applicant. The Respondents were not in attendance. The Tribunal considered the terms of Rule 29. The Tribunal determined that the requirements of Rule 17(2) had been satisfied, and it was appropriate to proceed with the application in the absence of the Respondents.

5. The Tribunal raised a preliminary issue in that the date inserted at part 4 of the notices to leave (6th April 2023) appeared to be incorrect. The notices were dated and served on 7th March 2023. Mr Caldwell submitted that the notices to leave had been correctly completed, and this was in line with Scottish Government guidance. However, he said he was aware that a contrary position was taken in Adrian Stalker's *Evictions in Scotland*. Mr Caldwell said he was now serving further notices to leave in such cases, with the date at part 4 calculated in line with the view taken in *Evictions in Scotland*. He had served further notices to leave on the Respondents dated 24th May 2023. The notices became active on 24th June 2023. Mr Caldwell submitted that the Tribunal could use the discretion afforded by the Act to allow him to rely upon the new notices despite the fact that the application was raised during the notice period. Mr Caldwell offered to provide copies of the new notices to leave. Mr Caldwell addressed the Tribunal on the reasonableness of granting an order for eviction.
6. The Tribunal decided the notices to leave as lodged were not valid as the date stated at part 4 was incorrect. The notices failed to achieve the purpose of informing the Respondents of the correct date on which the landlord becomes entitled to make an application for an eviction order. The Tribunal agreed to accept copies of the new notices, and to continue the CMD to another CMD to allow the Respondents to be notified of the Applicant's position in relying on the new notices, and the discretionary provisions of section 52(4) of the Act.
7. Parties were notified of a further CMD to take place on 13th November 2023 by letter dated 25th October 2023.
8. By email dated 9th November 2023, the Applicant representative lodged an updated rent statement showing rent arrears in the sum of £12,313.13.

The Case Management Discussion

9. A CMD took place by telephone conference on 13th November 2023. Mr Kenneth Caldwell was in attendance on behalf of the Applicant. The Respondents were not in attendance.
10. The Tribunal considered the terms of Rule 29. The Tribunal determined that the requirements of Rule 17(2) had been satisfied, and it was appropriate to proceed with the application in the absence of the Respondents.
11. Mr Caldwell maintained his position that the original notices to leave were valid, and pointed out that Scottish Government guidance continues to support his position. However, he accepted that the Tribunal had decided otherwise and submitted that it would be reasonable for the Tribunal to

exercise its discretion in terms of section 52(4) of the Act by granting an order despite the fact that the application was made during the notice period in respect of the second notices to leave.

12. Mr Caldwell addressed the Tribunal on reasonableness. The arrears are now £12,313.13. The Respondents are not communicating with the Applicant. The tenancy is not sustainable. It is believed the Respondent, Ms Gillespie, gave birth in February 2023. There was a request to remove Mr Potter from the tenancy in April 2023, but this was not progressed. There had been some past discussion about Ms Gillespie entering into a Trust Deed, but no further information was available in that regard. There is no information to suggest the Respondents are receiving any housing assistance as part of Universal Credit, but they may be receiving direct payments. There has been no response to communications. The Applicant is a company with a large letting portfolio. Mr Caldwell moved the Tribunal to grant the eviction order under ground 12A.

Findings in Fact and Law

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- (i) Parties entered into a private residential tenancy agreement in respect of the Property that commenced on 3rd September 2021 with a monthly rent of £785.
 - (ii) The monthly rent was increased in May 2022 to £827.39.
 - (iii) The monthly rent was increased in August 2023 to £852.12.
 - (iv) The Applicant has served notices to leave upon the Respondents.
 - (v) The Respondents have accrued rent arrears.
 - (vi) The Respondents had substantial rent arrears which exceeded an amount that is the equivalent of 6 months' rent at the time of serving the notices to leave.
 - (vii) The Respondents being in rent arrears is not as a result of a delay or failure in the payment of a relevant benefit.
 - (viii) The Applicant has complied with the pre-action protocol.
 - (ix) It is reasonable to entertain the application despite it being made in breach of section 54 of the Act.
 - (x) It is reasonable to grant an eviction order.

Reasons for Decision

14. Section 54(1) of the Act provides that a landlord may not make an application to the Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice. In this case, the second notices to leave were served on 24th May 2023, becoming active on 24th June 2023. The application to the Tribunal was made on 31st May 2023.
15. Section 52(4) of the Act provides that the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.
16. The Tribunal considers it is reasonable to entertain the application despite the breach of section 54. The Respondents were initially served with notices to leave on 7th March 2023, thereby becoming aware of the Applicant's intention to raise proceedings. Having become aware that the notices may be subject to challenge, the Applicant's representative saw fit to serve further notices to leave on 24th May 2023. In the intervening period to date of almost six months, the Respondents have paid no further rent and the arrears are significant. The Tribunal considers there would be significant prejudice to the Applicant if the Tribunal's discretion in terms of section 52(4) was not exercised. The tenancy would appear to have been unsustainable for a considerable period of time, with no rent paid, no payment towards arrears, and no communication from the Respondents. It would not be reasonable for the Tribunal to refuse to exercise its discretion and allow the arrears to continue to accumulate.
17. Ground 12A of Schedule 3 of the Act provides that it is an eviction ground that the tenant has substantial rent arrears. The Tribunal may find that this applies if the tenant has accrued rent arrears and the cumulative amount of the arrears equate to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy when notice to leave is given. The Tribunal must be satisfied that it is reasonable to issue an eviction order on account of that fact.
18. The Respondents had substantial rent arrears which exceeded an amount that is more than the equivalent of 6 months' rent at the time of serving the Notices to Leave. The Respondents being in rent arrears is not as a result of a delay or failure in the payment of a relevant benefit. The Tribunal is satisfied that Ground 12A has been established.
19. In considering whether it was reasonable to grant the eviction order, the Tribunal considered the circumstances of both parties. The Respondents have been tenants since September 2021. Rent arrears have accrued from November 2022, with only one full rental payment made in February 2023, and no payments thereafter. There has been no recent communication from the Respondents. The Respondents have not entered into any payment plans to repay the arrear, despite the Applicant having complied with the pre-action protocol and making the Respondents aware of sources of advice. The

tenancy would appear to be unsustainable. The Respondents did not attend either CMD to put forward any argument in respect of reasonableness.

20. The Applicant is entitled to rent lawfully due in terms of the tenancy agreement. The sum outstanding is significant. There appears to be no prospect of the Respondents paying their ongoing rent or addressing the arrears. The Applicant has complied with the pre-action protocol.

21. In all the circumstances, the Tribunal considered it reasonable to grant the order sought.

Decision

22. An eviction order in respect of the Property is granted. The order is not to be executed prior to 12 noon on 18th December 2023.

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

13th November 2023
Date