



**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/23/2507**

**Re: Property at 3 Forthview Terrace, Wallyford, East Lothian, EH21 8LH (“the Property”)**

**Parties:**

**Strathearn (Edinburgh) Ltd, 3 Salters Road, Wallyford, EH21 8JY (“the Applicant”)**

**George Mclean, Samantha Mclean, 3 Forthview Terrace, Wallyford, East Lothian, EH21 8LH (“the Respondents”)**

**Tribunal Members:**

**Joel Conn (Legal Member) and Helen Barclay (Ordinary Member)**

**Decision (in absence of the Respondents)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

**Background**

1. This is an application by the Applicant for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”). The PRT in question was by the Applicant to the Respondents commencing on 24 February 2020.
2. The application was dated 26 July 2023 and lodged with the Tribunal on that date. This makes the application subject to the Cost of Living (Tenant Protection) (Scotland) Act 2022, as shall be referred to further below.
3. The application relied upon a Notice to Leave dated 27 April 2023 in terms of section 50 of the Private Housing (Tenancies) (Scotland) Act 2016, intimated upon the Respondents by email (in terms of the Tenancy Agreement) on that

date. The Notice relied upon Ground 12 of Schedule 3 Part 1 of the 2016 Act, being that “the tenant has been in rent arrears for three or more consecutive months”. In regard to Ground 12, the body of the notice referred to arrears of £1,250 as of that date, stating that “£395 hasn’t been paid for over 3 months with no explanation” and “a further £895 was due on 24<sup>th</sup> April 2023 but hasn’t been paid”. (See our comments below regarding the correct arrears calculation.) The rent stated in the Tenancy Agreement lodged was £895 a month, meaning the stated arrears as at the date of the Notice to Leave were under 1.4 months though the Respondents were said to have been in arrears for some months. The Notice intimated that an application to the Tribunal would not be made before 28 May 2023.

4. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon East Lothian Council on 26 July 2023 was provided with the application. There was no evidence in the application papers of the Applicant providing pre-action protocol information in standard form to the Respondents though we were addressed on this at the continued case management discussion (“CMD”).

### **The Hearing**

5. The matter called for a continued CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 17 January 2024 at 10:00. We were addressed by Sarah Strachan, Senior Portfolio Manager, Umega Ltd, on behalf of the Applicant. There was no appearance from the Respondents.
6. The Respondents had been represented by Haddington CAB at the initial CMD of 13 October 2023, when the application had been continued (along with a conjoined application on rent arrears under reference CV/23/2508) for advice to be provided. The Respondents’ agent had been advised of the date of the continued CMD on 22 November 2023 though subsequently withdrew from acting on 13 December 2023.
7. We were informed by the clerk that no contact had been received from the Respondents (or on their behalf) with the Tribunal since their agent’s withdrawal. The Applicant’s agent said that no communication had been received from the Respondents or the CAB since the initial CMD (excluding the communication about the CAB withdrawing from acting). The Applicant’s agent stated that neighbours had reported that the Respondents had abandoned the Property but the Applicant had not yet confirmed if this was the case.
8. We considered that the Respondents had received clear intimation of the continued CMD through their agents at the time, and it was reasonable of us to assume that the date was known to them. In the absence of any attempt by the Respondents to make contact with the Tribunal or the Applicant’s agent themselves, or appoint new agents, and having not commenced the continued CMD until around 10:05, we were satisfied to consider the application in the Respondents’ absence. In any case, no attempt was made by either of the Respondents (nor anyone on their behalf) to dial in late to the continued CMD.

9. At the continued CMD, the Applicant's agent confirmed that the application for eviction was still insisted upon. We were informed that no rent payments had been received since £900 on 29 September 2023 and arrears now stood at £3,778.04 in respect of rent due through to 23 January 2024. A rent statement covering the period to 5 October 2023 was with the application papers considered at the initial CMD allowing us clarity on how the figure of £3,778.04 was constituted. The rent statement showed that arrears had been present on the account since 24 January 2023, though had fluctuated due to irregular monthly payments, some short payments, and some monthly payments being higher than £895 and thus reducing the arrears. The arrears amounted to £1,230 as at 27 April 2023 - the date of the Notice to Leave - as opposed to £1,250 as the Notice stated. Nonetheless, as of that date there had been some level of arrears outstanding for the Property for four months and the arrears have persisted since then.
10. The Applicant's agent provided further submissions on the background for our consideration in regard to the reasonableness of the application:
  - a. The Property was a two-bedroomed property which was not specially adapted for the use of the Respondents.
  - b. The Respondents were believed to live as a couple at the Property (subject to the rumours that they had now abandoned it).
  - c. The Respondents were, according to the information provided by them at the outset of the Tenancy, in their mid-30s and in employment. No information on any subsequent unemployment had been received.
  - d. The Applicant and its agent knew of nothing to suggest the Respondents had ever sought or received benefits.
  - e. The Applicant and its agent knew of nothing to suggest the Property was particularly suitable for the Respondents needs (such as proximity to a source of support or medical treatment).
11. In regard to adherence with the pre-action protocol, the Applicant's agent expressed surprise that the application papers lacked any evidence of compliance. She said she was confident that a pre-action protocol letter would have been issued and that, further, her agency had sent letters chasing arrears which encouraged the Respondents to enter into a payment proposal and directed them to sources of advice (though no such letters were in the papers provided to us either). We noted that the Respondents had clearly engaged Haddington CAB at one point, and had received information regarding sources of advice and the arrears within the Notice to Leave and prior to the initial CMD.
12. The Applicant's agent confirmed that the Applicant was aware of the 2022 Act applying and no special submission was made in regard to the operation of that Act. No motion was made for expenses.

### **Findings in Fact**

13. On or about 22 and 24 February 2020 the Applicant let the Property as a Private Residential Tenancy to the Respondents under a lease with commencement on 24 February 2020 ("the Tenancy").

14. In terms of clause 8 of the Tenancy Agreement, the Respondents required to pay rent of £895 a month in advance on the 24<sup>th</sup> day of each month.
15. On 27 April 2023, the Applicant's agent drafted a Notice to Leave in correct form addressed to the Respondents, providing the Respondents with notice, amongst other matters, that they were in rent arrears for a period in excess of three consecutive months and detailing arrears at that date claimed to be £1,250.
16. The Notice to Leave provided the Respondents with notice that no application would be raised before the Tribunal prior to 28 May 2023.
17. The Applicant's agent served a copy of the Notice to Leave on the Respondents by email on 27 April 2023.
18. Clause 4 of the Tenancy Agreement permits for service of notices by email to the Respondents at the email addresses provided by them.
19. The Applicant raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 12 of Schedule 3 Part 1 of the 2016 Act on 26 July 2023.
20. Arrears as at the date of the Notice to Leave, 27 April 2023, were £1,230.
21. Arrears as at the expiry of the Notice to Leave, 28 May 2023, were £1,225.
22. Arrears as at the date of lodging the application, 28 May 2023, were £2,003.04.
23. As at the date of the Notice to Leave, rent arrears were in excess of 1.3 months and there had been some level of arrears outstanding in regard to the Property since 24 January 2023, a period in excess of 4 months.
24. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon East Lothian Council by the Applicant's agent on 26 July 2023.
25. As of 17 January 2024, the Respondents remained in arrears of rent in the amount of £3,778.04 which is equivalent of over 4.2 months of rent and there had been some level of arrears outstanding in regard to the Property for a period in excess of 11 months.
26. The Respondents do not claim to have paid any amount of the arrears of £3,778.04 remaining as at 17 January 2024.
27. The sum of arrears remaining as of 17 January 2024 is neither wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, other than any referable to an act or omission of the Respondents.

28. The Respondents have no known dependents living with them at the Property.
29. The Property is not specially adapted with the use of the Respondents nor is its location specifically suitable for the Respondents' needs.

### **Reasons for Decision**

30. The application was in terms of rule 109, being an order for eviction from a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been correctly drafted and served upon the Respondents. We noted the small error in the statement of the arrears due as at the date of the Notice to Leave (£1,230 as opposed to £1,250 stated in the notice) but given that no material attempt was made to pay the arrears stated in the Notice to Leave we do not see this affects the validity of the notice.
31. Ground 12 of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:
  - (1) *...the tenant has been in rent arrears for three or more consecutive months. ...*
  - (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*
    - (a) *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, and*
    - (b) *the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations.*
32. The arrears information provided at the CMD clearly showed that Ground 12 was satisfied in regard to the length of arrears and amount outstanding. There is nothing to suggest that Respondents' failure to pay is related to an issue with benefits. Ground 12 is satisfied subject to paragraph 3(b) regarding reasonableness.
33. We require, in terms of the Act as currently amended, to consider the reasonableness of the application even in regard to persistent arrears. We were satisfied that the Applicant's reasons for seeking eviction were reasonable given the amount and duration of the arrears. The arrears were not initially substantial but have been growing. There was an absence of any formal engagement by the Respondents on payment of the arrears, and now there appears to be no engagement. The Respondents did not appear or provide submissions in regard

to any issue regarding reasonableness and we are satisfied that it is reasonable to evict on the basis of the information before us.

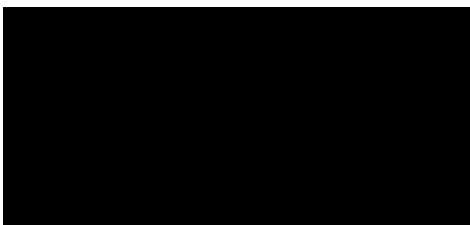
34. We remain of this view in the absence of any evidence of compliance with the pre-action protocols. Even absent the Applicant's agent's submission that there would have been compliance, this was a continued CMD. We were thus aware that the Respondents have had the benefit of the information in Notice of Leave (which covers many of the matters within a pre-action protocol letter), as well as having engaged a CAB, and having received the rent statement correct to 5 October 2023 by letter from the Tribunal on 11 October 2023 in advance of the initial CMD. The purpose of the pre-action protocol has been fully addressed.
35. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time under Ground 12 subject to the appropriate suspension under the 2022 Act. The order will thus be suspended so that it may not be executed prior to 12:00 on the earlier of (a) the day following the end of a period of 6 months beginning with the day on which this order was granted (that is 17 July 2024), or (b) the expiry or suspension of Paragraph 1 of Schedule 2 of the 2022 Act, currently expected to be 31 March 2024.

### **Decision**

36. In all the circumstances, we grant an order against the Respondents for eviction from the Property under section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* further to ground 12 of Schedule 3 of that Act, subject to the suspension under the 2022 Act.

### **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.**



**17 January 2024**

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**Legal Member/Chair**

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**Date**