



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 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)

Chamber Ref: FTS/HPC/EV/23/2866

Re: Property at 98 West Pilton Terrace, Edinburgh, EH4 4LX (“the Property”)

Parties:

Mrs Joanne Peace, Mr Douglas Peace, 13 Forthview Road, Edinburgh, EH4 2DE (“the Applicant”)

Mrs Kelly Marie Dillon, Mr Ryan Brown, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Tony Cain (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession of the property be granted.

Background

1. By application received on 22 August 2023, the Applicant applied to the Tribunal for an order for recovery of possession of the property in terms of Grounds 10 (tenant not occupying), Ground 12 (rent arrears over 3 consecutive months and Ground 12A (substantial rent arrears) of Schedule 3 to the 2016 Act. Supporting documentation was submitted in respect of the application, including a copy of the tenancy agreement, the Notice to Leave/proof of service of same, the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003/proof of service of same, a Rent Statement showing the balance of rent arrears owing at the time of the application being made of £8,592.44 and evidence regarding the ‘pre-action requirements’.

2. Following initial procedure, on 2 October 2023, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. There was an unsuccessful attempt by the Tribunal Administration to serve notification of the application and details of a Case Management Discussion (“CMD”) fixed for 6 December 2023 on the Respondent by way of Sheriff Officer on 1 November 2023 at an address they had been traced to by tracing agents instructed by the Applicant. Accordingly, that CMD required to be postponed until 7 February 2024 and service on the Respondent was arranged by Advertisement on the Tribunal website for the requisite period. No representations were lodged by the Respondent prior to the CMD.

Case Management Discussion

4. The CMD took place by telephone conference call on 7 February 2024 at 2pm. It was attended by one of the Applicants, Mrs Joanne Peace who was represented by her son, Mr David Peace, whom the Tribunal was advised is also involved in managing the Property with his parents. The Tribunal delayed the commencement of the CMD for 5 minutes to allow an opportunity for the Respondent to join late but they did not do so.
5. Following introductions and introductory remarks by the Legal Member, who also explained the purpose of the CMD, Mr Peace was asked to explain the background to the application and also why an eviction order is required, given that it appeared from the documentation that the Respondent had vacated the Property some months ago.
6. Both Mrs Peace and Mr Peace explained that they require an eviction order to be granted as the Respondent did not confirm in writing that they had vacated the Property, had not returned the keys and had not cleared the Property of all their belongings. The Applicant took advice from an organisation which represents landlords and were advised that, in these circumstances, they should not take back possession of the Property without first obtaining an eviction order. Accordingly, the Applicant wished to terminate the tenancy properly and ‘keep themselves right’ legally.
7. Mr Peace explained that they brought the application under Grounds 10, 12 and 12A as all seemed to apply. When rent arrears had started to accrue, the Applicant followed due diligence and sought to engage with the Respondent regarding the rent arrears. Reference was made to the pre-action requirements template letters sent to the Respondent. The Applicant also tried text messaging as a means of contact. The Respondent did not engage or do anything to resolve the arrears situation, and then stated that they were planning to leave around March/April 2023. However, they did not return the keys or formally confirm in writing that they had vacated. In May 2023, an EICR required to be carried out at the Property and it appeared to the Applicant at that time that, although the Property was not fully cleared, no one had been living there recently. They did not change the locks as they were still not sure

that the Respondent would not come back. In late summer 2023, the Property was broken into and the police were involved. It appeared that someone was using the Property to stash stolen belongings. The Applicant had the door and doorframe re-built and did what they could to otherwise secure the Property. There was also a build-up of mail noted at the Property at that time. Since then, the Applicant has not been inside the Property but, understandably, wish to recover possession as soon as possible so that the Property can be refurbished and re-let, as opposed to lying empty.

8. As to the Respondent's circumstances, Mr Peace confirmed that they had four children residing with them in the Property, two of whom were teenagers, and were also due to have another baby. The Property is a three-bedroom property and Mr Peace understands that the Respondent was looking for a four-bedroom property and was not paying the rent for this Property, in order to save up a deposit for another. The Respondent has not been in any further contact with the Applicant throughout this process.
9. The Tribunal adjourned the CMD to discuss in private and, on re-convening, the Legal Member confirmed that the Tribunal was satisfied that all grounds of eviction were met and also that it was reasonable to grant the order in the circumstances. There was some brief discussion regarding the issuing of paperwork and the applicable appeal period. It was recommended that the Applicant seeks their own advice on implementation of the eviction order.

Findings in Fact

1. The Applicant is the joint owner and landlord of the Property.
2. The Respondent is the joint tenant of the Property by virtue of a Private Residential Tenancy which commenced on 13 December 2019.
3. The rent due in respect of the tenancy is £1,000 per calendar month.
4. There was a history of rent arrears, with erratic and missed payments, such that arrears amounting to £7,567.44 had accrued by the time the Notice to Leave was served in July 2023 and £8,592.44 by the time this application was lodged with the Tribunal.
5. The Applicant has contacted the Respondent concerning the rent arrears throughout and in terms of the 'pre-action protocol'.
6. The Respondent did not engage with the Applicant regarding the arrears situation nor seek to resolve it.
7. Notices to Leave in proper form and giving the requisite period of notice were served on the Respondent by email sent on 19 July 2023.

8. The date specified in the Notice to Leave as the earliest date an eviction application could be lodged with the Tribunal was specified as 19 August 2023.
9. The Tribunal Application was submitted on 22 August 2023.
10. The Respondent has been called upon to make payment of the rental arrears or enter into a satisfactory payment arrangement but has failed to do so.
11. The Respondent has been in arrears of rent for three or more consecutive months.
12. The Respondent has accrued rent arrears under the tenancy in respect of one or more periods and the cumulative amount of those arrears exceeded the equivalent of 6 months' rent (£6,000) both when the Notice to Leave was served and currently.
13. There is no indication that the arrears have arisen wholly or partly as a result of a failure or delay in the payment of relevant benefits.
14. The Respondent is no longer occupying the Property.
15. The Respondent has failed to formally surrender the tenancy or to return the keys or to clear the Property of all their belongings.
16. The Respondent did not submit any representations or attend the CMD.

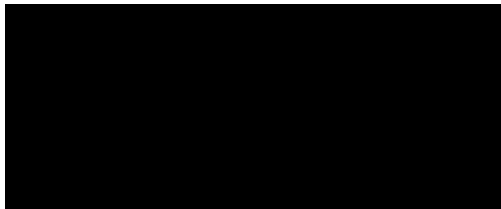
Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation and to the oral submissions of the Applicant, Mrs Peace, and her son who represented her at the CMD.
2. The Tribunal found that the application was in order, that a Notice to Leave in proper form and giving the correct period of notice had been served on the Respondent and that the application was made timeously to the Tribunal, all in terms of the tenancy agreement and the relevant provisions of the 2016 Act.
3. The Tribunal considered the grounds of eviction relied upon in this application, namely Grounds 10, 12 and 12A of Schedule 3 to the 2016 Act, as amended, and were satisfied that all requisite elements of each of these grounds had been met. The Tribunal was satisfied that the Respondent was not occupying the let Property, that there were substantial rent arrears and that the rent had been continuously in arrears for lengthy period of time.
4. As to reasonableness, all the factors mentioned above satisfied the Tribunal that it was also reasonable to grant an order in these circumstances and to do so at this stage. The Respondent had not entered into the Tribunal process and

the Tribunal therefore had no material before it either to contradict the Applicant's position nor to advance any reasonableness arguments on behalf of the Respondent. The Tribunal accordingly determined that an order for recovery of possession of the Property could properly be granted at the CMD as, in the circumstances, there was no need for an Evidential Hearing.

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

7 February 2024
Date