



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/23/4333

Re: Property at Flat 13, 12 Well Spring Close, Edinburgh, EH13 9FD (“the Property”)

Parties:

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

Mr James McWhinnie, Flat 13, 12 Well Spring Close, Edinburgh, EH13 9FD (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

This was an application for an eviction order dated 5th December 2023 and brought in terms of Rule 109 (Application for an eviction order) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant sought an eviction order in relation to the Property against the Respondent and provided with its application copies of the private residential tenancy agreement, notice to leave with proof of service by e-mail, section 11 notice with proof of service, rent arrears statement, rent increase notice and pre-action protocol correspondence.

All of these documents and forms had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016* and the

Coronavirus (Scotland) Act 2020, and the procedures set out in those Acts appeared to have been correctly followed and applied.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 1st February 2024 and the Tribunal was provided with the execution of service.

Case Management Discussion

A Case Management Discussion was held at 10:00 on 19th March 2024 by Tele-Conference. The Applicant did not participate, and was represented by Mr Caldwell, solicitor. The Respondent did not participate, nor was he represented.

The Tribunal was satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

Mr Caldwell invited the Tribunal to grant the order sought on grounds 12 and 12A of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*. At the date of the notice to leave of 20th September 2023, rent arrears were £5,797.89. As of 19th March 2024, the rent arrears had risen to £10,206.39. The Respondent had made sporadic part payments, but the level of arrears continued to rise. Mr Caldwell understood the Respondent to live alone at the Property.

The pre-action correspondence produced showed various attempts to contact the Respondent asking him to make contact with the Applicant in order to discuss options to assist him with his rent arrears and advising him about where he might obtain advice. The Respondent had intermittently engaged with the Applicant's agent in response to those making various proposals to address the arrears. The Applicant indicated that if the Tribunal granted the order, it was willing not to enforce it if the Respondent made acceptable arrangements to address the rent arrears.

The notice to leave relied on grounds 12 and 12A of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*. Rental of £825.00 per month was payable in advance in terms of clause 8 of the private residential tenancy agreement. By rent increase notice dated 1st April 2023 the rent was increased to £849.79 from 4th July 2023. The Respondent had been in arrears since 1st November 2022 and so had been in arrears of rent for a continuous period of more than three consecutive months. The amount of arrears exceeded an amount that is the equivalent of six months' rent.

Statement of Reasons

In terms of Section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* ("the Act") as amended by the *Coronavirus (Scotland) Act 2020*, the Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an

application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

Para 12 of Schedule 3 to the Act provides that it is an eviction ground that the tenant has been in rent arrears for three or more consecutive months, and that the Tribunal may find that the ground applies if it is satisfied that it is reasonable on account of that fact to issue an eviction order. In deciding whether it is reasonable to issue an eviction order, the Tribunal is to consider 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.

The Tribunal was satisfied that ground 12 had been established. The tenant was in substantial arrears of rent and had been in arrears for a continuous period in excess of three months. The Tribunal was further satisfied that the tenant being in arrears was not wholly or partly due to any delay or failure in the payment of a relevant benefit. There was no evidence to establish any such reason for rent arrears.

Para 12A of Schedule 3 to the Act provides that it is an eviction ground that the tenant has substantial rent arrears. That ground applies if the tenant has accrued rent arrears under the tenancy in respect of one or more periods, 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 that the Tribunal is satisfied that it is reasonable to issue an eviction order. In deciding whether it is reasonable to issue an eviction order, the Tribunal is to consider 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 the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers under the *Rent Arrears Pre-action Requirements (Coronavirus) (Scotland) Regulations 2020*.

The Tribunal was satisfied that ground 12A had been established. The tenant was in substantial arrears of rent in respect of one or more periods and the cumulative amount of those rent arrears exceeded an amount that was the equivalent of 6 months' rent under the tenancy when notice to leave was given to the tenant on that ground. The Tribunal was satisfied that the tenant being in arrears was not wholly or partly due to any delay or failure in the payment of a relevant benefit. There was no evidence to establish any such reason for rent arrears. The Tribunal was further satisfied that the Applicant had complied with the pre-action requirements under the *Rent Arrears Pre-action Requirements (Coronavirus) (Scotland) Regulations 2020*.

In the case of *City of Glasgow District Council v Erhaiganoma* 1993 SCLR 592, The Inner House of the Court of Session stated at page 594 that "Where prima facie reasonableness has been made out, we think that it is then for the tenant to put circumstances before the court to show otherwise."

In this application, the Respondent had not responded to this application advancing any arguments that it was not reasonable to issue an eviction order and had not participated in the Case Management Discussion. The Respondent had put forward

no circumstances to show that it would not be reasonable for the Tribunal to issue an eviction order.

Having considered the whole circumstances, the Tribunal was satisfied that it was reasonable to issue an eviction order. The arrears of rent are substantial. The Respondent has failed to adequately engage with the Applicant to agree a reasonable plan to make payments to the landlord.

Decision

In these circumstances, the Tribunal made an eviction order as sought in this application.

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.

N Kinnear

19/03/2024

Legal Member/Chair

Date