

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 30 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 in the Schedule to the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017

Chamber Ref: FTS/HPC/EV/23/3681

Re: Property at Flat 6/6 Lyne Street, Edinburgh, EH7 5DW (“the Property”) and

Parties:

Mrs Sheila Hobbs and Mr Paul Scott, both residing at 6 Lussielaw Road, Edinburgh, EH9 3BX (“the Applicants”) and

Mr Kieron King residing at Flat 6/6 Lyne Street, Edinburgh, EH7 5DW (“the Respondent”)

Tribunal Members:

G McWilliams- Legal Member

F Wood - Ordinary Member

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determines the Respondent’s application to recall the Tribunal’s Decision, dated 1st February 2024, as follows

Background

1. The Applicant sought recovery of possession of the Property. A Case Management Discussion (“CMD”) proceeded by remote tele-conference call at 10am on 1st February 2024. The Respondent Mr King did not attend and was

not represented at the CMD. Having considered the available evidence, and heard a submission from the Applicant Ms S Hobbs, with no contrary written or oral representations having been made by Mr King, the Tribunal decided to grant an order for possession of the Property. Reference is made to the written Decision and Order of the Tribunal, both dated 1st February 2024.

Application for Recall

2. Mr King sent an email to the Tribunal's office at 12.11pm on 1st February 2024. He stated that he had tried to join the CMD call that morning by mobile phone but had been unsuccessful. Mr King sent further emails to the Tribunal's office in which he said that he has been suffering health problems and wants to try to reach an agreement, with Mrs Hobbs, and Mr Scott, to remain in the Property. He also stated that he wished to participate in a CMD in respect of the Application and therefore sought to recall the Tribunal's decision and order made on 1st February 2024, in terms of Rule 30 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the 2017 Rules").
3. Ms Hobbs and Mr Scott sent an email to the Tribunal's office on 15th February 2024 in which they set out various points in opposition to Mr King's application to recall the decision and order dated 1st February 2024.
4. The Tribunal decided to schedule a further CMD in order to consider Mr King and Ms Hobbs and Mr Scott's arguments regarding Mr King's application to recall the previous decision and order.

Case Management Discussion on 5th April 2024

5. A further CMD proceeded by remote teleconference call at 10.00am on 5th April 2024. Mr King, Ms Hobbs and Mr Scott attended.
6. Mr King referred to his e-mail sent to the Tribunals Office on 1st February 2024 and stated that he had tried to join the CMD call that morning but was unable to do so due to problems with his mobile phone. Mr King acknowledged that there are substantial rent arrears owing to Ms Hobbs and Mr Scott. He referred to the updated rent statement lodged by the Applicants, showing current arrears of £10,843.27. Mr King disputed the exact amount of the arrears and stated that allowances should be made for remedial matters in the property which he has attended to himself. He acknowledged that he has not made any payments of rent to the Applicants since September 2023, when he paid the sum of £125.00. He stated that he had been working in his current job, as a bartender, since August 2023 but due to his level of earnings he had not been able to pay rent. He further acknowledged that there had been a previous Tribunal order for payment, granted in March 2023, in the sum of £5,785.00 and that the

arrears now owing are in a considerably higher amount. Mr King said that he thought that from around October 2023 his rent had been paid directly to the Applicants by DWP in terms of his Universal Credit (“UC”) award. He stated that he had been unable to access his DWP account at that time. He said that he was going for a job interview, for a managerial role, later on 5th April which, if successful, would result in him earning at increased hourly wage. Mr King stated that he had been suffering from mental health problems and re-iterated that he wants to try to resolve matters with the Applicants and stay in the Property. He said that he had obtained advice, regarding these proceedings, from CHAI, Edinburgh.

7. Mrs Hobbs addressed the Tribunal on behalf of herself and Mr Scott. She referred to the most recent rent statement that she had lodged with the Tribunal’s Office and stated that the current arrears of rent are in the sum of £10,843.27, the arrears having increased from the sum of £9527.54 due on 1st February 2024. She stated that Mr King had not paid any rent since he made payment of the sum of £350.00 in September 2023. She said that he had not made a full payment of the monthly rent due, of £675.00, since prior to the grant of the previous Tribunal order for payment. Ms Hobbs stated that nominal payments of rent had been received from Universal Credit in the sums £9.00, £75.00, £28.00 and £6.00 in the months, October and November 2023 and in February and March 2024, respectively. She said that she had been trying to make arrangements to provide Mr King with a microwave oven, whilst she awaited a replacement glass part for the main oven in the Property, but he had not responded. She stated that she had now obtained the glass part. She said that she had paid the bill for a contractor’s inspection of the oven and that there were no monies owing by the Applicants to Mr King regarding any issue at the Property. Ms Hobbs asserted that Mr King must know what payments of rent are being made through his UC award given that he has to submit his monthly pay details to DWP and access his UC Journal to do so. Ms Hobbs re-iterated what she had said at the previous CMD, namely that the continuing loss of rental income was unsustainable for herself and Mr Scott and that the stress of the ongoing loss, and the current Tribunal proceedings, were adversely affecting their health. Mr Hobbs stated that there was no realistic prospect of Mr King being able to repay the arrears of rent due.

Decision and Reasons

8. The Tribunal considered the submissions of Mr King and Ms Hobbs. The Tribunal was satisfied that Mr King had experienced problems with his mobile

phone on 1st February 2024 and, as a result, was unable to attend the CMD that morning.

9. The Tribunal considered the merits of the Application for an eviction order and the reasonableness, or otherwise, of the granting of such an order. Mr King accepted that there are substantial arrears of rent owing to Ms Hobbs and Mr Scott. He disputed the exact amount of the arrears but acknowledged that they are substantial. The ground for the Tribunal's grant of the eviction order on 1st February 2024 was therefore not in issue.

10. The Tribunal balanced the reasonableness of the grant of the order for eviction against the recall and potential, subsequent refusal of such an order. The Tribunal accepted that Mr King, and Ms Hobbs and Mr Scott, have been suffering health difficulties. Mr King acknowledged that a payment order had previously been granted, in March 2023, and that the rent arrears had since increased considerably. Mr King accepted that he been in employment since August 2023 but had not made payments of rent to the Applicants since September 2023 and also that DWP had only been paying nominal rent amounts to the Applicants. Having weighed the arguments from all of the parties the Tribunal decided that it was reasonable that an eviction order had been granted. In reaching this decision the Tribunal relied on Mr King's acknowledgement of his history of non-payment of rent and arrears. The Tribunal decided that given the amount of arrears, and as they are increasing, it was reasonable that an eviction order had been granted and that Mr King's occupation of the Property, without payment of rent to the Applicants, be brought to an end. Mr King had not made a full monthly rental payment and had not made and followed any repayment proposal since prior to the grant of the payment order, in March 2023. In such circumstances the Tribunal decided that it would be unreasonable for these proceedings to continue, the Applicants to sustain more loss of rent, Mr King to incur increased rent arrears debt and for there to be any further adverse effect on all parties' health due to the proceedings.

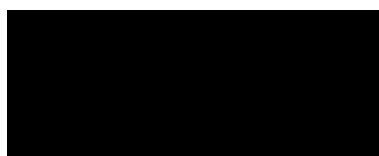
11. Given that a period of time has elapsed from the grant of the eviction order on 1st February 2024, so that Mr King's application for recall could be properly determined, the Tribunal also decided that it is fair and just that the eviction order, granted in favour of the Applicants, should not be enforced earlier than 20th May 2024.

Outcome

12. Accordingly, the Tribunal refused Mr King's application for recall of their decision and eviction order made on 1st February 2024. A fresh eviction order accompanies this written Decision.

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.



G McWilliams Tribunal Legal Member

Date: 17th April 2024