



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/23/1783

Re: Property at Flat 6, 3 Baileyfield Crescent, Edinburgh, EH15 1BW (“the Property”)

Parties:

Castle Rock Edinvar Housing Association, 1 Hay Avenue, Edinburgh, EH16 4RW (“the Applicant”)

Mr Connor Good, Flat 6, 3 Baileyfield Crescent, Edinburgh, EH15 1BW; ■■■, address supplied (“the Respondents”)

Tribunal Member:

Valerie Bremner (Legal Member) and Frances Wood (Ordinary Member)

Decision

The Tribunal determined that an eviction order be granted against both Respondents in terms of Ground 12A of Schedule 3 of the Private Housing Tenancies(Scotland) Act 2016 given that substantial rent arrears have accrued under the tenancy agreement which exceed 6 months’ rent and it is reasonable to grant an order.

The decision of the Tribunal was unanimous.

1.This application for an eviction order in terms of rule 109 of the Tribunal rules of procedure was first lodged with the Tribunal on 31st May 2023 along with a related payment order application with reference FTS/HPC/CV/23/1780.The applications were accepted by the Tribunal on 31st August 2023 and a case management discussion was fixed for both applications for 14th December 2023 at 10am.

2.The case management discussion was attended by Ms Wilson of Patten and Prentice LLP solicitors on behalf of the Applicant. There was no appearance by or on

behalf of the Respondent Connor Good. The Respondent ■■■ attended and represented herself.

3. The tribunal had sight of the application, a tenancy agreement, a paper apart, a covering letter and Notices to Leave sent to both Respondents by email, a pre action protocol letter sent to the Respondent Connor Good, a notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 and an email sending this to Edinburgh City Council. The Tribunal also had sight of rent arrears statements and email correspondence between the Applicant's solicitor and the Tribunal.

4. The Tribunal was aware that the application, supporting papers and the time and date of the case management discussion had been intimated to the Respondent Connor Good by Sheriff officer on 6th November 2023. The Tribunal was satisfied that the Respondent Connor Good had been given fair notice of the Case Management Discussion in terms of the Tribunal rules and that it was appropriate to proceed in his absence.

5. The parties had entered a tenancy with a joint tenancy in place at the property with effect from 11 June 2021. The monthly rent payable in advance was initially £605 per month and in June 2022 this was increased to £628.60. In July 2023 the monthly rent was increased to £647.46. The joint tenant ■■■ left the tenancy with effect from 2nd September 2022 and advised the landlord's agent that she was no longer residing at the property. Rent arrears started to accrue in terms of the tenancy agreement after she left and apart from one payment of £1000 paid by the Respondent at the end of March 2023 no rent had been paid. When a Notice to leave was served on Mr Good in February 2023 rent arrears stood at £3765.20. When a Notice to Leave was served on Respondent ■■■ rent arrears had reached the sum of £5279.60. Rent arrears had reached £8515.10 as of the date of the case management discussion on 14th December 2023. The Tribunal noted that on the front page of the tenancy agreement it was noted that where there are joint tenants the full rights and responsibilities apply to each tenant, and each is jointly and severally liable for all obligations of each of the tenants in the agreement. Despite efforts to contact Mr Good regarding the arrears he did not engage with the Landlords's agents and rent arrears continued to accrue. There was no up to date information as to Mr Good's circumstances known to the Applicant but there was no information to suggest that the arrears were caused by any failure or delay in the payment of a relevant benefit.

6. The Tribunal Legal Member confirmed that ■■■ had received the application and supporting papers. The Legal member also explained the eviction ground being used, i.e. substantial rent arrears (Ground 12 A) of the 2016 Act) and why the eviction application had been served on both tenants when ■■■ had ceased to occupy the property on 2nd September 2022. The legal member explained the ways in which a private residential tenancy could be brought to an end when there are joint tenants and there is no agreement to end the tenancy.

7. ■■■ confirmed she had received a Notice to leave but objected to an eviction order being granted including her name. She had contacted Touchstone the landlords' agent on 9th September 2022 explaining that she had required to leave the property due to issues with the other tenant, her ex-partner and could not return. The message ■■■

sent stated that the other tenant Mr Good wanted to stay on and would pay the rent himself and requested that her name be removed from the tenancy agreement. The recipient, a Donovan Hlabangana at Touchstone had replied to the message saying that he could contact the Respondent Mr Good to let him know that if he wished to stay in the property he would have to reapply and asked for confirmation from ■■■ that she was happy for contact to be made in this way with Mr Good. ■■■ responded confirming she was content for that contact to be made. ■■■ confirmed that she had not heard anything after this and assumed that her name had been removed from the tenancy agreement. When she had received the Notice to Leave, she had phoned Touchstone and discovered that the person she had spoken to no longer worked there.

8. The Tribunal members were concerned as to whether another tenancy agreement might have been entered into with Mr Good on his own given the nature of the correspondence which had taken place. Ms Wilson Indicated that she could attempt to make further enquiries to see if anything had happened after ■■■ had been in contact with Touchstone.

9. The Tribunal adjourned to allow Ms Wilson to make enquiries with Touchstone. The Tribunal adjourned for this purpose. When the Tribunal reconvened Ms Wilson advised that she had managed to be in touch with Touchstone and understood that the tenancy agreement had not been amended and that the tenancy agreement being considered by the Tribunal was the only tenancy agreement in relation to the parties. Touchstone had understood that ■■■ was seeking advice on the matter after she contacted them. As the member of staff had left Touchstone she could not say whether he had made contact with Mr Good to attempt to create a new tenancy in his name only. Ms Wilson confirmed that the rent arrears at the property had started to accrue after ■■■ had ceased to occupy the property.

10. ■■■ remained concerned that her name should be on an eviction order because her landlords had failed to act when she left the property. She wished to take advice on her position.

11. There was discussion as to what should happen with the application. ■■■ was prepared to seek advice and contact the tribunal to confirm if she maintained an objection to an order being made including her name. Ms Wilson requested an order be made but did not object to a short continuation to allow ■■■ to take advice on her position.

12. The Tribunal considered that it was appropriate to allow a short adjournment for ■■■ to take advice and confirm her position and to issue a direction to parties to require ■■■ to confirm after taking advice if she still objected to an order being made and also to confirm whether a new teleconference was required or if the matter could be dealt with administratively.

13. The Tribunal also considered it appropriate to require the Applicant's representative to lodge written submissions on section 52(4) of the 2016 Act since this application was made before the Notice to Leave served on ■■■ on was served and the applications were made to the Tribunal before the notice period in the Notices to Leave relied on had expired. The Tribunal determined it was also appropriate to require the

parties to indicate whether the matter could be dealt with administratively without another teleconference call. The Tribunal issued a Direction covering these issues and requiring parties to confirm if the matter could be dealt with administratively or if they objected to that. No response of any kind was received from the Respondent Connor Good to this direction.

14. The case management discussion was continued to 12th April 2024 at 10am for ■■■ to take advice and for the Applicant's representative to make representations as set out at paragraph 12 above. ■■■ was also required to advise if she continued to object to the application and if she did not, if it could be dealt with administratively by the Tribunal.

15. The Applicant's representative made representations to the Tribunal on 3rd January 2024 in response to a Direction issued on 14th December 2023. In these the Applicant confirmed that an order was sought against both Respondents in terms of Ground 12 A substantial rent arrears. It was accepted that the Notice to Leave setting out this Ground had been sent to ■■■ after the action was raised in breach of Section 54 of the Private Housing Tenancies (Scotland) Act 2016. The Applicant's representative also referred to the fact that the Notice to Leave served on the First Respondent referred to Ground 12 rent arrears and sought to amend the application to add Ground 12 A substantial rent arrears and for the Tribunal to allow this ground to be considered although not included in the Notice to Leave served on Connor Good, in terms of Section 52(5). The Applicant's representative indicated that they were seeking that the Tribunal apply section 52(4) in relation to the application being made before the Notice to Leave was served on ■■■ and asking the Tribunal to allow the eviction of Connor Good based on Ground 12 A even though the Notice to Leave served on him referred to Ground 12 only.

16. The Applicant's representative expressed sympathy for ■■■ who had understood she was to be removed from the tenancy but indicated that when ■■■ had engaged with Touchstone the other tenant Mr Good had already accrued rent arrears. A new tenancy could not be signed as the consent of all parties was required. The Applicant's representative submitted that since ■■■ no longer wished to have any obligations under the tenancy that the application against ■■■ should be allowed to proceed although the Notice to Leave was served after the application was lodged. As far as the Respondent Connor Good is concerned it was suggested that given his failure to engage and the level of rent arrears accrued without any recent payments that the Tribunal should allow the Application to proceed under Ground 12 A against him too.

17. ■■■ consulted CAB and the Tribunal received representations made on her behalf indicating that she had done everything she could to leave the tenancy due to the behaviour of Mr Good and was concerned to have their name associated with the tenancy. In these representations it was stated that if ■■■ name could remain anonymous in the interests of justice she would not object to an eviction order being granted to include her. The Applicant's representative indicated that they did not object to such a request.

18. On 5th May 2024 the Tribunal issued a Direction to the Applicant's representative and ■■■ representative regarding the basis on which a decision could be made in relation to parties being named. The Tribunal received responses from both parties

indicating that there was no issue with ■ being referred to by her initials only in any decision and that there was no objection by her to an eviction order being granted on that basis.

19. The Tribunal was satisfied that it could allow the application to be amended in terms of section 52(5) of the 2016 Act to include Ground 12 A as an eviction ground and that it was appropriate to do this although the Notice to Leave served on Connor Good was in terms of Ground 12 only. The Tribunal was satisfied that it was appropriate to allow this as the Respondent Mr Good was aware that rent had not been paid and a Notice to Leave had been served on him when the arrears were well over three consecutive months in terms of Ground 12. All that had changed was that the arrears had risen and had now reached a sum in excess of 6 months' rent which would be known to him. ■ had been sent a Notice to Leave served on her in terms of Ground 12 A. The Tribunal was minded to allow the matter to proceed against ■ although her notice to Leave was served after the application was lodged as she was keen to have the matter resolved and her name had been added after the application had been submitted.

20. Given that there appeared to be no objection to an order being granted by the Respondent ■ and no engagement or response from the Respondent Connor Good at any stage of the proceedings, the Tribunal determined that the matter could be dealt with administratively and the case management discussion on 12th April 2024 was cancelled.

21. The Tribunal was satisfied that it had sufficient information upon which to make a decision and that the proceedings had been fair.

Findings in Fact

22. The parties entered into a private residential tenancy at the property with effect from 11th June 2021.

23. This was a joint tenancy and on the agreement it was noted that where there are joint tenants the full rights and responsibilities apply to each tenant, and each is jointly and severally liable for all obligations of each of the tenants in the agreement.

24. The rent in terms of the tenancy agreement started off at £605 per month payable in advance and was increased to £638.60 in June 2022 and to £647.46 per month in July 2023.

25. Respondent ■ ceased to occupy the property in September 2022 and asked if her name could be removed from the tenancy.

26. The landlord' agents could not obtain consent for a new tenancy agreement with Mr Good as the only tenant as consent of all parties could not be obtained as rent arrears had started to accrue in terms of the tenancy agreement.

27. Rent arrears in terms of the agreement reached £3765.20 in February 2023.

28. In July 2023 rent arrears had reached £5279.60 and by the case management discussion in December 2023 the arrears stood at £8515.10.

29. Apart from one payment of £1000 in March 2023 the rent has been in arrears since September 2022 and no other payments of rent have been made since then.

30. A Notice to leave in proper form setting out Ground 12 rent arrears over three consecutive months as the eviction ground was served on the Respondent Connor Good by email dated 8th February 2023 and this Notice indicated that an application for eviction would not be lodged with the Tribunal before 10th March 2023

31. A Notice to Leave in proper form setting out Ground 12 A as an eviction ground was sent to the Respondent [REDACTED] by e mail on 30th June 2023 and this Notice indicated that an application would not be made to the tribunal before 31st July 2024.

32. A letter in terms of the Pre Action Protocol was sent to the Respondent Mr Good on 26th May 2023.

33. A Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2016 was sent to Edinburgh City Council in relation to the tenancy on 30th June 2023.

34. Substantial rent arrears have accrued at the property and an amount of more than 6 months' rent has been in arrears since the beginning of April 2023.

35. Rent arrears accrued at the property are not the result of delay or failure in the payment of any relevant benefit to the Respondents.

Reasons for Decision

The Tribunal was satisfied that the eviction ground was made out having allowed the application to be amended as far as Mr Good was concerned to consider Ground 12 A against him when a Notice to Leave under Ground 12 had been served on him. The Tribunal was satisfied it was appropriate to allow this to be done given that rent arrears had continue to accrue with no engagement by Mr Good with the landlord at a time when he must have known that the rent arrears continued to increase. The appropriate procedures had been carried out and the paperwork was in proper order.

As far as the Respondent [REDACTED] is concerned the appropriate Notice to Leave had been served on her. She had ceased to occupy the property some time ago for reasons she had explained to the Tribunal and these were considered sufficient to allow her name to be withheld.

As far as reasonableness is concerned the Tribunal had no hesitation in making the order against Mr Good as he had continue to live at the property without paying rent other than one payment in March 2023. As regards [REDACTED] the question of reasonableness was not so straightforward but given her desire to bring the tenancy agreement to an end so that she had no remaining legal obligations in terms of the agreement, the Tribunal considered it was reasonable to grant an order against her too.

Decision

The Tribunal determined that an eviction order be granted against both Respondents in terms of Ground 12A of Schedule 3 of the Private Housing Tenancies(Scotland) Act 2016 given that substantial rent arrears have accrued under the tenancy agreement which exceed 6 months' rent and it is reasonable to grant an order.

NOTE: This document is not confidential and will be made available to other First-tier Tribunal for Scotland (Housing and Property Chamber) staff, as well as issued to tribunal members in relation to any future proceedings on unresolved issues.

Valerie Bremner

Legal Member

12.4.24
Date