



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

Chamber Ref: FTS/HPC/EV/23/3135

Re: Property at 185 Slateford Road, Edinburgh, EH14 1PU (“the Property”)

Parties:

Home Group Limited, 2 Gosforth Park Way, Gosforth Business Park, Newcastle Upon Tyne, NE12 8ET (“the Applicant”)

Mr Kris Brown, 185 Slateford Road, Edinburgh, EH14 1PU (“the Respondent”)

Tribunal Members:

Mary-Claire Kelly (Legal Member) and Angus Lamont (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for eviction

Background

1. By application dated 7th September 2023 the applicant seeks an order for eviction on ground 12 in schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 in respect of rent arrears.
2. The applicant lodged the following documents with the application:
 - Copy tenancy agreement
 - Rent statement
 - Rent increase notice
 - Notice to leave dated 4th July 2023 with proof of service
 - Section 11 notice

- Letters from the applicant to the respondent regarding rent arrears dated 7th September 2023, 21st April 2023 and 4th April 2023.
3. A case management discussion (“cmd”) was assigned for 5th February 2024.

Case management discussion – teleconference – 5th February 2024

4. The applicant was represented by Ms Callaghan, solicitor from TC Young solicitors. The respondent did not attend and was not represented. The Tribunal determined that proper notice of the cmd had been given to the respondent and proceeded in his absence.
5. The Tribunal noted that that arrears were £6689.38 as at 1st January 2024. Ms Callaghan sought an order for eviction. She stated that at the time the lease was signed on 11th May 2022 the respondent was working as an electrician. His income at that time was £42,000 per year. As far as the applicants were aware there was no one else residing in the house. Ms Callaghan referred to the three letters which had been posted to the respondent regarding arrears. She advised that notwithstanding the letters, arrears continued to increase and there had been a lack of engagement from the respondent. In terms of the rent account which had been provided the respondent had paid a total of £1500 since September 2023. Ms Callaghan advised that the respondent had responded to a text message from her clients on 12th January 2024. He had stated in the text that he was still living in the property and was applying for a loan which he would use to clear the arrears. The Tribunal enquired what the applicants had done in response to the text message. Ms Callaghan advised that they had not responded to that most recent text message as they did not think it appropriate.
6. The cmd was adjourned to allow the applicant’s to provide additional information setting out what action the applicants had taken to the offer of payment made by the respondent in his text dated 12th January 2024.
7. The Tribunal also requested that the applicant’s provide further information on the written information which had been provided to the respondent in order to satisfy the requirements of the pre action protocols relevant to rent arrears cases pursued under ground 12.

Case management discussion – teleconference – 3rd June 2024

8. The applicant was represented by Ms Callaghan from TC Young solicitors. The respondent was not present or represented. The Tribunal noted that proper notice of the cmd had been given to the respondent. The Tribunal determined to proceed with the cmd in the respondent's absence in terms of Rule 29.
9. Ms Callaghan sought an order for eviction. She advised that no payments had been received from the respondent since the previous cmd. The last payment had been £200 in November 2023. The arrears at present amounted to £10,003.74. Ms Callaghan stated that the respondent had contacted the applicant by text on 1st May 2024. He had stated that he was due to receive a tax rebate and wished to offer to pay £200 per week towards the rent and arrears. The current rent charge for the property is £828.59 per month. Ms Callaghan stated that the applicants had contacted the respondent on 1st May 2024. They had provided an income and expenditure form for the applicant to complete in order that they could consider the offer of repayment. The applicant had also offered a home visit to the respondent to discuss a repayment arrangement. Ms Callaghan advised that the respondent had failed to respond to the applicant and no payments of ongoing rent or toward the arrears had been received. In relation to the pre action requirements Ms Callaghan had lodged written representations setting out the applicant's position that paragraph 4(2) of the Rent Arrears Pre Action Requirements (Coronavirus) (Scotland) Regulations 2020 had been complied with. The provision requires information to be provided to tenants relating to the terms of the tenancy agreement, the level of arrears, the tenants rights in relation to eviction proceedings, and providing information on where a tenant could access advice in relation to proceedings. Ms Callaghan pointed to the contents of the tenancy agreement itself, letters dated 4th April 2023 (containing a tenant's rights leaflet), 21st April 2023, 25th April 2023 and 9th May 2023 as evidence that the pre action requirements had been satisfied. Ms Callaghan confirmed that there had been no known change in the respondent's personal circumstances since the previous cmd.

Findings in fact

10. Parties entered into a private rented tenancy agreement with a commencement date of 11th May 2022.
11. Monthly rent payable in respect of the tenancy is £828.59
12. As at the date of the hearing outstanding rent arrears amounted to £10,003.74
13. The arrears are not due to any delay or failure in payment of a relevant benefit.
14. The applicant has complied with the pre action requirement in relation to rent arrears eviction applications.
15. The respondent has not lodged a written defence to the application and has not entered into the present process.

Reasons for the decision

16. The Tribunal had regard to the application and the documents lodged by the applicant. The Tribunal also took into account oral submissions at the cmd.
17. Ground 12 states:

12 Rent arrears

(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

[...]²

(3) The First-tier Tribunal may find that the ground named by subparagraph (1) applies if—

(a) for three or more consecutive months the tenant has been in arrears of rent, and

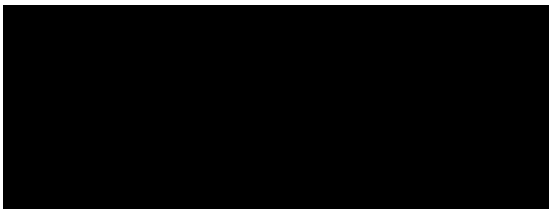
(b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.

18. The Tribunal was satisfied that the respondent had been in arrears for more than 3 months and accordingly part (a) was established. The Tribunal proceeded to consider whether it was reasonable to issue an eviction order.

19. The Tribunal was satisfied that the arrears were not due in whole or part to any failure or delay in payment of a relevant benefit. The Tribunal accepted the information provided by the applicant's representative that the applicant was in employment. The respondent had not raised any benefits issues with the applicant and had not lodged a defence that there was an issue with relevant benefits.
20. The Tribunal gave weight to the fact that the respondent did not seek to defend the action. The Tribunal gave weight to the fact that the arrears were high and had increased significantly since the application had been lodged. The respondent was not paying the ongoing rent and had paid nothing since November 2023. The Tribunal took into account that the respondent had contacted the applicant in advance of both cmds to make an offer of repayment however, the Tribunal gave weight to the fact that the respondent had not subsequently made any payment and in relation to the most recent offer had not responded to the applicant request for further information.
21. Taking all the above factors into account the Tribunal determined that it was reasonable to grant an order for eviction.

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

3rd June 2024_____
Date