



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/24/0106

Re: Property at Flat 2, 35 Drumbrae South, Edinburgh, EH12 8DT (“the Property”)

Parties:

Mrs Naga Alladi, 201 Kingsknowe Road North, Edinburgh, EH14 2ED (“the Applicant”)

Mr Scott Crawford Brand, Ms Samantha Tosh, Flat 2, 35 Drumbrae South, Edinburgh, EH12 8DT; Flat 2, 35 Drumbrae South, Edinburgh, EH12 8DT (“the Respondent”)

Tribunal Members:

Mary-Claire Kelly (Legal Member) and Ahsan Khan (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 8 January 2024 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. The application was heard alongside a second application between the parties in respect of an order for payment under reference FTS/HPC/CV/1393.
2. The applicant lodged the following documents with the application:
 - Copy tenancy agreement

- Rent statement
 - Notice to leave dated 1 December 2023 with proof of service
 - Section 11 notice
 - Copy correspondence between the applicant and the respondents
3. A case management discussion (“cmd”) was assigned for 10 June 2024.

Case management discussion – teleconference – 10 June 2024

4. The applicant was in attendance. The respondents did not attend and were not represented. The Tribunal determined that proper notice of the cmd had been given to the respondents and proceeded in their absence.
5. The applicant sought an order for eviction on the grounds of rent arrears. She advised that as per the rent account which had been lodged prior to the cmd rent arrears as at February 2024 amounted to £10,100. The applicant stated that at the commencement of the tenancy the respondents had provided evidence in the form of payslips that they were in employment. The applicant stated that this was the only property that she rented out. She advised that after they moved into the property in June 2023 the respondents paid rent in August 2023 however apart from one payment of £400 made on 18th September 2024 no further payments had been received. The applicant advised that the monthly rent was £1500. Arrears had continued to rise since the application was lodged. The applicant advised that the non-payment of rent and the conduct of the tenancy had been extremely stressful for her. She advised that there was a mortgage over the property and the non-payment of rent meant that she had to cover the payments herself.
6. The applicant advised that she was not sure what the relationship was between the respondents however she thought they were partners. She advised that Ms Tosh’s 4 year old daughter also lived in the property which was a 2 bedroom flat.
7. The applicant had lodged correspondence with the respondents spanning the period when the arrears first arose to the lodging of the application. The emails showed that the applicant had made attempts to enter into a repayment arrangement with the respondents. The applicant had also provided information on where the respondents could access advice on benefits and housing

support. The applicant stated that the respondents had failed to engage with her to discuss the arrears after they had stopped paying the rent. The applicant stated that as far as she was aware there were no outstanding applications for benefits which would assist with the payment of the rent.

8. The application also specified ground 11- breach of tenancy agreement as a ground the applicant sought to rely on. During the course of the cmd the applicant stated that she wished to proceed with the application relying solely on ground 12.

Findings in fact

9. Parties entered into a private rented tenancy agreement with a commencement date of 26 June 2023.
10. Monthly rent payable in respect of the tenancy is £1500
11. As at the date of the application outstanding rent arrears amounted to £10,100.
12. The arrears are not due to any delay or failure in payment of a relevant benefit.
13. The applicant has complied with the pre action protocol in relation to rent arrears eviction applications.
14. The respondents have not lodged a written defence to the application and have not entered into the present process

Reasons for the decision

15. 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.
16. 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.

(4) In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider [—]

(a) 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

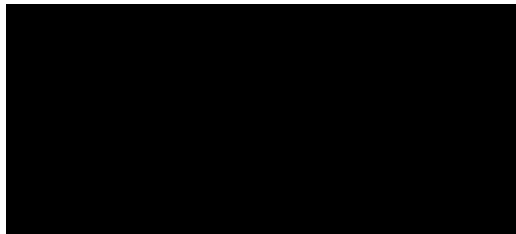
(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations.

17. The Tribunal was satisfied that the respondents 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.
18. 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 applicant had stated that she had not been contacted regarding benefits. 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.
19. 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 September 2023. The Tribunal took into account that the applicant had sought to make an arrangement with the respondents and had sought to discuss the situation with them however, they had failed to engage with her. The Tribunal was satisfied on the basis of the correspondence that had been produced that the applicant had complied with the pre action protocol. The protocol 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. The Tribunal gave weight to the fact that there was a young child in the property however in the absence of any further mitigating factors or information in the form of a written defence the Tribunal considered that this factor was outweighed by the other circumstances of the case.

20. 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

10 June 2024
Date