



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/24/0518

Re: Property at 32 Ashvale Place, 1st Floor Right, Aberdeen, AB10 6QA (“the Property”)

Parties:

Cordiner Holdings Limited, a company registered under the Companies Act (company no 15767444) and having its registered office at 70 St Mary Axe, London, EC3A 8BE (“the Applicant”)

Mhamad Ahmad, 32 Ashvale Place, 1st Floor Right, Aberdeen, AB10 6QA (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member) and Gordon Laurie (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. This is an application by the Applicant for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”). The PRT in question was by the Applicant’s predecessor in title (and associated company) James Cordiner & Sons Ltd to the Respondent commencing on 2 December 2021.
2. The application was dated 31 January 2024 and lodged with the Tribunal on behalf of James Cordiner & Sons Ltd on that date. The application relied upon a Notice to Leave dated 15 December 2023 in terms of section 50 of the Private Housing (Tenancies) (Scotland) Act 2016, intimated upon the Respondent by email (in terms of the Tenancy Agreement) on that date. The Notice relied upon

Ground 12 of Schedule 3 Part 1 of the 2016 Act, being that “the tenant has been in rent arrears for three or more consecutive months”. In regard to Ground 12, the body of the notice referred to arrears of £2,125 as of that date. The rent stated in the Tenancy Agreement lodged was £425 a month, meaning the stated arrears as at the date of the Notice to Leave were equivalent to 5 months’ rent. The Notice intimated that an application to the Tribunal would not be made before 15 January 2024.

3. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon Aberdeen City Council on 31 January 2024 was provided with the application. There was evidence in the application papers of compliance with provision of the pre-action protocol information in standard form on behalf of James Cordiner & Sons Ltd to the Respondent by letter on 10 October 2023.
4. Prior to the case management discussion (“CMD”) we were provided with an updated rent arrears statement showing rent due to 1 July 2024 in arrears of £4,675, with the last rent payment made on 2 July 2023, being 11 months of arrears. This was lodged by email with the Tribunal on 18 June 2024 and was intimated to the Respondent by email at the same time.

The Hearing

5. The matter called for a CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 3 July 2024 at 10:00. We were addressed by Aaron Doran, solicitor, Raeburn Christie Clark & Wallace LLP on behalf of the Applicant. There was no appearance from the Respondent.
6. We were informed by the clerk that no contact had been received from the Respondent (or on their behalf) with the Tribunal. The Applicant’s agent said that no communication had been received from the Respondent since his firm commenced acting. He knew of some contact between the Respondent and the letting agent acting in regard to repairs, with no recent contact in regard to the arrears. Previous contact on the arrears had ceased around the expiry of the Notice to Leave. The Applicant’s agent referred to three points in particular:
 - a. The Respondent had paid on time until August 2023. When the rent due on 2 August 2023 was missed, the Respondent explained to the Letting Agent that he had lost his job. There was a discussion that he might defer payment of the August rent payment until September 2023, which he would then pay from a student loan (as he was believed also to be a student). The Respondent thereafter made contact to say that he would be unable to pay from the student loan after all, as he required to use that money for essential living expenses.
 - b. The Letting Agent provided the Respondent with information as to potential sources of advice, and encouraged him to contact advice agencies. The Respondent responded to the Letting Agent to say: “I refuse all help.”
 - c. After the expiry of the Notice to Leave, the Respondent made contact with the Letting Agent to say that he had contacted the local authority in regard to seeking rehousing but had been informed by them that no assistance could be given until he was evicted.

The Applicant's agent knew of no other contact since then, and confirmed that there had been no response to his email of 18 June 2024 (which also intimated an amendment to the sum sought in a conjoined case on rent arrears: CV/24/0519).

7. We considered that the Respondent had received clear intimation of the CMD by the Sheriff Officer instructed by the Tribunal and, having not commenced the CMD until around 10:05, we were satisfied to consider the application in the Respondent's absence. In any case, no attempt was made by the Respondent (nor anyone on his behalf) to dial in late to the CMD.
8. During oral submissions at the CMD, and further to the Tribunal members' own investigations with Registers of Scotland, it was noted that title to the Property appeared to have very recently transferred from James Cordiner & Sons Ltd to the Applicant (on 28 June 2024). A brief adjournment was permitted for the Applicant's agent to seek further information. After the adjournment, he made a motion to amend the Applicant from James Cordiner & Sons Ltd to the new owner: "Cordiner Holdings Limited, a company registered under the Companies Act (company no 15767444) and having its registered office at 70 St Mary Axe, London, EC3A 8BE".
9. The Applicant's agent explained that the two companies had common directors and shareholders, and that Cordiner Holdings Limited was an attempt by the owners to build up a separate property company, as James Cordiner & Sons Ltd was a trading company in an unconnected field. Cordiner Holdings Limited owned one other property alongside its new ownership of the Property. Section 45 of the 2016 Act was referred to in support of the motion to amend and to allow the amendment at the CMD without further intimation on the Respondent.
10. Though it was conceded by the Applicant's agent that no intimation of the new owner had yet been made on the Respondent, we accepted that it was a matter of public record that the Applicant was now the landlord, that in terms of section 45 there was continuity of the Tenancy, and that the new landlord was entitled to seek eviction under the steps taken by James Cordiner & Sons Ltd thus far. We granted the amendment to the new Applicant without the need for further intimation.
11. The Applicant's agent confirmed that the application for eviction was still insisted upon. We were informed that no rent payments had been received by James Cordiner & Sons Ltd since rent paid for the rent due on 2 July 2023. Further there had been no payment of the rent due for payment on 2 July 2024 (which, subject to intimation on the Respondent, was due to the Applicant as the new landlord). Arrears were now due – between the two companies – of £5,100.
12. The Applicant's agent provided further submissions on the background in regard to the reasonableness of the application:
 - a. The Property was a flat and it was not believed to be specially adapted for the use of the Respondent, nor especially suitable for his needs.
 - b. The Respondent was believed to live alone at the Property.

- c. The Respondent was believed to be a student who had also been employed until July 2023. No information on any continuing employment or unemployment had been received.
- d. The Applicant and its agent knew of nothing to suggest the Respondent had ever sought or received benefits.
- e. As described above, the Respondent had apparently sought rehousing but had been told that would only be considered if he were evicted.
- f. The Applicant was a small property holding company owning the Property and one other property for let.
- g. James Cordiner & Sons Ltd had been happy with the Respondent's performance as a tenant until rent payments stopped, though there were concerns about the condition of the Property. Contractors had reported that there was much belongings, mess and food stuffs left around the Property. On at least one occasion contractors had refused to enter until there had been some cleaning. Cleaning did occur to the extent of making some extra space for the contractors to work, though they still reported that the Property was being kept in a poor condition.

13. No motion was made for expenses.

Findings in Fact

14. On or about 15 November and 2 December 2021 James Cordiner & Sons Ltd let the Property as a Private Residential Tenancy to the Respondent under a lease with commencement on 2 December 2021 ("the Tenancy").
15. In terms of clause 8 of the Tenancy Agreement, the Respondent required to pay rent of £425 a month in advance on the 2nd day of each month.
16. On 15 December 2023, James Cordiner & Sons Ltd's letting agent drafted a Notice to Leave in correct form addressed to the Respondent, providing the Respondent with notice, amongst other matters, that he was in rent arrears for a period in excess of three consecutive months and detailing arrears at that date of £2,125.
17. Arrears as at the date of the Notice to Leave were £2,125.
18. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior to 15 January 2024.
19. James Cordiner & Sons Ltd's letting agent served a copy of the Notice to Leave on the Respondent by email on 15 December 2023.
20. Clause 4 of the Tenancy Agreement permits service of notices by email to the Respondent at the email address provided by him.
21. James Cordiner & Sons Ltd raised proceedings on 31 January 2024 for an order for eviction with the Tribunal, under Rule 109, relying on Ground 12 of Schedule 3 Part 1 of the 2016 Act.

22. Arrears as at the date of lodging the application, 31 January 2024, were £2,550.
23. As at the date of the Notice to Leave, rent arrears were equivalent to 5 months' rent.
24. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon Aberdeen City Council by James Cordiner & Sons Ltd's agent on 31 January 2024.
25. A letter complying with the pre-action protocols was issued to the Respondent on behalf of James Cordiner & Sons Ltd on 10 October 2023.
26. On 28 June 2024, James Cordiner & Sons Ltd transferred title to the Property to the Applicant.
27. As of 3 July 2024, the Respondent remained in arrears of rent in the amount of £5,100 which is equivalent of 12 months of rent.
28. The Respondent does not claim to have paid any amount of the arrears of £5,100 remaining as at 3 July 2024.
29. The sum of arrears remaining as of 3 July 2024 is neither wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, other than any referable to an act or omission of the Respondent.
30. The Respondent has no known dependents living with him at the Property.
31. The Respondent lives alone at the Property.
32. The Property is not specially adapted for the use of the Respondent nor is its location specifically suitable for the Respondent's needs.
33. Intimation of the date and time of the CMD was given to the Respondent by Sheriff Officer on 29 May 2024.

Reasons for Decision

34. The application was in terms of rule 109, being an order for eviction from a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been correctly drafted and served upon the Respondent in respect of the interests of the then-landlord.
35. Ground 12 of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:

(1) ...the tenant has been in rent arrears for three or more consecutive months. ...

(3) The First-tier Tribunal may find that the ground named by sub-paragraph (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.

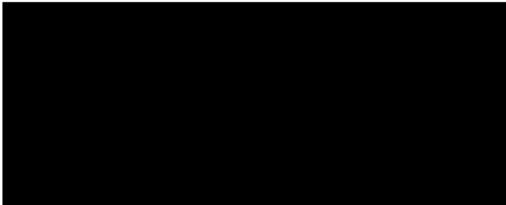
36. The arrears information provided at the CMD clearly showed that Ground 12 was satisfied in regard to the length of arrears and amount outstanding. There is nothing to suggest that Respondent's failure to pay is related to an issue with benefits. Ground 12 is satisfied subject to paragraph 3(b) regarding reasonableness.
37. We require, in terms of the Act as currently amended, to consider the reasonableness of the application even in regard to persistent arrears. We were satisfied that the Applicant's reasons for seeking eviction (and those of James Cordiner & Sons Ltd before it) were reasonable given the amount and duration of the arrears. There was an absence of any recent or material engagement by the Respondent on payment of the arrears, and now there appears to be no engagement. The Respondent did not appear or provide submissions in regard to any issue regarding reasonableness and we are satisfied that it is reasonable to evict on the basis of the information before us.
38. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time under Ground 12.

Decision

39. In all the circumstances, we grant an order against the Respondent for eviction from the Property under section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* further to ground 12 of Schedule 3 of that Act.

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.



3 July 2024

Legal Member/Chair

Date