



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) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/23/3777

Re: Property at 6 Flat 26 Sailmaker Road, Edinburgh, EH6 7GB (“the Property”)

Parties:

C-urb 6 Ltd, Formerly Link Housing Association Ltd, Link House, 2c New Mart Road, Edinburgh, EH14 1RL (“the Applicant”)

Ms Chiara Foulner, 6 Flat 26 Sailmaker Road, Edinburgh, EH6 7GB (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for the eviction of the Respondent from the property.

Background

1. By application dated 26 October 2023 the Applicant’s representatives, Harper Macleod LLP, Solicitors, Glasgow, applied to the Tribunal for an order for the eviction of the Respondent from the property in terms of Ground 12A of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant’s representatives submitted a copy of a tenancy agreement, Notice to Leave, Section 11 Notice, Pre-Action Requirement letters together with other documents in support of the application.
2. By Notice of Acceptance dated 28 December 2023 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 13 February 2024.
4. By email dated 25 March 2024 the Applicant's representatives submitted further written representations and documents including as rent increase letter dated 1 April 2023 and a current rent statement showing the rent due at March 2024 to be £8258.29.
5. A CMD was held by teleconference on 26 March 2024. Mr Andrew Moodie and Ms Laurie Watterson attended from the Applicant who was represented by Ms Sheryl Dempster from the Applicant's representatives. The Respondent did not attend nor was she represented. The Tribunal noted the background to the application and the reason for serving a Notice to Leave due to the level of rent arrears and the failure of the Respondent to engage with the Applicant. The Tribunal also noted that intimation of the proceedings had been given to Edinburgh City Council by way of a Section 11 Notice on 26 October 2023.
6. The Tribunal was advised that the Respondent had recently given birth and that she had separated from the father of her child and had previously complained of having mental health issues and of being in an abusive relationship. The Tribunal was advised that the Respondent had been given advice from the Applicant's in-house support team and directed to external agencies such as the CAB but that the Respondent had not engaged with them. The Tribunal was also advised that it was unlikely that the Respondent's family who were tenants of the Applicant and lived in the area would be able to provide the Respondent with accommodation due to lack of space. The Tribunal was also advised that the Respondent might be eligible for Housing benefit which had previously been stopped due to the Respondent's failure to provide information and that she had recently requested further documents from the Applicant to allow her to progress a claim. In light of the information provided and despite the high level of arrears the Tribunal determined to continue the application to a further CMD to allow the Respondent to obtain advice and to see if some progress could be made to resolve any outstanding housing benefit claim or other financial assistance that might be available.
7. By email dated 12 July 2024 the Applicant's representative submitted an updated rent statement to the Tribunal showing the rent due at 8 July 2024 to be £10494.92.

The Case Management Discussion

8. A CMD was held by teleconference on 2 August 2024. Mr Andrew Moodie and Ms Laurie Waterson attended from the Applicant who was represented by Ms Sheryl Dempster from the Applicant's representatives. The Respondent did not attend nor was she represented. The Tribunal

being satisfied that proper intimation of the date and time of the CMD had been given to the Respondent determined to proceed in her absence.

9. Ms Dempster advised the Tribunal that the Respondent's claim for Housing Benefit had been rejected and that the rent arrears now amounted to £11112.75.
10. In response to a query from the Tribunal Mr Moodie explained that as the Respondent had never cancelled her direct debit this was shown as a credit each month on the rent statement immediately followed by a debit for the same amount as the direct debit was unpaid.
11. In response to a further query from the Tribunal Ms Waterson explained that numerous attempts had been made to try to engage with the Respondent through text messages, phone calls and calling at the Respondent's home but on most occasions the Respondent had failed to respond or participate. Ms Waterson said on one occasion she had met the Respondent in the street but had not felt it appropriate to discuss matters in detail with her as she was in the company of a third party but had arranged to telephone her later but that call had then not taken place and a further meeting that was then arranged also did not happen.
12. Mr Moodie advised the Tribunal that the Applicant's in-house team had done all it could to assist the Respondent and had signposted the Respondent to outside agencies but the Respondent had failed to engage with them. He confirmed that if an order for eviction was granted the decision on whether to proceed with an eviction would be taken by the Applicant's Managing Director.

Findings in Fact

13. The Respondent commenced a Private Residential Tenancy of the property on 1 September 2021.
14. A Notice to Leave under Ground 12A of Schedule 3 of the 2016 Act was served on the Respondent on 27 July 2023.
15. At the date of service of the Notice to Leave the Respondent owed rent of £4702.10.
16. A Section 11 Notice was sent to Edinburgh City Council on 26 October 2023.
17. At the date of the CMD on 2 August 2024 the Respondent owed rent of £11112.75.
18. The Respondent has failed to engage with the Applicant to try to address issues around her accumulation of rent arrears.

19. The Applicant has provided advice to the Respondent and issued Pre-action Requirement letters on 22 July 2022 and 3 August 2022.
20. The Applicant has directed the Respondent to other advice agencies such as the CAB.
21. The Respondent is living in the property with a young child who is believed to be about six months old.
22. The Respondent has indicated to the Applicant that she has had mental health issues and been in an abusive relationship.
23. The Respondent is believed to have separated from the father of her child.
24. The Respondent's family are unable to provide her with alternative accommodation.
25. The Respondent is not in receipt of Housing Benefit.
26. Any decision to evict the Respondent will be made by the Applicant's Managing Director.

Reasons for Decision.

27. The Tribunal was satisfied from the written representations and documents submitted and the oral submissions that the parties entered into a Private Residential tenancy that commenced on 1 September 2021. The Tribunal was also satisfied that a valid Notice to Leave had been served on the Respondent under Ground 12A of Schedule 3 of the 2016 Act and that proper intimation of the proceedings had been given to Edinburgh City Council by way of a Section 11 Notice.
28. The Tribunal was therefore satisfied that procedurally the criteria for granting an order for the eviction of the Respondent from the property had been met subject to it being reasonable for such an order to be made. In reaching its decision the Tribunal took account of the fact that despite being given the opportunity to submit written representations and on two occasions the opportunity to participate in a CMD the Respondent chose to do neither. The Tribunal also took account of the fact that despite being given an opportunity by both the Tribunal and the Applicant to engage with the Applicant to try to address the issues around her failure to pay rent or to resolve any Housing Benefit issues the Respondent again did not participate. The Tribunal was satisfied that the Applicant had done all it could to try to engage with the Respondent and assist her through its in-house support team and by directing her to outside agencies that could provide assistance. The Tribunal acknowledged that if an order for her eviction was granted this would have a serious impact upon the Respondent particularly given she has a very young child and has

apparently had mental health issues in the past. However, the Tribunal took the view that it would not be appropriate to allow the Respondent to continue to retain the tenancy with no rent being paid and the arrears now amounting to the equivalent of 18 months' rent. The Tribunal also acknowledged that as part of the Link Group the Applicant would before enforcing an order for eviction consider the Respondent's circumstances and the final decision would be taken by the Applicant's Managing Director. In all the circumstances the Tribunal was satisfied that it was appropriate to grant the order for eviction sought by the Applicant.

Decision

29. The Tribunal being satisfied it had sufficient information before it to make a decision without the need for a hearing, finds the Applicant entitled to an order for the eviction of the Respondent from the property.

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.

**Graham Harding
Legal Member/Chair**

**2 August 2024
Date**