



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 (Act)

Chamber Ref: FTS/HPC/EV/24/1217

Re: Property at 19A New Street, Musselburgh, EH21 6JH (“the Property”)

Parties:

Mr Charles Bentley, 7 Duddingston Square East, Edinburgh, EH15 1RU (“the Applicant”)

Mr Daniel Hayes, 19A New Street, Musselburgh, EH21 6JH (“the Respondent”)

Tribunal Members:

Alan Strain (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 the application be granted.

Background

This is an application under Rule 109 and section 51(1) of the Act for eviction and recovery of possession on Ground 12 of Schedule 3 to the Act.

The Tribunal had regard to the following documents:

1. Application received 13 March 2024;
2. Private Residential Tenancy Agreement (**PRTA**) commencing 27 August 2023;
3. Notice to Leave dated and served by Sheriff Officers on 9 January 2024;
4. Section 11 Notice to Local Authority and covering email dated 13 March 2024;
5. Rent Arrears Statement as at 27 February 2024;
6. Service of Tribunal CMD Notification on the Respondent by Sheriff Officer on 28 June 2024.
7. Email application to amend sum sued for by Applicant dated 1 July 2024 along with rent statement as at 27 June 2024.

Case Management Discussion (CMD)

The case called for a CMD by conference call on 5 August 2024. The Applicant did not participate but his solicitor did. The Respondent did not participate and was not represented.

The Tribunal delayed the start of the CMD to see if the Respondent would participate but they did not.

The Tribunal were satisfied that the Respondent had received notification of the Case Management Discussion and that the Tribunal could determine the matter if it considered it had sufficient information to do so and the procedure was fair. The notification also advised the Respondent that he should attend and the Tribunal could determine the matter in absence if he did not.

The Applicant's solicitors provided information regarding the Applicant's personal circumstances and some limited information regarding the Respondent.

The Tribunal had regard to Ground 12 of Schedule 3 to the Act which provides:

Rent arrears

12(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—

(a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant—

(i) is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day, and

(ii) has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, and

(b) the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

(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 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.

(5) For the purposes of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the [Housing Benefit \(General\) Regulations 1987 \(S.I. 1987/1971\)](#),

(ii) a payment on account awarded under regulation 91 of those Regulations,

(iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,

(iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,

(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.

The Tribunal then considered the oral and documentary evidence it had received. In so far as material the Tribunal made the following findings in fact:

1. The Parties let the subjects under a PRTA commencing 27 August 2023;
2. The monthly rent was £850;
3. Notice to Leave had been served on the Respondent on 9 January 2024;
4. As at the date of service of the Notice to Leave the Respondent was in arrears of rent and had been in arrears for a continuous period of three or more consecutive months;
5. As at the date of the CMD the Respondent was £7,650 in arrears;
6. The rental arrears were not due to any delay or failure in the payment of a relevant benefit;
7. Section 11 notification had been served on the local authority;
8. The Applicant was retired, in receipt of a partial state pension and dependent upon the rental income for his retirement;
9. The Respondent lived in the Property alone and was in employment. He had agreed an arrears repayment plan which had not been adhered to.

The Tribunal considered all of the evidence and submissions. The Tribunal were aware that it had to be satisfied that it was reasonable in the circumstances to grant the order sought.

The Tribunal sought to make a fair and just decision. The Tribunal determined that it would be reasonable to grant the order in the circumstances.

The Tribunal was satisfied that Ground 12 had been established and accordingly granted the application for eviction and recovery of possession.

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.

A Strain

5 August 2024

Legal Member/Chair

Date