



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for eviction/ possession of a Rented Property in terms of Rule 109 of the Procedure Rules.

Chamber Ref: FTS/HPC/EV/24/0523

Re: 6 Dunnikier Lane, Edinburgh, EH17 8YG ('the Property')

Parties:

Castle Rock Edinvar Housing Association Limited in Association with Places for People ('the Applicants')

Patten and Prentice, Solicitors (The Applicant's Representative')

Graeme Love, 6 Dunnikier Lane, Edinburgh, EH17 8YG ('the Respondent')

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal')

Tribunal Members: Jacqui Taylor (Legal Member) and Helen Barclay (Ordinary Member)

1.1. The Applicants submitted an application to the Tribunal for eviction/ possession of the Rented Property under section 51(1) of the Private Housing Tenancies (Scotland) Act 2016, in terms of Rule 109 of the Procedure Rules.

1.2 The application was dated 31st January 2024. The application stated that the ground for eviction was as follows:

'Ground 12: Rent Arrears.

Rent is due at the rate of £746.75 per month. On 11th October 2023 a Notice to Leave was served on the Respondent based on rent arrears. On that date the rental balance was £5821.02. The Respondent has been in arrears for three or more consecutive months. There are current rent arrears of £6061.27. The current level of arrears is in excess of one month's rent. The Tribunal has discretionary power to grant an order for eviction. Reference is made to the Statement of Account produced.

Ground 12A: Substantial Rent Arrears.

The cumulative amount of your rent arrears equates to or exceeds an amount that is the equivalent of 6 months' rent due under the tenancy. Rent is due at the rate of £746.75 per month. There are current rental arrears of £6061.27. The current level of

arrears is in excess of six months' rent. The Tribunal has discretionary power to grant an order for eviction. Reference is made to the Statement of Account produced.

1.3 Documents lodged with the Tribunal were:-

- Private Residential Tenancy Agreement between the parties dated 25th November 2022 and 2nd December 2022.
- A rent statement for the period 28th November 2022 to 30th September 2023 showing arrears of £5574.27.
- A rent statement for the period 28th November 2022 to 4th October 2023 showing arrears of £5821.02.
- A rent statement for the period 28th November 2022 to 1st January 2024 showing arrears of £6061.27.
- A rent statement for the period 28th November 2022 to 31st July 2024 showing arrears of £6646.47.
- A rent statement for the period 28th November 2022 to 31st August 2024 showing arrears £7649.27.
- Email dated 1st August 2024 advising that the rent statement for the period 28th November 2022 to 31st August 2024 does not include a rent payment of £500 paid on 30th July 2024.
- Notice of Proposed Rent Increase dated 1st April 2023 increasing the rent to £746.75 from 4th July 2023.
- Notice to Leave dated 11th November 2023 advising the Respondent that an application for an eviction order on the ground that there has been rent arrears over three consecutive months and there are substantial rent arrears will not be submitted to the Tribunal before 11th October 2023.
- Email from the Respondents' Representative to the Applicant dated 11th October 2023 with the Notice to Leave attached.
- Section 11 Notice addressed to Edinburgh City Council.
- Email to Edinburgh Council dated 29th January 2024 attaching the section 11 Notice.
- Copies of Pre action letters sent to the Respondent dated 15th September 2023 and 29th January 2024.

2. By Notice of Acceptance by Helen Forbes, Convener of the Tribunal, dated 3rd April 2024 she intimated that she had decided to refer the application (which application paperwork comprises documents received between 31st January 2024 and 8th March 2024) to a Tribunal.

4. The First Case Management Discussion

4.1 This case called for a conference call Case management Discussion (CMD) at 10.00am on 5th August 2024.

Mr Caldwell, the Applicants' Representative, attended the CMD.

The Respondent had been served with a letter advising him of the CMD by Dale Barrett, Sheriff Officer on 28th June 2024. The Tribunal were satisfied that the requirements of Tribunal Rule 29 had been complied with and continued with the CMD.

4.1 Oral Submissions by Mr Caldwell.

Mr Caldwell advised the Tribunal that the rent due by the Respondent in terms of the Tenancy Agreement was £725 per month. The rent had been increased to £746.75 on 4th July 2023. The Respondent had not challenged that increase. The rent had also been increased to £804.24 in July 2024. The rent arrears started early in the tenancy. Between January 2023 and October 2023 the Respondent only made one payment of £1000. He then paid monthly payments of £500. The Respondent is in regular contact with the Applicants as he phones them monthly but he has not provided them with an explanation for the rent arrears. He did mention that he was waiting for a divorce settlement to come through. The rent arrears currently amount to £7149.27.

The first Notice to Leave that was served on the Respondent contained a school boy error. The Notice states that an application would not be submitted to the Tribunal before 11th October 2023 and the Notice was dated 11th November 2023. These dates had been transposed. He invited the Tribunal to accept that the error had been cured by the terms of the accompanying email which stated that an application would not be submitted to the Tribunal before 11th November 2023. He also invited the Tribunal to accept that section 73 of the Private Housing (Tenancies) (Scotland) Act 2016 applies and the error does not make the Notice invalid.

He explained that he had sent a fresh Notice to Leave to the Respondent and a copy would be provided to the Tribunal, in the event that the Tribunal were not persuaded that the error in the Notice to Leave did not result in the Notice being invalid.

He confirmed that the Respondent was not in receipt of benefits. He was a self-employed salesman. He understands that the Respondent has an eight year old daughter who may reside in the Property but he suspects that this is during periods of contact.

4.2 Outcome of the First Case Management Discussion.

Mrs Taylor advised Mr Caldwell that the Tribunal were not persuaded that the Notice to Leave was not invalid. The purpose of the Notice to Leave is to advise the Tenant of the earliest date an application would be made to the Tribunal for an eviction order. The Tribunal did not accept that an error in this date was a minor error. They did not accept that section 73 of the Private Housing (Tenancies) (Scotland) Act 2016 applied as this fundamental error to the Notice to Leave could not be described as 'minor'. The Case Management Discussion was adjourned to a further Case Management Discussion to allow time for the Applicant's Representative to produce to the Tribunal a copy of the fresh Notice to Leave that had been served on the Respondent, together with evidence of service.

5. Additional written representations lodge by the Applicant.

The Applicant's Representative sent the Tribunal a copy of the second Notice to Leave dated 12th March 2024 advising the Respondent that an application for an eviction order on the ground that there has been rent arrears over three consecutive months

and there are substantial rent arrears will not be submitted to the Tribunal before 12th April 2024. The Notice to Leave stated that the rent arrears amounted to £5808.02.

6. Direction.

6.1 The Tribunal issued a Direction in the following terms:

'The Applicant's Representative sent the Tribunal a copy of the Notice to Leave dated 12th March 2024 which states that an application will not be submitted to the Tribunal before 12th April 2024, together with a copy of the covering email to the Respondent also dated 12th March 2024. This Application to the Tribunal is dated 31st January 2024.

The Applicants' Representative is Directed to provide the Tribunal with written representations as to why he considers the said Notice to Leave dated 12th March 2024 to be a valid Notice to Leave in relation to this application.

The said written representations should be lodged with the Tribunal no later than close of business on 14th August 2024.'

6.2 The Applicant's Representative sent the Tribunal an email dated 12th August 2024 which explained that the fresh Notice to Leave was served on the Respondent as a fall-back position in the event that the Tribunal did not accept that the errors contained in the dates detailed in the original Notice to Leave could be cured in terms of section 73 of the Private Housing (Tenancies) (Scotland) Act 2016. He invited the Tribunal to have regard to section 52(4) of the Act. As the fresh notice was served to address the error in the original notice and the interest of justice dictated that the Tribunal should deal with matters to avoid delay that would be occasioned by lodging a fresh application he invited the Tribunal to have regard to section 52(4) of the Act. He accepted that the current application was submitted before the second Notice became valid but he stated that it was long before the Respondent received formal intimation of the Application from the Tribunal.

7. The Second Case Management Discussion

7.1 This case called for a conference call Case Management Discussion (CMD) at 11.30am on 19th August 2024.

Mr Caldwell, the Applicant's Representative, and the Respondent attended the CMD.

7.1 Oral Representations by Mr Caldwell.

Mr Caldwell advised that the current rent arrears were £7149.27. He explained that the second Notice to Leave had been issued to correct the 'school boy' error made in the original Notice to Leave where the date of signing of the Notice and the date for making an application to the Tribunal had been reversed. The fresh Notice to Leave was dated 12th March 2024 and it stated that an application would not be made to the Tribunal before 14th April 2024. He acknowledged that the second Notice to Leave had been submitted to the Tribunal after the application had been made to the Tribunal on 31st January 2024. He stated that the Respondent would have received the second Notice to Leave before the Respondent had received notification of the application

from the Tribunal. He invited the Tribunal to accept that it was reasonable to accept the second Notice to Leave in terms of section 52(4) of the Act.

He advised that it was reasonable for the Tribunal to grant the eviction order. The rent arrears had been ongoing for over one and a half years. The rent was £746.75 per month. The Respondent had been paying £500 per month. Mr Caldwell advised that he has had a number of telephone calls with the Respondent and asked him to provide an irrevocable mandate in relation to sums he hoped to receive from a court action but the Respondent has never provided the mandate.

7.2 Oral Representations by the Respondent.

Mr Love confirmed that the current rent arrears were £7149.27. He did not want to challenge the validity of the Notices to Leave. He was aware of the content of the two Notices to Leave and that the Applicants had applied for the eviction. He is currently involved in three court actions and has been granted Legal Aid. While the court actions are ongoing he is not in a position to increase his earning beyond £600 per month. One of the court actions is an action for unjustified enrichment and he expects to receive settlement this autumn. The case has taken longer than anticipated. If the case is successful he would intend to pay off the rent arrears.

He does not want to be evicted. He has entered into negotiations with the Landlords regarding making payments towards the arrears but has not set up regular payments as he is presently not in a position to make the payments. He hopes that this will change. He moved into the Property to ensure that he was closer to his daughter. However, his ex-wife has since denied him access to his daughter. He advised that he is in receipt of Universal Credit and the housing element amounts to £600 per month. He hopes to improve his employment position soon and just needs a bit more time to resolve his affairs.

8. Decision

8.1 The Tribunal made the following findings in fact:

8.1.1 The Respondent is the Tenant of the Property in terms of the Private Residential Tenancy dated 25th November 2022 and 2nd December 2022.

8.1.2 The Applicants are Landlords of the Property.

8.1.3 The Rent due by the Respondent in terms of the lease is £725 per month.

8.1.4 The Rent was increased to £746.75 with effect from 4th July 2023.

8.1.5 The Rent was increased to £804.24 in July 2024.

8.1.6 The rent statements produced are correct.

8.1.7 The rent arrears currently amount to £7149.27.

8.1.8 The rent account has been in arrears since January 2023.

8.1.9 A Notice to Leave was served on the Respondent by email on 11th October 2023. The Notice was dated 11th November 2023 and it advised the Respondent that an application would not be made to the Tribunal before 11th October 2023.

8.1.10 The Applicant's solicitor sent a covering email to the Respondent dated 11th October 2023 advising that an application would not be made to the Tribunal before 11th November 2023.

8.1.11 A Notice to Leave was served on the Respondent by email on 12th March 2024 and advised the Respondent that an application would not be made to the Tribunal before 12th April 2024.

8.1.12 The Tribunal first notified the Respondent of the application on 27th June 2024.

8.1.13 The rent arrears are not due to a delay or failure in the payment of a relevant benefit.

8.1.14 The Applicants' solicitor had sent preaction letters to the Respondent dated 15th September 2023 and 29th January 2024.

8.2. Requirements of Section 109 of the Procedure Rules.

The Tribunal confirmed that the application correctly detailed the requirements of section 109(a) of the Procedure Rules namely:-

(i) the name, address and registration number of the Landlord.

(ii) the name and address of the Landlord's representative.

(iii) the name and address of the Tenants.

(iv) the ground of eviction. The grounds stated in the application are that the tenant is in rent arrears over three consecutive months and that there are substantial rent arrears.

The Tribunal accepted that the grounds of eviction are Ground 12 and Ground 12A of Schedule 3 of the 2016 Act.

8.3 The Tribunal confirmed that the application complied with the requirements of Section 109(b) of the Procedure Rules:

(i) evidence showing that the eviction ground or grounds had been met.

The required rent statements had been provided showing rent arrears over three consecutive months and rent arrears amounting to more than six months rent.

(ii) a copy of the notice to leave given to the Tenant as required by section 52(3) of the 2016 Act.

The two Notices to Leave advised the Tenant that the Applicants intend to apply to the Tribunal for an eviction order in respect of the property on the basis of Ground 12 (The Tenant is in rent arrears over three consecutive months) and Ground 12A (substantial rent arrears).

The First Notice to Leave was sent to the Respondent by email on 11th October 2023 and erroneously advised the Respondent that an application for eviction would not be made before 11th October 2023. The covering email stated that an application for eviction would not be made before 11th November 2023.

The Second Notice to Leave was sent to the Respondent by email on 12th March 2024 and advised the Respondent that an application for eviction would not be made before 12th April 2024, even although the application had been submitted to the Tribunal on 31st January 2024.

The Tribunal considered the application by the Applicants' Representative to accept the application on the basis of the Notice to Leave dated 12th March 2024, even although it was dated after the application had been made to the Tribunal as he considered it to be reasonable in terms of section 52(4) of the Act.

The Tribunal accepted that it was reasonable to entertain the application made in breach of section 54 of the Act for the following reasons:

(a) The Respondent was not challenging the Notices that had been issued.

(b) The Respondent had not been advised of the application by the Tribunal administration until 27th June 2024.

(c) The Applicants had sent the Respondent a Notice to Leave on 11th October 2023 albeit that the Notice to Leave contained errors. That Notice to Leave was invalid but the Respondent had been advised of the proposed action and the correct details had been provided in the accompanying email from the Applicants' Representative.

(d) The second Notice to Leave had been issued to the Respondent after the application had been submitted to the Tribunal and before the application had been accepted by the Tribunal. The second Notice to Leave had been issued due to the errors contained in the first Notice to Leave.

(e) It is an overriding objective of the Tribunal to avoid delay.

(iii) a copy of the notice given to the local authority as required by Section 56(1) of the 2016 Act.

The Tribunal confirmed that a copy of the required notice had been provided.

8.4 The Tribunal confirmed that the application form had been correctly signed and dated by the Landlords' representatives as required by Section 109(c) of the Procedure Rules.

8.5 In relation to the requirements of Ground 12 and Ground 12A of the Private Housing (Tenancies) (Scotland) Act 2016 the Tribunal found as follows:

8.5.1. The Tribunal determined that the Respondent had been in arrears of rent for three or more months at the date of the two Notices to Leave, the date of the Application to the Tribunal and at today's date.

8.5.2 The Tribunal found that the rent arrears exceeded six months' rent (£4480.50) at the date of the two Notices to Leave, the date of the Application to the Tribunal and at today's date.

8.5.3 The Tribunal found that the rent arrears were not due to a delay or failure in payment of a relevant benefit.

8.5.4 The Tribunal found that it was reasonable for the eviction order to be granted for the following reasons:

8.5.5 The considerable amount of the rent arrears owing.

8.5.6 The fact that the rent arrears first started in January 2023.

8.5.7 The fact that the Applicant had issued preaction letters to the Respondent.

8.5.8 The Tribunal gave little weight to the potential payment the Respondent will receive in relation to the action for unjustified enrichment as no specific details have been provided. In particular, no evidence of the likely outcome of the action or expected date of payment has been provided.

8.6 The Tribunal found in law that the grounds 12 and 12A in Schedule 3 of the 2016 Act were met.

8.7 The Tribunal granted the eviction.

9. 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:

Date: 19th August 2024

J Taylor