



**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/24/1288**

**Re: Property at 17A/5 Smith's Place, Edinburgh, EH6 8NT ("the Property")**

**Parties:**

**Raimes Clark & Company Limited, 19 Smith's Place, Edinburgh, EH6 8NU ("the Applicant")**

**Christopher Dickson, 17A/5 Smith's Place, Edinburgh, EH6 8NT ("the Respondent")**

**Tribunal Members:**

**Shirley Evans (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 an order against the Respondent for possession of the Property at 17A/5 Smith's Place, Edinburgh, EH6 8NT under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act") be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in their name may enter thereon and peaceably possess and enjoy the same.**

**Background**

1. This is an action for recovery of possession of the Property raised in terms of Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Regulations").

2. The application was accompanied by a Private Residential Tenancy Agreement between the parties dated 20 July 2021, letters dated 4,13 and 23 October 2023, 7 and 17 November 2023 and 8 December 2023 to the Respondent from Southside Property Management, a Notice to Leave dated 18 January 2024 with Sheriff Officer's Execution of Service dated 24 January 2024, a rent statement to 1 March 2024, and an email dated 18 March 2024 addressed to Edinburgh City Council with a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003.
3. On 10 April 2024 the Tribunal accepted the application under Rule 9 of the Regulations.
4. On 5 July 2024 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 26 July 2024. The Tribunal advised parties that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 13 August 2024. This paperwork was served on the Respondent by Dale G Barratt, Sheriff Officer, Edinburgh on 8 July 2024 and the Execution of Service was received by the Tribunal administration.
5. The Respondent did not make any representations.

### **Case Management Discussion**

6. The Tribunal proceeded with a CMD on 13 August 2024 by way of teleconference. Mr Gray from Gilston Gray, solicitors appeared for the Applicant. There was no appearance by or on behalf of the Respondent despite the CMD starting 10 minutes late to allow him plenty of time to join the call. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in his absence. The case was heard together with a case for arrears under case reference number FTS/HPC/CV/24/1288.
7. The Tribunal had before it the Private Residential Tenancy Agreement between the parties dated 20 July 2021, the letters dated 4,13 and 23 October 2023, 7 and 17 November 2023 and 8 December 2023 to the Respondent from Southside Property Management, the Notice to Leave dated 18 January 2024 with Sheriff Officer's Execution of Service dated 24 January 2024, the rent statement to 1 March 2024 and the email dated 18 March 2024 addressed to Edinburgh City Council with a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003. The Tribunal considered these documents.

8. Mr Gray moved the Tribunal to grant an order for eviction. Arrears had increased to £8921 as at 1 August 2024, being over 10 months of arrears. The last payment to account was for £4 in October 2023. The Respondent had not engaged at all with the Applicant's agents despite the pre action requirement letters. They had attempted to engage with him at a tenancy inspection on 27 February 2024, but he had refused access and sent the agent away. He understood the Respondent was in receipt of Universal Credit and had been from the start of the tenancy. He was not aware of a change in circumstances. The Respondent is 31 years of age and lives in the Property alone.
9. In response to questioning by the Tribunal Mr Gray explained his client owned twenty-six other properties, twenty-two of which were in the same building as the Property. The Property was not encumbered by a mortgage. His clients are however losing income and are concerned they have not had access to check the condition of the Property or to comply with the statutory requirements.

### **Reasons for Decision**

10. The Tribunal considered the issues set out in the application together with the documents lodged in support. The Tribunal also considered the following legislation in its determination -
  - Private Housing (Tenancies) (Scotland) Act 2016
  - The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.
11. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on Ground 12 (rent arrears) and Ground 12A (substantial rent arrears).
12. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.
13. In terms of Section 54 of the 2016 Act a landlord may not make an application to the Tribunal for an eviction order against a tenant until the expiry of the relevant period in relation to that Notice. The relevant period begins on the day the tenant receives the Notice which in the case of Ground 12 and Ground 12A of Schedule 3 is 28 days.

14. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states that it proceeds on Grounds 12 and 12A of schedule 3 of the 2016 Act and states the amount of arrears at Part 2 of the Notice. The Notice to Leave specifies the date the Applicant as landlord expects to become entitled to make an application for an eviction order namely 22 February 2024. In terms of Section 62(4) of the 2016 Act, the Notice to Leave must specify the day falling after the day on which the notice period defined in section 54(2) will expire. In this case the Notice to Leave was received by the Respondent on 24 January 2024 by Sheriff Officer. In the circumstances the Tribunal is satisfied the Respondent has been given sufficient notice of 28 days. Accordingly, the Notice to Leave complies with Section 62.
15. The Tribunal considered the issues set out in the application together with the documents lodged in support. The Respondent's arrears were increasing and stood at £8921, the monthly rent being £595 with reference to the rent statement. The Applicant's letting agents had sent a number of pre-action letters to the Respondent. Arrears were increasing with the last payment being in October 2023. The arrears were substantial and amounted to over 10 months in arrears. The Tribunal was persuaded by Mr Gray's submissions that the factual basis of Grounds 12 and 12A had been established. However, Grounds 12 and 12A are discretionary grounds of eviction. As well as being satisfied the facts have been established to support the grounds, the Tribunal has to be satisfied that it is reasonable to evict.
16. With regard to reasonableness, the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal was satisfied that the Applicant had clearly done everything they could to avoid taking action and assist the Respondent. On the other hand, the Respondent did not oppose the application. The Respondent had refused to engage with the Applicant's agents and had refused access to the Property. He had made no attempts to pay the arrears or enter into a repayment arrangement following upon the letters sent to him under the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. The Tribunal noted that notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Edinburgh City Council had been served. The balance of reasonableness in this case weighted towards the Applicant.
17. In the circumstances the Tribunal considered that in terms of Grounds 12 and 12A of Schedule 3 the Respondent was in substantial rent arrears and that it is reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

## **Decision**

18. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

### **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.

# S. Evans

13 August 2024

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Legal Chair

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Date