



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 (“2016 Act”)

Chamber Ref: FTS/HPC/EV/24/0832

Re: 49 2/1 (also known as flat 5) Lyon Street, Dundee, DD4 6RA (“the Property”)

Parties:

Mrs Pervin Maleque, 3C Westgrove Avenue, Dundee, DD2 1LN (“the Applicant”)

Mr Quesmatullah Taskin and Ms Rafia Haidari, both of 49 2/1 Lyon Street, Dundee, DD4 6RA (jointly and severally “the Respondents”)

Tribunal Members:

Pamela Woodman (Legal Member) and Ahsan Khan (Ordinary Member)

Present:

The case management discussion took place at 10am on Monday 26 August 2024 by teleconference call (“the CMD”). The Applicant was not present but was represented by Mr Greg Gardiner of Easylets Limited, supported by Mrs Chantelle Gunn of Easylets Limited. Both of the Respondents were present. The clerk to the Tribunal was Leo Capocci. This case was conjoined with the case with reference FTS/HPC/CV/24/0833.

DECISION

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted under ground 12 of schedule 3 to the 2016 Act against the Respondents.

BACKGROUND

1. An application had been made to the Tribunal under section 51(1) of the 2016 Act and in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“HPC Rules”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended. More specifically, the application was made in

terms of rule 109 (*Application for an eviction order in relation to a private residential tenancy*) of the HPC Rules.

2. The order sought from the Tribunal was an eviction order against the Respondents in respect of the Property on the basis of ground 12 (rent arrears over three months).
3. Ground 12 of schedule 3 to the 2016 Act provides that:
 - “(1) It is an eviction ground that 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. The application form was dated 20 February 2024 and copies of various documents were provided, including:
 - a. the private residential tenancy agreement between the Applicant and the Respondents dated 5 December 2022 (“**Tenancy Agreement**”).
 - b. a notice to leave dated 15 December 2023 addressed to the Respondents at the Property (“**Notice to Leave**”), which stated that an application would not be submitted to the Tribunal for an eviction order before 15 January 2024 and that the eviction ground was “You are in rent arrears over three consecutive months” (ground 12).
 - c. covering e-mail to the Respondents (using the e-mail address for notices set out in the Tenancy Agreement) dated 31 August 2023 attaching the Notice to Leave.
 - d. a notice under section 11(3) of the Homelessness etc. (Scotland) Act 2003, together with the covering e-mail sending it to the local authority on 20 February 2024.
 - e. rent account covering the period from 6 December 2022 to 5 February 2024 and which showed arrears of rent as at 5 February 2024 of £2,192 (“**Original Rent Statement**”).
5. A notice of acceptance of the application was issued dated 19 March 2024 under rule 9 of the HPC Rules, confirming that the application paperwork had been received between 20 and 22 February 2024.
6. The Respondents were sent notice of the CMD by letter dated 24 July 2024, which was confirmed (in the certificates of intimation from Roger Ewen of Walker Love,

sheriff officers) as having been served on each of the Respondents by posting through the letterbox on 25 July 2024.

7. The Respondents had provided written representations by e-mail from the second Respondent dated 14 August 2024.
8. The Applicant's representatives had sought to provide an updated rent account covering the period from 6 December 2022 to 1 August 2024, which showed rent arrears of £2,904 as at 1 August 2024 ("**Updated Rent Statement**"). This was sent to the Tribunal's administration team on 20 August 2024. They also provided a copy of the rent increase notice which proposed a rent increase from £420 per month to £432 per month from 1 February 2024.
9. This decision arises out of the CMD.

PROCEEDINGS, NAMELY THE CMD

10. Mr Gardiner confirmed that the Property was also known as flat 5, 49 Lyon Street. The Tribunal noted that the Applicant was the registered landlord for flat 5 but that the landlord registration number provided in the case papers was incorrect.
11. The Respondents confirmed that they were still in occupation of the Property. The second Respondent noted that she had moved out of the Property between October 2023 and January 2024 and that she returned to the Property in February 2024. The Respondents confirmed that no change was made to the Tenancy Agreement to reflect this.
12. Mr Gardiner noted that the Property had been let under the same Tenancy Agreement since 2022, that it was a joint tenancy and, if the second Respondent had moved out for a time, this was not reflected in the Tenancy Agreement.
13. The Tribunal noted that the Updated Rent Statement had been provided less than 14 days before the date of the CMD. However, it was noted that the payments which the second Respondent had confirmed to have been made in her e-mail of 14 August 2024 had been reflected in the Updated Rent Statement.
14. Both Respondents confirmed that they believed that the Original Rent Statement was accurate and that there were arrears of £2,192 as at 5 February 2024.
15. Mr Gardiner confirmed that pre-action protocol letters, based on the Scottish government's template letters, were not sent. However, both Mr Gardiner and the first Respondent confirmed that there had been many e-mail communications and meetings with Easylets Limited – those meetings primarily being between the first Respondent and Mrs Gunn – with regard to the rent arrears.
16. The Respondents both confirmed that they had not been in permanent employment but that they paid amounts towards the rent whenever they could and that they intended to pay any debts that they may have.

17. The first Respondent confirmed that the rent increase notice had been received and that he had spoken to Mrs Gunn to ask to speak to the Applicant as they were already struggling to pay the rent at the original level. He noted that the Applicant's representatives would not provide him with contact details for the Applicant. Mrs Gunn confirmed that she had asked the Applicant if she was willing to have her contact details provided and she confirmed that she wanted any communication to be through her agents, Easylets Limited.
18. The Respondents stated that they were planning to leave the Property as soon as possible, as soon as they had alternative accommodation. It was noted that the second Respondent had received a social housing offer and that the first Respondent was waiting for a decision. They confirmed that they were not objecting to the eviction *per se* but rather that they might need more time and that another month would be helpful.
19. Mr Gardiner confirmed that this would be acceptable to the Applicant and that the important thing was to have a definite date when possession could be regained.
20. Mr Gardiner explained that they had tried to work with the Respondents and tried to avoid serving notice to leave but that assurances about payments and moving out had been given previously and not met. He noted that there were periods of 3 or 4 months at a time when no payments had been made.
21. Mr Gardiner confirmed that payments had been made in the last week and the current amount of arrears as at the date of the CMD was £2,040. The second Respondent confirmed that this was accurate.

FINDING IN FACT

22. The Tenancy Agreement stated that:
 - a. the start date was 1 December 2022;
 - b. rent was payable at a rate of £420 per month, on or before the 1st of the month;
 - c. a rent deposit of £470 was to be paid;
 - d. notices to be served under the Tenancy Agreement may be served using the email addresses set out in the Tenancy Agreement.
23. The rent increase notice stated that the rent from 1 February 2023 was to increase from £420 to £432 per month.
24. The Tribunal was satisfied, on the balance of probabilities:
 - a. the Notice to Leave was valid and had been validly served;
 - b. the section 11 notice was valid and had been validly served:
25. The Tribunal noted that the Applicant was the registered landlord of the Property.

26. The Tribunal also noted that the Applicant was the registered proprietor of the Property (title number ANG18278).
27. The Tribunal was satisfied, on the balance of probabilities, that the Respondents had been in rent arrears for three or more consecutive months as at the date of service of the Notice to Leave; there having been arrears of some amount since 1 July 2023 and the arrears as at 5 February 2024 were £2,192. In addition (and whilst not necessary to meet the ground), the Tribunal was satisfied, on the balance of probabilities, that there were rent arrears of over four months' rent as at the date of the CMD, namely £2,040.
28. The Tribunal noted that the Respondents were jointly and severally liable for the rent payable under the Tenancy Agreement for the whole period of the tenancy, notwithstanding that one of the Respondents was not in occupation for the entire period.

REASON FOR DECISION

29. The Tribunal was satisfied, on the balance of probabilities, that:
- a. The requisite notices were valid and had been validly served (and received by the Respondent);
 - b. The Respondents had been in arrears of rent (of some amount) for over six months when the Notice to Leave was issued, the amount of arrears at that time being £1,760.
 - c. It was reasonable to grant an eviction order in the circumstances of this case. This was on the basis that:
 - i. primarily, the Respondents did not object to the eviction order, provided that they were given some more time to find alternative accommodation;
 - ii. there were periods during which no rent was paid at all, for example between 1 July 2023 and 19 September 2023, between 1 November 2023 and 5 February 2024, and between 1 May 2024 and the middle of August 2024;
 - iii. there had been arrears of some amount since 1 July 2023, a period of over 13 months; and
 - iv. whilst pre-action protocol letters (in the form of the Scottish government's template letters) had not been sent, both parties confirmed that there had been various e-mail communications and meetings about the arrears of rent.

30. Accordingly, the Tribunal found that ground 12 (rent arrears) of schedule 3 to the 2016 Act applied.

DECISION

31. The Tribunal granted the application under section 51(1) of the 2016 Act for an eviction order on the basis of ground 12 (rent arrears). However, the Tribunal determined that the eviction order could not be enforced before Friday 25 October 2024.

Right of Appeal

In terms of Section 46 of the Tribunals (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.

P Woodman

Chair

Date