



**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/24/1476**

**Re: Property at 56/3, Wester Hailes Park, Edinburgh, EH14 3AQ (“the Property”)**

**Parties:**

**Places For People Homes Limited, 2 Crescent Office Park, Clarks Way, Bath, BA2 2AF (“the Applicant”)**

**Mr Saul Catto, Mr Ryan Thomas, 56/3, Wester Hailes Park, Edinburgh, EH14 3AQ (“the Respondents”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Carol Jones (Ordinary Member)**

**Decision (in absence of the Respondents)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order**

**Background**

1. By application to the Tribunal the Applicant sought an eviction order against the Respondents in respect of the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). In support of the application the Applicant provided the following documentation:-
  - (i) Private Residential Tenancy Agreement between the parties dated 30 August 2022;
  - (ii) Notice to Leave dated 23 February 2024 citing grounds 12 and 12A, together with proof of service on the Respondents by email of that same date;

- (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Edinburgh City Council together with proof of service by email;
  - (iv) Rent Statement; and
  - (v) Copy correspondence from the Applicant's representative to the Respondent in compliance with the rent arrears pre-action protocol.
2. By Notice of Acceptance of Application dated 23 April 2024 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. The application was therefore referred to a Case Management Discussion. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondents by Sheriff Officers.
  3. On 24<sup>th</sup> July 2024 the Tribunal received an email from the first named Respondent, Saul Catto. He gave consent to communication by email and advised that he was offering the Applicant £1500 per month, to be paid on the first of each month.
  4. On 1<sup>st</sup> August 2024 and 19<sup>th</sup> August 2024 the Applicant's representative emailed the Tribunal with updated rent statements.

### **Case Management Discussion**

5. The Applicant was represented at the Case Management Discussion by Mr Ross O'Donnell of Patton and Prentice Solicitors. Neither Respondent was present. The Tribunal noted that they had both been served with the application paperwork which included notification of the date and time of the Case Management Discussion, together with instructions for joining the teleconference. The Tribunal therefore determined to proceed in their absence. Mr O'Donnell was then invited to make submissions on the application.
6. Mr O'Donnell advised that his colleague had been in correspondence with Mr Catto, in which Mr Catto had confirmed his awareness of the Case Management Discussion. Mr Catto had however advised that he did not intend on being present primarily due to work commitments, but also because he would be busy moving his things out of the property. Mr O'Donnell confirmed that the Applicant was seeking an eviction order on grounds 12 and 12A. As ground 12A had not been stated in the Notice to Leave he sought the Tribunal's permission to now include it with the application in terms of section 52(5) of the Private Housing (Tenancies) (Scotland) Act 2016.

7. Mr O'Donnell explained that the tenancy was a private residential tenancy which had commenced on 31<sup>st</sup> August 2022. The initial rent was £825 however this was increased, following service of a rent increase notice, to £849 from 1<sup>st</sup> October 2023. In early 2023 arrears began to accrue on the account. Some payments were made by the Respondents to reduce or maintain the level of arrears however the arrears continued to accrue. A Notice to Leave had been served upon both Respondents on 23 February 2024, with an effective date of 25<sup>th</sup> March 2024. At the time of making the application to the Tribunal the arrears stood at £4895. They had now increased to £8245. There had been no payments since 28 March 2024.
8. Mr O'Donnell addressed the issue of reasonableness. The level of arrears was excessive. No payments had been made in five months. It was understood that the second Respondent, Mr Thomas, had left the property around eight months ago. Mr Catto had since advised that he was in the process of moving and intended on vacating the property by the end of the month. However neither Respondent had given formal intimation to the Applicant to terminate the tenancy. In response to questions from the Tribunal Mr O'Donnell advised that he had scant information regarding the Respondents' personal circumstances. Mr Catto had indicated he was in employment. Both Respondents were believed to be in their 20s. There were no dependents and no vulnerabilities that the Applicant was aware of, and no entitlement to housing benefit. With regard to Mr Catto's payment offer, Mr O'Donnell advised that Mr Catto had made similar offers in the past. No payments had been received and Mr Catto had been advised by Mr O'Donnell's colleague that the Applicant was no longer prepared to enter into any payment agreement.

### **Relevant Legislation**

9. The legislation the Tribunal must apply in its determination of the application are the following provisions of the Private Housing Tenancies (Scotland) Act 2016, as amended by the Coronavirus (Scotland) Act 2020, the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020 and the Coronavirus (Extension and Expiry) (Scotland) Act 2021:-

#### **1.1.1 1 - Meaning of private residential tenancy**

1) *A tenancy is a private residential tenancy where—*

*(a) the tenancy is one under which a property is let to an individual ("the tenant") as a separate dwelling,*

*(b) the tenant occupies the property (or any part of it) as the tenant's only or principal home, and*

*(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.*

*(2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.*

### **51 First-tier Tribunal's power to issue an eviction order**

*(1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.*

*(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.*

*(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.*

*(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.*

### **52 Applications for eviction orders and consideration of them**

*(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.*

*(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—*

*(a) subsection (3), or*

*(b) any of sections 54 to 56 (but see subsection (4)).*

*(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.*

*(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.*

*(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—*

*(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or*

*(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.*

#### **54 Restriction on applying during the notice period**

*(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.*

*(2) The relevant period in relation to a notice to leave—*

*(a) begins on the day the tenant receives the notice to leave from the landlord, and*

*(b) in the case of a notice served before 3 October 2020 expires on the day falling—*

*(i) 28 days after it begins if subsection (3) applies,*

*(ii) three months after it begins if subsection (3A) applies,*

*(iii) six months after it begins if neither subsection (3) nor (3A) applies.*

*(c) in the case of a notice served on or after 3 October 2020, expires on the day falling—*

*(i) 28 days after it begins if subsection (3B) applies,*

*(ii) three months after it begins if subsection (3C) applies,*

*(iii) six months after it begins if neither subsection (3B) nor (3C) applies*

*(3) This subsection applies if the only eviction ground stated in the notice to leave is that the tenant is not occupying the let property as the tenant's home. [ground 10]*

*(3A) This subsection applies if—*

*(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—*

*(i) that the landlord intends to live in the let property, [ground 4]*

*(ii) that a member of the landlord's family intends to live in the let property, [ground 5]*

*(iii) that the tenant has a relevant conviction, [ground 13]*

*(iv) that the tenant has engaged in relevant anti-social behaviour, [ground 14]*

*(v) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour, [ground 15]*

*(vi) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]*

*(vii) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, [ground 17] or*

*(b) the only eviction grounds stated in the notice to leave are—*

*(i) the eviction ground mentioned in subsection (3), and*

*(ii) an eviction ground, or grounds, mentioned in paragraph (a)*

*(3B) This subsection applies if the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—*

*(a) that the tenant is not occupying the let property as the tenant's home, [ground 10]*

*(b) that the tenant has a relevant conviction, [ground 13]*

*(c) that the tenant has engaged in relevant anti-social behaviour, or [ground 14]*

*(d) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour. [ground 15]*

*(3C) This subsection applies if—*

*(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—*

*(i) that the landlord intends to live in the let property, [ground 4]*

*(ii) that a member of the landlord's family intends to live in the let property, [ground 5]*

*(iii) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]*

*(iv) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or [ground 17]*

*(b) the only eviction grounds stated in the notice to leave are—*

*(i) an eviction ground, or grounds, mentioned in subsection (3B), and*

*(ii) an eviction ground, or grounds, mentioned in paragraph (a).*

## **62 Meaning of notice to leave and stated eviction ground**

*(1) References in this Part to a notice to leave are to a notice which—*

*(a) is in writing,*

*(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,*

*(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and*

*(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.*

*(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.*

*(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).*

*(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.*

*(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.*

### **Schedule 3, Part 12**

*(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 subparagraph (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.*

### **Schedule 3, Part 12A**

*(1) It is an eviction ground that the tenant has substantial rent arrears.*

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

*(a) the tenant has accrued rent arrears under the tenancy in respect of one or more periods,*

*(b) the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy when notice to leave is given to the tenant on this ground in accordance with section 52(3), and*

*(c) the Tribunal is satisfied that it is reasonable to issue an eviction order.*

*(3) In deciding under sub-paragraph (2) whether it is reasonable to issue an eviction order, the Tribunal is to consider—*

*(a) whether the tenant being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit,*

*(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers under paragraph 12(4)(b) (and continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022).*

*(4) For the purpose of this paragraph—*

*(a) references to a relevant benefit are to—*

*(i) a rent allowance or rent rebate under the Housing Benefit Regulations 2006 (S.I. 2006/213),*

*(ii) a payment on account awarded under regulation 93 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.”*

## **Findings in Fact**

10. The parties entered into a Private Residential Tenancy Agreement dated 30 August 2022.
11. The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.



12. In terms of Clause 8 of the said Tenancy Agreement the Respondent undertook to make payment of rent at the rate of £825 per calendar month.
13. The rent was subsequently increased to £849 per month, with said increase taking effect from 1<sup>st</sup> October 2023.
14. On 23 February 2024 the Applicant delivered a Notice to Leave to the Respondents by email to the addresses stated in the Tenancy Agreement. The Tenancy Agreement permits service of notices under the agreement by email.
15. The Notice to Leave cited grounds 12 and 12A of Schedule 3 of the 2016 Act and confirmed that proceedings would not be raised any earlier than 25 March 2024.
16. The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
17. As at the date of service of the Notice to Leave arrears in the sum of £4046 were outstanding.
18. As at the date of the Case Management Discussion arrears in the sum of £8245 were outstanding.
19. The last payment to the rent account was on 28 March 2024.
20. The Applicant has made efforts to engage the Respondents by sending correspondence in accordance with the rent arrears pre-action protocol.
21. The first named Respondent, Saul Catto, is in employment. The first named Respondent intends to vacate the property by the end of the month.
22. The second named Respondent, Ryan Thomas is no longer residing at the property.
23. The Respondents are both believed to be in their 20s.
24. The Respondents have no dependents and no known vulnerabilities or health issues.

25. The Respondents have no known entitlement to a relevant benefit that would assist in the payment of the rent for the property.

### **Reasons for Decision**

26. The Tribunal was satisfied that it had sufficient information upon which to make a decision at the Case Management Discussion in the absence of the Respondents. Both had been served with the application paperwork which the first named Respondent had responded to. The Tribunal also had regard to Mr O'Donnell's submissions regarding the correspondence between the Applicant's representative and the first named Respondent, in which the latter had stated that he did not intend on appearing at the Case Management Discussion, as well as the fact that the second named Respondent was no longer residing at the property. The Tribunal therefore concluded that it would not be prejudicial to the Respondents for a decision to be made following the Case Management Discussion. They had not sought to put forward any defence to the application and there were therefore no issues to be resolved that would require a hearing to be fixed.
27. The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicants intention to rely upon ground 12 of Schedule 3 of the 2016 Act. The Tribunal was satisfied that the required notice had been given to the Respondent and therefore that application could be entertained. The Tribunal was further satisfied that it could give permission to the inclusion of ground 12A within the application in terms of section 52(5) of the 2016 Act as the arrears were now in excess of six months rent and the ground was substantially similar to the ground stated in the Notice to Leave. Both relied upon the Applicant establishing a breach of the obligation to pay rent.
28. The Tribunal therefore considered whether both grounds 12 and 12A applied in this case. The Tribunal accepted the evidence submitted by the Applicant in the form of a rent statement, which confirmed arrears in the sum of £8245 were outstanding as at the date of the Case Management Discussion. This equated to approximately nine months rent.
29. The Tribunal then considered the question of reasonableness. The Tribunal agreed with Mr O'Donnell that the arrears were excessive, and that this was a factor that could be given substantial weight. Where rent arrears are significant, as in this case, it will always be a challenge for a Respondent to counter an argument as to the reasonableness of making an eviction order. The Tribunal had no information regarding the Respondents personal circumstances, other than the submissions from the Applicant's representative. The Tribunal noted from Mr McDonnell's submissions that the second named Respondent was no longer residing in the property, and that the first named Respondent was in the

process of moving out, which presented a plausible explanation for the lack of payments in recent months. The Tribunal further noted that the Respondents were both young men with no dependents, one of whom was in employment, and neither had any known vulnerabilities or entitlement to benefits. There was nothing before the Tribunal to contradict the evidence put forward by the Applicant therefore the Tribunal accepted it as fact and concluded that there were no significant factors in respect of the Respondents' personal circumstances that would outweigh the reasonableness of making an eviction order having regard to the level of arrears in this case.

30. Accordingly, having identified the above factors as relevant to the questions of reasonableness, the Tribunal concluded that grounds 12 and 12A had been met and it would be reasonable to make an eviction order in this case.

31. 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.**

# Ruth O'Hare

**21 August 2024**

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**Legal Member/Chair**

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**Date**