



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/24/0774

Re: Property at 14/8 Hailesland Place, Edinburgh, EH14 2SL (“the Property”)

Parties:

Edinburgh Living MMR LLP, Waverley Court, 4 East Market Street, Edinburgh, EH8 8BG (“the Applicant”)

Mr Lewis Slane, 14/8 Hailesland Place, Edinburgh EH14 3ES and Ms Rachael McKinnon, 4/8 Clovenstone Gardens, Edinburgh, EH14 3ES (“the Respondents”)

Tribunal Members:

George Clark (Legal Member) and Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and issued an Eviction Order against the Respondents.

Background

1. By application, dated 15 February 2024, the Applicants sought an Order for Possession of the Property under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Grounds relied on were Grounds 12, 12A and 14 of Schedule 3 to the 2016 Act.
2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties, commencing on 10 July 2019 at a monthly rent of £650, and a Notice to Leave, dated 30 October 2023, advising the Respondent that the Applicant was seeking an Eviction Order under Grounds 12 and 12A of Schedule 3 to the 2016 Act and that an application to the Tribunal would not be made before 30 November 2023. The application also included a Rent Statement showing arrears at 6 December 2023 of £15,535.42 The Rent Statement indicated that no rent had been paid since 21

July 2023. The application included allegations in relation to anti-social behaviour as defined in Ground 14 of Schedule 3 to the 2016 Act but, in the event, it was not necessary for the Tribunal to consider the application under Ground 14.

3. On 1 July 2024, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondents were invited to make written representations by 22 July 2024. the first-named Respondent did not make any written representations to the Tribunal.
4. On 11 July 2024, the Second-named Respondent, in written representations, told the Tribunal that she had vacated the Property on 13 December 2021. She had emailed the then letting agents to give 4 weeks' notice in January 2022 and had not been advised that she had not been released from her contractual obligations under the Tenancy Agreement.
5. On 23 July 2024, the Applicants' representatives advised the Tribunal that the rent arrears now stood at £19,002.42.

Case Management Discussion

1. A Case Management Discussion was held by means of a telephone conference call on the afternoon of 7 August 2024. The Applicant was represented by Mr Calvin Gordon of Thorntons Law LLP, Glasgow and by Miss Claire Smith. The Respondents were both present.
2. The First-named Respondent began proceedings by stating that he did not understand why the Second-named Respondent was a Party to the claim, as she had moved out of the Property in December 2022. He admitted the debt and added that the entire responsibility was his. He stated that he had no objection to an Eviction Order being made and that he would be moving out of the Property shortly, as he had secured the tenancy of another flat.
3. The Applicants told the Tribunal that no payments of rent had been received since the date of the application.

Reasons for Decision

4. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.
5. Section 51 of the 2016 Act states that the 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.

6. Ground 12 of Schedule 3 to the Act states that it is an Eviction Ground that the tenant has been in rent arrears for three or more consecutive months and that the Tribunal may find that Ground 12 applies if, at the beginning of the day on which the Tribunal first considers the application for an Eviction Order on its merits, the tenant 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 has been in in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, that 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, and the Tribunal is satisfied that it is reasonable on account of that fact to issue an Eviction Order.
7. The Tribunal was satisfied that the Respondents have been in rent arrears for three or more consecutive months and that the current arrears exceed one month's rent. No evidence had been presented to indicate that the Respondents' being in arrears might be wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
8. Ground 12A of Schedule 3 to the Act states that it is an Eviction Ground that the tenant is in substantial rent arrears and that the Tribunal may find that Ground 12A applies if the tenant has accrued rent arrears under the tenancy in respect of one or more periods, 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) of the Act and the Tribunal is satisfied that it is reasonable to issue an Eviction Order. In deciding 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 or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
9. The Tribunal was satisfied that, at the date of the Notice to Leave, the rent arrears exceeded the equivalent of 6 months' rent and that no evidence had been produced to indicate that the Respondents' 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.
10. Having decided that the other requirements of Grounds 12 and 12A had been met, the only matter for the Tribunal to determine was whether it was reasonable to issue an Eviction Order. The Tribunal noted that the Second-named Respondent had made no representations for the Tribunal to take into consideration in deciding whether it would be reasonable to issue an Eviction Order. He had stated at the Case Management Discussion that he regarded himself as wholly liable for the arrears. The arrears are enormous, and no attempt has been made by the First-named Respondent, who confirmed to the Tribunal that he alone is responsible, to seek to reduce them. He has simply stopped paying rent. Accordingly, having considered all the information before it, the Tribunal decided that it would be reasonable to issue an Eviction Order under Grounds 12 and 12A of Schedule 3 to the 2016 Act.

11. The Tribunal noted that the First-named Respondent had vacated the Property in December 2021, but had no option but to issue the Eviction Order against both Respondents, as there was no evidence that the Applicants had formally accepted that she was no longer a Party to the Tenancy Agreement.
12. As the Tribunal had decided to issue an Eviction Order under Grounds 12 and 12A, it was not necessary for the Tribunal to consider further the application under Ground 14 of Schedule 3 to the 2016 Act.
13. The Tribunal's Decision 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.

George Clark

Legal Member/Chair

Date 7 August 2024