



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 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)

Chamber Ref: FTS/HPC/EV/24/1576

Re: Property at Watermill House, The Holmes, St. Boswells, TD6 0EL (“the Property”)

Parties:

William Dale Testamentary Trust, Hedderwickhill, Dunbar, East Lothian, EH42 1XF (“the Applicant”)

Mr Donald Fergusson, Watermill House, The Holmes, St Boswells, TD6 0EL (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession of the property be granted.

Background

1. By application received on 8 April 2024, the Applicant applied to the Tribunal for an order for recovery of possession of the property in terms of Grounds 12 (rent arrears over 3 consecutive months and Ground 12A (substantial rent arrears) of Schedule 3 to the 2016 Act. Supporting documentation was submitted in respect of the application, including a copy of the tenancy agreement, the Notice to Leave/proof of service of same, the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003/proof of service of same, a Rent Statement showing the balance of rent arrears owing at the time of the Notice to Leave being served of £5,100 and evidence regarding the ‘pre-action requirements’.

2. Following initial procedure, on 30 May 2024, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. A Case Management Discussion (“CMD”) was fixed for 2 October 2024 at 10am. The application and details of the CMD fixed were served personally on the Respondent by Sheriff Officer on 23 August 2024. In terms of said notification, the Respondent was given an opportunity to lodge written representations. No representations were lodged prior to the CMD.

Case Management Discussion

4. The CMD took place by telephone conference call on 2 October 2024 at 10am. It was attended by the Applicant’s representative, Mrs Claire Carr, of FBR Seed Ltd, who manage the Property on behalf of the Applicant. She was accompanied by two colleagues from FBR Seed Ltd, Ms Erin Jackson and Mr Richard Armitage, both of whom were attending in an observation/supportive capacity only. The Respondent did not attend. The Tribunal delayed the commencement of the CMD for 5 minutes to allow an opportunity for the Respondent to join late but he did not do so.
5. Following introductions and introductory remarks by the Legal Member, who also explained the purpose of the CMD, Mrs Carr was asked to explain the background to the application and in respect of their dealings with, and knowledge of, the Respondent, given that it was explained that, in addition to being satisfied that the grounds for eviction are met, the Tribunal also has to be satisfied in respect of the reasonableness of granting an eviction order.
6. Mrs Carr confirmed that the landlord (Applicant) had visited the Property yesterday and that the Respondent is still resident there. He did not give any indication of his intentions regarding the CMD today, although did mention to the Applicant at some point that he was waiting on the local authority giving him a house. Mrs Carr does not know if the Respondent has made an application for social housing or had any advice regarding housing or debt, although they gave him all the required advice regarding this in the ‘pre-action protocol’ letters.
7. Mrs Carr stated that the tenancy had begun in 2019 and that rent arrears had been in existence since 2021. However, nothing at all has been paid since July 2023 and the current rent arrears amount to £12,750. The rent arrears are accruing at £850 per month and amounted to at least 6 months’ rent owing when the Notice to Leave was served (January 2024). The Respondent has not really engaged with the Applicant’s representatives regarding the arrears. He made various promises about awaiting money from freelance work or from his pension but did not follow this up with payments or enter any formal payment arrangements. He also refused to allow the Applicant’s representatives to carry out property inspections, although their previous property manager did manage to get access in November 2023. The Respondent was not present and

explained that he had been at a hospital appointment. The Notice to Leave expired on 2 February 2024 and the Respondent told the Applicant that he would be arranging removal men within a few days of that, but this never happened and he has continued to occupy the Property. Mrs Carr confirmed that the Respondent is around 64 years old and lives alone. She does not know the nature of his freelance work or if he is still working and has no knowledge of him being in receipt of, or having applied for, any state benefits. Mrs Carr said that they have a note on their file that the Respondent may have some mental health issues but she has no knowledge or further detail regarding this.

8. As to the Applicant, Mrs Carr confirmed that this is the only remaining rental property that the Applicant has. There was previously a second rental property which they managed for the Applicant but that is now occupied by family members. The rent arrears owed by the Respondent are considerable and this is obviously impacting greatly on the Applicant's income and finances. Her understanding is that the intention of the Applicant is to recover the Property, refurbish it and let it out again to generate income. Mrs Carr asked the Tribunal to grant the eviction order sought, in the circumstances.
9. The Tribunal considered the application and confirmed that they were satisfied that both grounds of eviction were met and also that it was reasonable to grant the order in all the circumstances. There was some brief discussion regarding the issuing of the decision documentation to parties and the applicable appeal period. It was stated that it was hoped that the Respondent would provide the local authority with a copy of the documentation as soon as possible, if it was his intention to seek local authority housing.

Findings in Fact

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy which commenced on 22 July 2019.
3. The rent due in respect of the tenancy was originally £825 per calendar month but was increased to £850 per month as from 22 July 2022 by way of the formal rent increase process.
4. There was a background of rent arrears from 2021 but the arrears increased steadily from July 2023 when rent payments stopped altogether.
5. The last payment towards rent was £850 on 22 June 2023.
6. Arrears amounted to £5,100 by the time the Notice to Leave was served in January 2024 and now amount to £12,750.
7. The Applicant's representatives have contacted the Respondent concerning the rent arrears throughout and in terms of the 'pre-action protocol'.

8. The Respondent has not engaged with the Applicant's representatives regarding the arrears situation nor sought to resolve it.
9. A Notice to Leave in proper form and giving the requisite period of notice was served on the Respondent by Recorded Delivery/'signed for' post and by ordinary post, sent on 18 January 2024.
10. The date specified in the Notice to Leave as the earliest date an eviction application could be lodged with the Tribunal was specified as 20 February 2024.
11. The Tribunal Application was submitted on 8 April 2024.
12. The Respondent initially stated that he would remove from the Property but has remained in occupation.
13. The Respondent has been called upon to make payment of the rental arrears or enter into a satisfactory payment arrangement but has failed to do so.
14. The Respondent has been in arrears of rent for three or more consecutive months.
15. The Respondent has accrued rent arrears under the tenancy in respect of one or more periods and the cumulative amount of those arrears exceeded the equivalent of 6 months' rent both when the Notice to Leave was served and currently.
16. There is no indication that the arrears have arisen wholly or partly as a result of a failure or delay in the payment of relevant benefits.
17. The Respondent did not submit any representations or attend the CMD.

Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation and to the oral representations at the CMD by Mrs Carr on behalf of the Applicant.
2. The Tribunal found that the application was in order, that a Notice to Leave in proper form and giving the correct period of notice had been served on the Respondent and that the application was made timeously to the Tribunal, all in terms of the tenancy agreement and the relevant provisions of the 2016 Act.
3. The Tribunal considered the grounds of eviction relied upon in this application, namely Grounds 12 and 12A of Schedule 3 to the 2016 Act, as amended, and were satisfied that all requisite elements of each of these grounds had been

met. The Tribunal was satisfied that the Respondent was still occupying the let Property, that there were substantial rent arrears and that the rent had been continuously in arrears for a lengthy period of time.

4. As to reasonableness, all the factors mentioned above satisfied the Tribunal that it was also reasonable to grant an order in these circumstances and given the circumstances of both parties, and to do so at this stage. The Respondent had not entered into the Tribunal process and the Tribunal therefore had no material before it either to contradict the Applicant's position nor to advance any reasonableness arguments on behalf of the Respondent. The Tribunal accordingly determined that an order for recovery of possession of the Property could properly be granted at the CMD as, in the circumstances, there was no need for an Evidential Hearing.

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.

N Weir

Legal Member/Chair

2 October 2024
Date