



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, as amended (“the Regulations”)

Chamber Ref: FTS/HPC/EV/24/3289

Re: Property at Flat 3, 5 Bells Mills, Dean Village, Edinburgh, EH4 3DG (“the Property”)

Parties:

Iain Percival, 21A Drummond Place, Edinburgh, EH3 6PN (“the Applicant”)

Michael Layton (otherwise Michael Layon, Suzanne Hollywood (otherwise Suzanne Hollwood), Flat 3, 5 Bells Mills, Dean Village, Edinburgh, EH4 3DG (“the Respondent”)

Tribunal Members:

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

Decision

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 lodged on 19 July 2024, the Applicant applied to the Tribunal for an order for recovery of possession of the property in terms of Section 51 of the 2016 Act against the Respondent. The application sought recovery in terms of Ground 12 of Schedule 3 to the 2016 Act (rent arrears for three or more consecutive months). Supporting documentation was submitted in respect of the application, including a copy of the tenancy agreement, the Notice to Leave, the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003 and a Rent Statement showing the balance of rent arrears owing as at the date of application of £7,800.

2. Following initial procedure, on 12 August 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. This application was conjoined with an application for payment which had been lodged with the Tribunal and accepted at an earlier date. Both applications thereafter proceeded together.
4. On 23 August 2024, Sheriff Officers served a copy of the Application and supporting documentation on the Respondent, together with intimation of the date, time and details of the Case Management Discussion (“CMD”) to take place by telephone conference call on 23 September 2024. Written representations were to be lodged by 12 September 2024.
5. On 9 September 2024, an application to amend the sum claimed in respect of the conjoined payment application was lodged on behalf of the Applicant by email, together with an updated rent statement. The rent arrears had increased to £13,650 and the total sum claimed to £15,181.38.
6. On 11 September 2024, the second-named Respondent, Suzanne Hollywood, emailed the Tribunal requesting an extension of time in order to submit a Time to Pay Application in respect of the payment application and also requesting a postponement of the CMDs. The request cited illness and health issues, particularly pertaining to herself, as the reason for this request, explaining that they required more time to complete a Time to Pay Application and wished a postponement of the CMD due to their personal circumstances. There were no representations contained in the Respondent’s email relating specifically to the eviction application. The request was not circulated to the Applicant’s representative due to the sensitive, medical information that it contained. It was circulated to the Tribunal Members on 20 September 2024 (the Friday before the CMD on the Monday) and considered by them that afternoon. The Tribunal decided to refuse the postponement request, that good reason had not been shown for the CMDs not proceeding as scheduled and requested that the first-named Respondent, Michael Layton, join the CMD by telephone on behalf of both Respondents if Ms Hollywood was unable to attend. Given the timeframe available, there was little point extending the timeframe for written representations. Authority was also sought for the Tribunal to circulate the Respondent’s email to the Applicant’s representative but no response was received on this point from the Respondent prior to the CMD.

Case Management Discussion

7. The CMD took place on 23 September 2024 at 2pm by telephone conference call. The Applicant was represented by Mr Greg Smart of Gilson Gray, solicitors and Mr Michael Layton, the first-named Respondent.

8. After introductions and introductory remarks by the Legal Member, who explained the purpose of the CMD, the Legal Member also advised regarding the Respondent's postponement request, the timing of that, the reason why it had not been circulated to the Applicant's representative and the reasons it had been refused. Mr Layton was asked if the Respondent was happy for their email now to be circulated to the Applicant's representative but Mr Layton stated that they would prefer if it was not, because of the sensitive information it contained.
9. Mr Layton was then asked to confirm the Respondent's position regarding the eviction application. He was asked a number of questions by both Tribunal Members. He confirmed that they were not denying the rent arrears (now increased to £13,650) or opposing the eviction but were looking for an extension of time on any eviction order in order to find alternative accommodation. He stated that they require to find accommodation suitable to Ms Hollywood's needs, as she is disabled. They require a ground floor flat and one that is accessible. He stated that it is taking a longer time than usual to find suitable accommodation for her needs and this is why they need an extension of time. Mr Layton confirmed that they have been looking continuously for alternative accommodation and at different types of property but it is not easy as there is a lot of competition for housing. He confirmed that they have made enquiries with the local authority but there is a long waiting list and they have been told it could take years. Mr Layton was asked if they had been in contact with the local authority homeless team but he said not, that it had just been the general housing department. He confirmed that Edinburgh Council are aware of their housing needs and about the Tribunal proceedings but had not been told that if an eviction order is granted, their housing application may be prioritised. Mr Layton was asked if they had taken any housing or financial advice. Mr Layton said that they had telephoned a few places but were still considering their options and had not gone as far as actually instructing anyone to assist them.
10. Mr Layton was asked about the background to the rent arrears and what had led them to stopping paying any rent after February 2024. He stated that this was due to the illnesses of he and Ms Hollywood. Due to the severity of their health conditions, they were unable to work. He said that things had just spiralled out of control. He reiterated that they admit the amount owing and do want to repay the debt. This is why they had requested more time to complete the Time to Pay application. On being asked if they had contacted the landlord or his letting agent or solicitors when difficulties arose to advise of the reasons for the arrears or to try and agree a payment plan, Mr Layton stated that they had advised the letting agents that they had health issues. They had not made offers to pay as they had found it difficult to get their heads around. Mr Layton was reluctant to provide details of their current income and expenditure, even in general terms. When asked about benefits, Mr Layton stated that they were not in receipt of Universal Credit or any Disability/PIP type benefits, nor had they made application for benefits. Mr Layton repeated that they were looking into things but still considering their options. He was not in a position to make any payment offer at the moment or commit to any payment arrangement, even in relation to the ongoing rental payments of £1,950 per month. He confirmed

that they do not have savings or capital which would enable them to make a lump sum payment towards the arrears.

11. Mr Smart was then asked to address the Tribunal on behalf of the Applicant. It was explained that it is clear that the ground for eviction is met, given that the rent had been in arrears for three consecutive months when Notice to Leave was served, and now for much longer than that, and that this is accepted by the Respondent. However, the Legal Member explained that the Tribunal also requires to be satisfied, even when there is no opposition from the Respondent, that it is reasonable in all the circumstances for an eviction order to be granted. Mr Smart was asked to address reasonableness from the point of view of the Applicant and also to comment on the Respondent's request for an extension on the implementation of any eviction order to allow them more time to obtain alternative accommodation. Mr Smart stated that the rent arrears had amounted to between £5,000 and £6,000 when the eviction application was lodged and are now significantly higher than that. The rental income is needed by the Applicant to supplement his own income from his pension as he is retired. He is not a professional landlord and this is the only property that he rents out. There is no longer a mortgage over the Property but he is now having to look to other means to supplement his own income. He is severely disadvantaged by the high rent arrears and the fact that no rental payments have been made over a period of many months. Mr Smart confirmed that he does not accordingly have instructions to agree to any extension on an eviction order as the present situation is untenable and the Applicant requires to recover the Property as soon as possible. He does not know what the Applicant's intentions are with the Property or if he intends to sell. He thinks it more likely that he will rent it out again to bring in some rental income. Mr Smart was asked if the Applicant was aware of the Respondent's health issues and explanation for the rent arrears. He confirmed that the letting agent last had contact with the Respondent on 29 July 2024 and had been informed that the Respondent had medical conditions but had not been provided with any justification for rent not being paid or received any payment offers. Mr Smart requested that an eviction order be granted by the Tribunal without any extension of the timeframe for implementation.
12. The Tribunal adjourned to consider both applications in private, which they discussed in detail. On re-convening, the Legal Member advised that the Tribunal had decided to grant the eviction order sought on the basis that the eviction ground was met, that it was reasonable to grant the order in all the circumstances and that it was not opposed by the Respondent. However, the Tribunal had decided to exercise its discretion and extend the time limit for implementation of the order to a date eight weeks from today, to allow some further time for the Respondent to find alternative accommodation. It was explained to Mr Layton that the decision paperwork would be issued shortly and that it would be in the Respondent's interests to provide the local authority with a copy of same as soon as possible in order that the Respondent's housing application could progress and hopefully be prioritised.
13. Parties were thanked for their attendance and asked to hang up from the conference call. Mr Layton then stated that he wanted to say something. He

said that there had been a mis-communication earlier and that when he had said that the eviction was unopposed, he had not realised that the Tribunal would grant an eviction order today. He referred to the personal circumstances of the Respondent and that they will be in severe hardship if they are evicted. They want to pursue an application for local authority housing and do not want an eviction order against them for rent arrears. They therefore now want to oppose the eviction on grounds of reasonableness. Both Tribunal Members expressed the view that Mr Layton had been quite clear when stating the Respondent's position earlier, that they were not opposing the eviction order being granted but wanted an extension on the timeframe for implementation. He had stated an intention to seek alternative accommodation, more suitable to the needs of Ms Hollywood and had already made application to the local authority. They had admitted the rent arrears but had not made any payments since February 2024 or any payment offers and did not appear to have the intention of making payments towards the ongoing rent. It was explained that the Tribunal had explored matters in detail at the CMD and that Mr Layton had had every opportunity to put forward the Respondent's position; that the Tribunal had already considered the issue of reasonableness when making their decision to grant the eviction order and that it was unsatisfactory for the Respondent to try and change their position after the Tribunal's decision had been made.

14. Mr Smart was asked for his comments. He stated that the Tribunal's initial decision should stand. Mr Layton had agreed to an eviction order being made. He had to act in the interests of his client, the Applicant. There are significant rent arrears impacting on the Applicant and, in his submission, it would be unreasonable in the circumstances if an eviction order was not granted. It is clear that the Respondent does not have the capacity to pay off the arrears or pay ongoing rent for the Property. If the order is not granted at this stage, the arrears will continue to accrue and increase the debt already owed by the Respondent.
15. The Tribunal adjourned again briefly to consider the issue in private. On reconvening again, the Legal Member advised that the Tribunal's original decision would stand. It was explained that the eviction ground was met, the Tribunal had already considered the matter of reasonableness in detail, including the health conditions of the Respondent; that nothing new or additional had been put forward by the Respondent; and that, in the Tribunal's view, the present position was unsustainable, given the level of rent arrears already accrued and the lack of any ongoing payments towards rent or payment proposals.
16. Parties were thanked again for their attendance and the CMD brought to a close.

Findings in Fact

1. The Applicant is the owner and landlord of the Property.

2. The Respondent is the joint tenant of the Property by virtue of a Private Residential Tenancy commencing on 1 July 2022.
3. The rent in terms of the tenancy was £1,950 per calendar month.
4. Rent was paid until in or around March 2024, from which time the rent account has been continuously in arrears.
5. The last rent payment was £1,950, paid on 1 February 2024.
6. No payments have been made since then and rent arrears currently amount to £13,650.
7. When the Notice to Leave was served, the rent account had been in arrears for more than 3 consecutive months.
8. A Notice to Leave in proper form and giving the requisite period of notice (28 days) was served on the Respondent by Sheriff Officer on 13 June 2024.
9. The date specified in the Notice to Leave as the earliest date the eviction Application could be lodged with the Tribunal was specified as 12 July 2024.
10. The Tribunal Application was submitted on 19 July 2024.
11. 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.
12. The Respondent has remained in possession of the Property.
13. The Respondent admits the level of rent arrears and that rent had been in arrears over three consecutive months.
14. Both Respondents have stated health conditions and recent illnesses but were unwilling to have details disclosed to the Applicant.
15. Neither Respondent is currently in employment, receipt of benefits, nor made application for benefits.
16. The Respondent does not have savings or other capital.
17. The Respondent was not currently willing to provide details of their income and expenditure, nor make any payment proposal.
18. The Respondent has applied to the local authority for suitable housing to meet the second-named Respondent's needs and is currently on a waiting list.
19. The Respondent has not yet secured alternative accommodation to move into.

20. The Applicant is retired and uses the rental income from this Property to supplement his pension income.
21. The significant level of rent arrears and the length of time since any rent has been paid is negatively impacting on the Applicant financially.
22. The Applicant wishes to recover the Property as soon as possible for financial reasons.

Reasons for Decision

1. The Tribunal gave careful consideration to the background papers including the application and supporting documentation, the written representations from the Respondent in support of their request for a postponement of the CMD and the oral representations made by the Applicant’s agent and the Respondent, Mr Layton, at the CMD.
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 ground of eviction that the tenant has been in rent arrears for three or more consecutive months (Ground 12 of Schedule 3 to the 2016 Act, as amended) which is as follows:-

“Rent arrears

12(1)It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2).

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

(a)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, and

(b)the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations.

(5) For the purposes of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971),

(ii) a payment on account awarded under regulation 91 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.

(6) Regulations under sub-paragraph (4)(b) may make provision about—

(a) information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),

(b) steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,

(c) such other matters as the Scottish Ministers consider appropriate.”

4. The Tribunal was satisfied that all elements of Ground 12 were met and that it was reasonable, having regard to all of the circumstances, as outlined above, to grant the eviction order sought. The rent account had been continuously in arrears since March 2024 and no payments at all had been made since 1 February 2024. The current arrears are significant, amounting to £13,650. The Tribunal was satisfied that the Applicant requires to recover the Property without further delay as the present situation was unsustainable from his financial point of view. His agent had explained that the Applicant was retired and is reliant on the rental income from this, his only rental property, to supplement his pension. This was not disputed by the Respondent. He has already had no rental income for around 7 months. The Applicant’s agent had followed the pre-action protocol by trying to engage with, and issuing correspondence, to the Respondent regarding the rent arrears, providing sources of housing and financial advice and seeking to enter into a payment arrangement. Although the Respondent had advised the Applicant’s agent of their health conditions, they had not really explained the rent arrears situation, nor sought to make any payment arrangements. The Tribunal sympathised with the health conditions and recent illnesses stated by the Respondents and appreciated that these may have impacted on their employment, income and ability to pay their rent. However, the Tribunal did not consider it reasonable for the Respondent to seek to delay the eviction proceedings when they admitted

the arrears, were reluctant to provide any details of their income and expenditure, to put forward any concrete payment proposal towards the arrears or even to make any commitment to paying the ongoing rent. Mr Layton stated that they had no capital, were not in receipt of benefits and had not even made application for benefits. The Respondent appeared to have sought some initial telephone advice but had not sought to follow this up or appoint anyone to assist or represent them in relation to their financial or rent arrears situation. Mr Layton stated several times that they were “considering their options”. The Tribunal was satisfied that the rent arrears were not accordingly a consequence of a delay or failure in the payment of a relevant benefit. The Tribunal agreed with the Applicant representative’s view that the Respondent simply no longer had the capacity to meet the rent in respect of the Property. Mr Layton initially stated that the Respondent did not oppose the eviction order being granted and indeed, had stated that they required to move to alternative accommodation better suited or adapted to the needs of Ms Hollywood. They had already applied for social housing with Edinburgh Council and confirmed that they were on a waiting list. The Tribunal accordingly determined that an order for recovery of possession of the Property could properly be granted at the CMD as there were no facts in dispute nor any other requirement for an Evidential Hearing.

5. Having considered the submissions of both parties in respect of the extension of the date for eviction sought by the Respondent, which was opposed on behalf of the Applicant, the Tribunal considered it appropriate to exercise the discretion afforded to them by the legislation and extend the implementation date to a date 8 weeks from today. The Tribunal considered that this gave the Respondent a slightly longer period to progress their housing application and find suitable alternative accommodation, whilst giving both parties (and the local authority) a definite date to work towards.
6. On being advised of the Tribunal’s decision, Mr Layton had tried to change the position that he had stated previously, He indicated that the Respondent had misunderstood the purpose of the CMD, did not expect a final decision to be made at it and now wished to oppose the eviction order on grounds of reasonableness. The Tribunal reconsidered the matter. However, both Members were satisfied that they had each verified with Mr Layton during the CMD that the Respondent was not opposed to an eviction order being granted but was seeking an extension of time to allow them to pursue their local authority application and secure alternative accommodation. The Tribunal was also satisfied that Mr Layton had understood the position, given that it was explained to him during the CMD and there had been full discussion in which he had participated, including on the issue of the Tribunal extending the timeframe for an eviction order being implemented. The Tribunal considered that Mr Layton had not added anything new after being told of the decision, that they had elicited detailed information from Mr Layton during the CMD and that they had already fully assessed the issue of reasonableness, taking into account all the relevant facts, as outlined above, which were not in dispute. In these circumstances, the Tribunal did not consider it appropriate to continue the application to an Evidential Hearing, with the consequent delay and the consequences of that further unnecessary delay for both parties, given that arrears looked set to continue to accrue at the rate of almost £2,000 per month.

Rule 17(4) of the Procedure Regulations states that the Tribunal “*may do anything at a case management discussion which it may do at a hearing, including making a decision*”. Parties are advised of this in advance of the CMD in terms of the formal written notification they receive from the Tribunal.

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

Date 23 September 2024