

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/24/2623

Re: Property at 19 C Fettes Row, Edinburgh, EH3 6RH (“the Property”)

Parties:

Fiona Hutton, 579 Lanark Road West, Balerno, Edinburgh, EH14 7BL (“the Applicant”)

Celena Collins, 19 C Fettes Row, Edinburgh, EH3 6RH (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Andrew McFarlane (Ordinary Member)

Decision

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

Background

1. By application, dated 7 June 2024, the Applicant sought an Order for Possession of the Property under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Ground relied on was Ground 12 of Schedule 3 to the 2016 Act, namely that the Respondent has been in rent arrears for three or more consecutive months.
2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties, commencing on 2 June 2021 at a monthly rent of £1,800, a Notice to Leave, dated 30 April 2024, advising the Respondent that the Applicant was seeking an Eviction Order under Ground 12 of Schedule 3 to the 2016 Act and that an application to the Tribunal would not be made before 31 May 2024, a pre-action protocol letter dated 30 April 2024, signposting the Respondent to sources of possible help and advice, and a Rent Statement showing arrears as at 20 April 2024 of £7,039.

3. On 20 September 2024, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 11 October 2024.
4. On 8 October 2024, the Respondent made written submissions to the Tribunal. She did not dispute the debt or the application for an Eviction Order, but requested that the operative date of any Order should be postponed to a later date, because of the very difficult situation in the Edinburgh rental market, with 9 out of 10 tenancies being taken before scheduled viewings. She was chasing everything within budget, but without a reference from the Applicant, she was finding it very difficult to secure alternative accommodation. She provided details of a number of health issues and stated that she is on anti-depressant medication. She provided confirmation to this effect from her GP's practice.

Case Management Discussion

5. A Case Management Discussion was held by means of a telephone conference call on the afternoon of 28 October 2024. The Applicant was present and was represented by Mr John Jarvie of Bannatyne Kirkwood France & Co, solicitors, Glasgow. The Respondent was not present but was represented by Mr Andrew Wilson of Edinburgh Housing Partnership and Community Help and Advice (CHAI).
6. The Applicant's representative told the Tribunal that the arrears of rent now stand at £16,339, with only three payments, of £1,100, £1,000 and £500 made since 5 April 2024.
7. Mr Wilson told the Tribunal that the Respondent accepted that she could not offer a payment plan in respect of the arrears as she could not afford the rent itself. She has been unable to secure accommodation without a character reference and recognised that this would disclose the arrears. The Respondent was not opposing an Eviction Order, but would ask that enforcement be delayed into the New Year, to avoid the risk of her being homeless over Christmas.
8. Mr Jarvie then requested a short adjournment to enable him to discuss the matter with the Applicant and, following that adjournment, advised the Tribunal that the Applicant was prepared for the Eviction Order not to be enforceable before 13 January 2025.

Reasons for Decision

9. 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.

10. 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.
11. 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.
12. The Tribunal was satisfied that the Respondent has 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 Respondent's being in arrears might be wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
13. The Tribunal noted that the level of arrears is now enormous and that the Respondent is in no position to make any realistic offer of a payment plan to pay off the arrears. She accepts that she cannot afford the monthly rent and did not dispute that an Eviction Order should be issued against her, her only request being that it should not be enforced until after the Christmas and New Year holiday period.
14. Having considered carefully all the evidence before it, the Tribunal decided that it would be reasonable to issue an Eviction Order under Ground 12 of Schedule 3 to the 2016 Act, but that it should not be enforceable before 13 January 2025.
15. 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

28 October 2024
Date