



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/24/1804

Re: Property at 174/7 St Johns Road, Edinburgh, EH12 8AZ ("the Property")

Parties:

Daker Property 84 Company Limited, 12 Home Street, Edinburgh, EH3 9LY ("the Applicant")

Mr Juan Diego Lopez Fernandez, 174/7 St Johns Road, Edinburgh, EH12 8AZ ("the Respondent")

Tribunal Members:

Gillian Buchanan (Legal Member) and Mary Lyden (Ordinary Member)

Decision

At the Case Management Discussion ("CMD") which took place by telephone conference on 21 October 2024, the Applicant was represented by Mrs Kristina Simpson, Director of ime DJK Group Ltd. The Respondent was not in attendance but was represented by Mr Sam Donegan of CHAI, Edinburgh. Mr Andrew Wilson attended as an observer.

Prior to the CMD the Tribunal had received the following additional written representations:-

- i. Email from Mrs Simpson dated 26 September with attachments.
- ii. Email from the Respondent dated 28 September 2024 with attachment.
- iii. Email from Mrs Simpson dated 3 October 2024 with attachments.
- iv. Email from Mr Donegan dated 16 October 2024.
- v. Email from Mrs Kerr dated 17 October 2024.

The CMD took place in respect of this application and the related case bearing reference FTS/HPC/CV/24/1803.

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that:-

Background

The Tribunal noted the following background:-

- i. The Applicant is the heritable proprietor of the Property.
- ii. The Applicant leased the Property to the Respondent in terms of a Private Residential Tenancy Agreement ("the PRT") that commenced 18 June 2021.
- iii. On 5 December 2023, the Applicant served on the Respondent by email a Notice to Leave requiring the Respondent remove from the Property by 4 March 2024. The Notice to Leave proceeds upon Ground 3 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act"). It states:-

"Significant work needs carried out in the property. A new boiler needs fitted, removing the old flue etc which will cause significant disruption. Along with decoration work in the whole property and other work is also required."

- iv. A further Notice to Leave dated 15 August 2024 was served by the Applicant on the Respondent by recorded delivery requiring the Respondent remove from the Property by 19 September 2024. That Notice proceeded on Grounds 11 and 12 of Schedule 3 of the 2016 Act and stated:-

"Our property balance system shows the rent arrears and a copy will be sent with this notice. He has breached terms 20 of his tenancy agreement by refusing access to the property on numerous occasions for required safety certificates and an unsafe boiler that needed replace. Term 21 has also been breached by him engaging in anti-social behaviour towards many of our staff members and contractors who he has refused access to and we have several emails and witnesses to prove he has breached these terms in his tenancy agreement."

- v. The Applicant has served on City of Edinburgh Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.

The application proceeds on the basis of the Notice to Leave dated 5 December 2023 alone.

The CMD

At the CMD Mrs Simpson confirmed the Applicant seeks an eviction order and Mr Donegan confirmed the Respondent opposes the grant of an eviction order.

Submissions for Applicant

In response to questions from the Tribunal Mrs Simpson made the following additional oral submissions:-

- i. The Tribunal noted that the rent had increased from £650 per calendar month per the PRT to £669.50 per calendar month. Mrs Simpson advised that the increase in rent was formally notified to the Respondent on 16 April 2023 to take effect on 1 August 2023. That increase reflected the rent cap of 3% at that time. The deposit of £650 previously paid by the Respondent is still held in a tenancy deposit scheme.
- ii. The boiler and flue referred to in the Notice to Leave dated 5 December 2023 has already been replaced. The boiler had stopped working and the Applicant required to apply to the Tribunal for right of entry to the Property when the works were eventually done. Mrs Simpson could not remember precisely when the works were done. She said the main priority for the Applicant had been to replace the boiler which was unsafe.

- iii. The Tribunal asked what "other work" per the Notice to Leave was required and Mrs Simpson indicated that the Applicant wished to upgrade decoration and also "potentially" replace the bathroom and kitchen. The Applicant had been refused access to obtain quotations for those additional works. She said the Applicant would do these works if the cost was reasonable. The Tribunal asked why these additional works were not specifically referenced in the Notice to Leave and Mrs Simpson apologised for the wording being vague.
- iv. The Tribunal asked why it would be necessary for the Respondent to remove for the kitchen and bathroom to be replaced. She said these were "big jobs" and the Property would be without facilities for a period of time. She said the Applicant could not obtain evidence of his intention to carry out these works due to access being refused by the Respondent and his accusations of harassment.
- v. With regard to the Notice to Leave subsequently served on 15 August 2024 the Tribunal asked Mrs Simpson if she was seeking the Tribunal's permission to consider the eviction grounds referenced in that Notice to Leave (Grounds 11 and 12) as additional grounds upon which an eviction order is sought in terms of section 52(5) of the 2016 Act. Mrs Simpson confirmed permission is indeed being sought on that basis.
- vi. With regard to Ground 12 she explained that the rent arrears are £1217.11 as of today and that she does not accept the Respondent's Time to Pay application in the associated application bearing reference FTS/HPC/CV/24/1803. Mrs Simpson said that emails had been received from the Respondent that he is saving funds for the deposit for a new tenancy elsewhere. Rent is being paid in full on an ongoing basis with occasional contributions towards the arrears. She said there had been a few months where rent had not been paid. She said the Applicant was not being unreasonable and would take a lump sum payment of the arrears over 2 or 3 payments.
- vii. Mrs Simpson also referred to her pre-action protocol letter having been sent to the respondent by email on 14 December 2023.
- viii. With regard to Ground 11, the Tribunal noted to that the Notice to Leave reference to the Respondent being in breach of the Clauses 20 and 21 of the PRT.
- ix. Clause 21 deals with anti-social behaviour and Mrs Simpson referred to an incident in the in her offices on 16 November 2023 when the Respondent was abrupt, aggressive and raised his voice to members of staff. At that time the boiler in the Property was not working and the Respondent complained of having no heating or hot water. The Property was inspected and it was identified that the boiler needed replaced as it was unsafe and old. The contractor was not able to carry out the work due to other jobs. Mrs Simpson instructed a second engineer. However, the Respondent had changed his telephone number and had not advised Mrs Simpson's office to that effect and the engineer could not get in touch with him. His new number was passed on and then the Respondent cancelled the engineer's appointment and sent a text message to the engineer directly. Whilst in the office the Respondent demanded someone attend the Property there and then. He was very loud, such that Mrs Simpson had to leave the office and go elsewhere as she was then attending a webinar and could not hear what is being taught on the course. An engineer was secured to attend within 20 minutes and the Respondent was given a portable heater to take with him meantime. This was the third contractor who attended. Mrs Simpson confirmed there are no other incidents of anti-social behaviour founded upon.

- x. With regard to the Clause 20 of the PRT, the Respondent refused access for Portable Appliance Testing which had been pre-arranged. He refused access for the boiler to be replaced.
- xi. With regard to the application for right of entry, the Tribunal gave a date and time for entry to be taken but the contractor was unavailable. On the second date and time access went ahead. A warrant was not needed from the Court and access was provided amicably by the Respondent.

Submissions for Respondent.

In response to questions from the Tribunal Mr Donegan for the Respondent made the following additional oral submissions:-

- i. The application for an eviction order is opposed.
- ii. It is not reasonable to grant an order for eviction terms of Ground 3 of Schedule 3 of the 2016 Act. In particular, the works are not of a scale that necessitate the eviction of the Respondent and no evidence of the intention to carry out the works is provided by way of surveys or quotations.
- iii. With regard to the rent arrears, the Respondent is making efforts to clear these.
- iv. The Respondent disagrees with the amount stated to be due by way of rent arrears and Mr Donegan is presently assessing the Respondent's financial circumstances.
- v. The Tribunal asked Mr Donegan what amount the Respondent accepted to be due by way of rent arrears. He said his client was challenging the previous Rent Increase Notice as not having been served at all. He also suggested that the Applicant is charging interest on the rent arrears per the PRT and that additional payments made by the Respondent to the Applicant were not going towards the arrears. Mr Donegan could not identify the detail of such payments and interest on the Rent Statement.
- vi. The Tribunal asked whether Mr Donegan accepted there had been issues with access to the Property. Mr Donegan commented that if there are such difficulties the Applicant can apply to the Tribunal for a right of access. In any event, the Respondent has suggested dates for access that the Applicant has not engaged.
- vii. Mr Donegan was unaware that the boiler and flue had already been replaced.
- viii. With regard to the application to the Tribunal for permission to consider as part of this application the additional grounds of eviction contained within the most recent Notice to Leave, Mr Donegan suggested permission should be refused. He had no instructions from the Respondent relative to the allegation of anti-social behaviour.
- ix. With regard to the refusal of access, the Respondent's position is that dates had been offered.
- x. The Respondent lives alone in the property. He recently started work at the beginning of October. He is paying his rent regularly. He was unaware of whether the Respondent receives any benefits towards the rent due.
- xi. For the purposes of the CMD Mr Donegan said he had focused his discussions with the Respondent on the proposal to evict based on the Applicant's desire to refurbish the Property.
- xii. Mr Donegan could not comment on the steps taken by the Respondent to find alternative accommodation.
- xiii. Mr Donegan was not aware of whether the Respondent was a student when he moved into the Property and is not sure of his occupation.

- xiv. He said the Respondent had reached out on multiple occasions to agree a payment plan for the rent arrears. There was no dialogue from the Applicant to agree such a repayment plan.
- xv. Mr Donegan suggested that the Applications be dismissed by the tribunal.

Additional Submissions for Applicant

- i. With regard to the change of the rent payment date to the 10th of each month, Mrs Simpson explained that the Respondent had asked that the rent payment date to be changed and this had been facilitated as shown within the Rent Statement.
- ii. She confirmed that no interest had been charged to the Respondent relative to the rent arrears as the Applicant did not wish to put the Respondent under more financial distress.

Following the parties' oral submissions the tribunal adjourned to consider the position.

Reasons for Decision

Application for permission to add additional eviction grounds to the application

Section 52(5) of the 2016 Act states:-

"(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."

In the first instance the Tribunal required to determine whether or not to grant the Applicant permission to have the Tribunal consider the additional eviction grounds detailed in the Applicant's Notice to Leave dated 15 August 2024 which does not otherwise form part of the Applicant's eviction application.

The Tribunal noted the Notice to Leave dated 15 August 2024 contained three additional eviction grounds being (i) in respect of rent arrears said to be due by the Respondent (Ground 12 of Schedule 3 of the 2016 Act) and (ii) breaches of Clauses 20 and 21 of the PRT (Ground 11 of Schedule 3 of the 2016 Act).

- i. With regard to the alleged rent arrears, according to the Applicant's Rent Statement, if correct, the arrears have been outstanding and due since early 2024. A Notice to Leave relative to the rent arrears could have been served at a much earlier date but the Applicant failed to do so.
- ii. With regard to the allegation of anti-social behaviour, the Notice to Leave contains no specification as to when the anti-social behaviour is said to have taken place. At the CMD the Applicant's agent referred to one incident only in November 2023 in relation to which no action had previously been taken. The Tribunal does not consider it reasonable to serve a Notice to Leave based on a single incident more than nine months previously.
- iii. With regard to the alleged breach of Clause 20 of the PRT the Notice to Leave is again vague in its terms and simply states that the Respondent has refused access to the property on numerous occasions for required safety certificates to

be obtained and an unsafe boiler to be replaced. No detail is given of the dates upon which access was refused and in any event the boiler has now been replaced.

In all the circumstances the Tribunal did not consider it reasonable or in the interests of justice to give permission to add the additional Grounds specified in the Notice to Leave dated 15 August 2024.

Accordingly, the Applicant's application for permission under section 52(5) of the 2016 Act is refused.

Application for eviction – Ground 3

With regard to the application as framed it proceeds upon Ground 3 of Schedule 3 of the 2016 Act.

Ground 3 states: –

"3 Landlord intends to refurbish

(1) It is an eviction ground that the landlord intends to carry out significantly disruptive works to, or in relation to, the let property.

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

(a) the landlord intends to refurbish the let property (or any premises of which the let property forms part),

(b) the landlord is entitled to do so,

(c) it would be impracticable for the tenant to continue to occupy the property given the nature of the refurbishment intended by the landlord, and

(d) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.

(3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(a) includes (for example)—

(a) any planning permission which the intended refurbishment would require,

(b) a contract between the landlord and an architect or a builder which concerns the intended refurbishment."

In the application at Section 5 thereof and the eviction ground and description of the circumstances leading to the application being made are stated as follows

"Ground 3 – landlord intends to refurbish the let property. The landlord is looking to refurbish the property as it is due for an upgrade. Work to replace boiler and flue etc needs done."

At the CMD the Applicant's representative confirmed that the boiler and flue had already been replaced. The application otherwise refers only to an "upgrade" with no other specification being provided as to other work required.

The Notice to Leave dated 5 December 2023 states: –

"Significant work needs carried out in the property. A new boiler needs fitted, removing the old flue etc which will cause significant disruption. Along with decoration work in the whole property and other work is also required."

The reference to "Significant work" is without any detail other than the replacement of the boiler and flue. The only other specification is to "decoration work in the whole property" with other unspecified "work" also being required.

Under questioning from the Tribunal Mrs Simpson referred to the Applicant "potentially" replacing the bathroom and kitchen depending upon the price. She said the Applicant would carry out these works if reasonable to do so. There is no reference to these works in the Notice to Leave or the application.

The terms of Ground 3 are not met. It is not sufficient that the Applicant will "potentially" carry out work. Ground 3 requires that the Applicant "intends" to carry out such work. No evidence of that intention has been produced to comply with paragraph (3) of Ground 3 and it is clear from the facts and circumstances that no such intention exists.

Ground 3 also requires that the works in question are so significantly disruptive that it is impractical that the tenant continue to occupy the property given the nature of the refurbishment intended. Replacement of the bathroom and kitchen does not appear to be so significantly disruptive to require the removal of the Respondent. Many households replace bathrooms and kitchens without the property in question being vacated. No further justification or explanation was provided as to why the position might be different here.

In the circumstances the Ground 3 is not established. The Tribunal did not need to consider whether it would be reasonable to grant an eviction order as a result.

The application is accordingly refused.

Decision

The application is refused.

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.

G Buchanan

Legal Member/Chair

21 October 2024
Date