



**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/24/0877**

**Re: Property at Flat 5, 1 Telford Drive, Edinburgh, EH4 2NQ (“the Property”)**

**Parties:**

**Mr Jorge Fernando Mejia Shimizu, 10 Wester Drylaw Park, Edinburgh, EH4 2TR (“the Applicant”)**

**Mr Michael Joshua Rooney, Mr Jamie Ismial Salahuddin, Mrs Lisa Adamson (SBA), Flat 5, 1 Telford Drive, Edinburgh, EH4 2NQ; Flat 2, 1 Robin Place, Edinburgh, Midlothian, EH16 4GU; Unknown, Unknown (“the Respondents”)**

**Tribunal Members:**

**Ms H Forbes (Legal Member) and Mrs F Wood (Ordinary Member)**

**Decision (in absence of the Respondents)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted.**

**Background**

1. This is a Rule 109 application received on 22<sup>nd</sup> February 2024. The Applicant is seeking an eviction order under Ground 12. The Applicant lodged a copy of a private residential tenancy agreement between the parties in respect of the Property, which tenancy commenced on 11<sup>th</sup> May 2020, at a monthly rent of £880. The Applicant lodged a rent statement showing arrears in the sum of £4400, copy Notice to Leave with evidence of service, copy section 11 notice with evidence of service, and pre-action requirement correspondence.
2. Service of the application and notification of a forthcoming CMD to take place on 10<sup>th</sup> July 2024 was served upon Mr Rooney and Mr Salahuddin on 7<sup>th</sup> June 2024. Service upon Mrs Adamson was unsuccessful. The CMD was postponed to allow further enquiries as to her whereabouts. No address was obtained for Mrs Adamson, and an application was made for service by advertisement.

3. Notification of a further CMD was made upon Mr Rooney and Mr Salahuddin by recorded delivery letter on 17<sup>th</sup> October 2024. Email notification of service by advertisement was made upon Mrs Adamson, and service by advertisement was advertised on the Housing and Property Chamber website from 17<sup>th</sup> October to 18<sup>th</sup> November 2024.

### **The Case Management Discussion**

4. A CMD took place by telephone conference on 18th November 2024. The Applicant was in attendance. The Respondents were not in attendance. The start of the CMD was delayed to allow the Respondents to attend.
5. The Tribunal considered the terms of Rule 29. The Tribunal determined that the requirements of Rule 17(2) had been satisfied, and it was appropriate to proceed with the application in the absence of the Respondents.
6. The Applicant explained that only Mr Rooney is currently living in the Property, although the joint tenancy was not ended when Mr Salahuddin moved out in 2022 and Mrs Adamson moved out in 2023. The Applicant has been informed that Mr Rooney is sub-letting a room in the Property. No permission has been granted for sub-letting. There have also been complaints from neighbours of noise nuisance from a barking dog. No rent has been paid for 14 months, and efforts to discuss matters and arrange a payment plan were unsuccessful. Rent arrears are now in the sum of £12,320. The Applicant recently tried to arrange a Gas Safe Certificate check, but access was not provided to British Gas.
7. Responding to questions from the Tribunal, the Applicant said there had never been any children in the Property during this tenancy. He was not aware that any housing benefit had been in payment. When the rent was paid, he would receive £600 by bank transfer, and the remainder in cash, which Mr Rooney would usually deliver to the Applicant. The Applicant said he understands Mr Rooney has always been in employment.

### **Findings in Fact and Law**

8.
  - (i) Parties entered into a private residential tenancy agreement in respect of the Property which commenced on 11<sup>th</sup> May 2020.
  - (ii) The Applicant has served a Notice to Leave upon the Respondents.
  - (iii) The Respondents have accrued rent arrears.
  - (iv) The Respondents have been in rent arrears for three or more consecutive months.

- (v) The Respondents being in rent arrears is not as a result of a delay or failure in the payment of a relevant benefit.
- (vi) The Applicant has complied with the pre-action protocol.
- (vii) It is reasonable to grant an eviction order.

### **Reasons for Decision**

9. Ground 12 of Schedule 3 of the Act provides that it is an eviction ground if the tenant has been in rent arrears for three or more consecutive months. The Tribunal may find that this applies if for three or more consecutive months the tenant has been in rent arrears and the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order. The Tribunal is satisfied that Ground 12 has been established.
10. 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 that period is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit. There was no evidence before the Tribunal that the Respondents were in rent arrears as a result of a delay or failure in the payment of a relevant benefit.
11. In deciding whether it is reasonable to issue an eviction order, the Tribunal is to consider the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations. The Applicant has complied with the pre-action protocol by sending letters to the Respondents.
12. In considering whether it was reasonable to grant the eviction order, the Tribunal considered the circumstances of both parties. There was limited information in respect of the Respondents. The Tribunal noted that Sheriff Officer correspondence confirmed that Mr Salahuddin and Mrs Adamson had left the Property, albeit the joint tenancy had not been formally ended. The Tribunal took into account that Mr Rooney was believed to be in employment, with no children living in the Property.
13. The Applicant has made reasonable endeavours to assist the Respondents to rectify the situation, with no success. The Applicant is entitled to rent lawfully due in terms of the tenancy agreement. The account has been in arrears for a considerable period. The sum outstanding is significant and rising. There are concerns of noise nuisance and unauthorised sub-letting.
14. In all the circumstances, the Tribunal considered that a *prima facie* case in respect of reasonableness had been made out on behalf of the Applicant. It was incumbent upon the Respondents to attend or make representations to the Tribunal to indicate why an order should not be granted, and the Respondents have failed to do so. The Tribunal considered it was reasonable to grant the order sought.

## **Decision**

15. An eviction order in respect of the Property is granted. The order is not to be executed prior to 12 noon on 23<sup>rd</sup> December 2024.

## **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.

# H. Forbes

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Legal Member

18th November 2024