

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”)

Chamber Ref: FTS/HPC/EV/24/0738

**Re: G/1 Block A, Eagle Avenue, Newton Mearns, Glasgow, G77 6ZR
 (“the Property”)**

Parties:

Nevis Properties Limited, a company incorporated under the Companies Acts with company number SC535937 and having its registered office address at 6th Floor, Gordon Chambers, 90 Mitchell Street, Glasgow, Scotland, G1 3NQ (“the Applicant”), being heritable successor to Rothesay Life PLC, and with Rothesay Life PLC itself having been heritable successor to PACE Trustees Limited

Mr Junaid Khalid, G/1 Block A, Eagle Avenue, Newton Mearns, Glasgow, G77 6ZR (“the Respondent”)

Tribunal Members:

Pamela Woodman (Legal Member) and Elaine Munroe (Ordinary Member)

Present:

The case management discussion took place at 10am on Thursday 16 January 2025 by teleconference call (“**the CMD**”). The Applicant was represented by Nicola Brechany of TC Young, solicitors, at the CMD. The Respondent was neither present nor represented at the CMD. The clerk to the Tribunal was Kimberley Jamieson. This case was conjoined with the case with reference FTS/HPC/CV/24/0739.

DECISION (in the absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted under ground 12 (rent arrears) and/or ground 12A (substantial rent arrears) of schedule 3 to the 2016 Act against the Respondent in respect of the Property.

BACKGROUND

1. An application had been made to the Tribunal under section 51(1) of the 2016 Act and in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended. More specifically, the application was made in terms of rule 109 (*Application for an eviction order in relation to a private residential tenancy*) of the HPC Rules.
2. The order sought from the Tribunal was an eviction order against the Respondent in respect of the Property.
3. The application form dated 14 February 2024 was accompanied by copies of various documents, including:
 - a. the private residential tenancy agreement between Pace Trustees Limited and the Respondent dated 7 January 2022 (“**Tenancy Agreement**”).
 - b. a notice to leave dated 15 November 2023 addressed to the Respondent at the Property (“**Notice to Leave**”), which stated that the eviction ground was “You have substantial rent arrears (equivalent to 6 months’ worth of rent)”, that (among other things) the Respondent had “accrued arrears of rent amounting to £8,012.61 as at 11 October 2023” and that the “arrears at date of service of this notice exceed six months’ rent under the tenancy agreement”, and that an application would not be submitted to the Tribunal for an eviction order before 16 December 2023.
 - c. the rental statement (which accompanied the Notice to Leave) covering the period from 7 January 2022 to 11 October 2023, which stated that there were arrears of £8,012.61 as at 11 October 2023.
 - d. an e-mail from the Applicant’s representatives to the Respondent (to the e-mail address for the Respondent noted in the Tenancy Agreement) dated 15 November 2023 sending the Notice to Leave.
 - e. a notice under section 11(3) of the Homelessness etc. (Scotland) Act 2003, together with the covering e-mail dated 13 February 2024 sending it to the local authority.
 - f. pre-action correspondence from Orchard and Shipman Group Ltd trading as Pinnacle Group to the Respondent at the Property dated 14 February 2023.
4. A notice of acceptance of the application was issued dated 22 April 2024 under rule 9 of the HPC Rules, confirming that the application paperwork had been received between 14 February 2024 and 16 April 2024.
5. A case management discussion was originally scheduled for 23 August 2024. This was notified to both parties by letter. The Tribunal was provided with a certificate

of execution which stated that the paperwork from the Tribunal's administration team had been served by sheriff officers on the Respondent on 24 July 2024.

6. By e-mail dated 5 August 2024, the Applicant's representatives applied to "request that the application be amended in relation to the sum claimed from £9,320.20 to £13,179.02 in terms of Rule 14A of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017." The Tribunal was informed that this request had also been sent to the Respondent.
7. By e-mail dated 6 August 2024, the Respondent requested a postponement of the case management discussion scheduled for 23 August 2024. The Applicant's representatives objected to a postponement on 12 August 2024. However, the Tribunal agreed to a postponement.
8. By letter dated 3 December 2024 (sent to both the Applicant's representatives and the Respondent by e-mail), the parties were informed of the date and time of the CMD.
9. By e-mail dated 24 December 2024, the Applicant's representatives made the following requests:

"We refer to the above and request that the application be amended in relation to the sum claimed from £9,320.20 to £13,781.39 in terms of Rule 14A of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

We also request to amend the application in terms of Rule 14 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. We are seeking to amend the Applicant's name from "Rothesay Life PLC" to "Nevis Properties Limited" following sale of the subject on 5 December 2024 and assignation of Rothesay Life PLC's interests in the proceedings to Nevis Properties Limited."

This attached an assignation dated 5 December 2024 of Rothesay Life PLC's right, title and interest in and to the proceedings (in the current case against the Respondent) in favour of Nevis Properties Limited, and notification to the Respondent dated 12 December 2024 of the change in property ownership and payment details, which (among other things) purported to change the date of payment of the rent from the 10th of each month to the 1st of each month.

A copy of a letter dated 19 December 2024 from TC Young, solicitors, addressed to the Respondent at the Property was provided to the Tribunal, in which the request to increase the amount claimed to £13,781.39 was notified to the Respondent and that an amendment was being sought to change the Applicant's name from Rothesay Life PLC to Nevis Properties Limited.

10. The e-mail dated 24 December 2024 with attachments from the Applicant's representatives were sent by the Tribunal's administration team to the Tribunal and to the Respondent on 6 January 2025.

11. By e-mail dated 6 January 2025, the Applicant's representatives provided a copy of the letter dated 23 December 2024 of intimation of the assignation of Rothesay Life PLC's whole right, title and interest in these proceedings to the Applicant (i.e. Nevis Properties Limited).
12. On the morning of the CMD, the Applicant's representatives sought to lodge correspondence from them to the Respondent with an attached rent statement, sent in August 2024.
13. The Respondent had not provided written representations in advance of the CMD and did not attend the CMD.
14. This decision arises out of the CMD.

PROCEEDINGS, NAMELY THE CMD

15. The Tribunal agreed that the identity of the Applicant could be changed to Nevis Properties Limited.
16. It was noted that the Notice to Leave sought to rely on ground 12A but the application had been made in reliance on ground 12 (of schedule 3 to the 2016 Act). Ms Bechany submitted that the eviction ban was no longer in force and, since both grounds had been made out as a result of the substantial rent arrears, the application had been submitted under ground 12.
17. Ms Bechany confirmed that various attempts had been made to contact the Respondent both by the Applicant and by Rothesay Life PLC but that the Respondent had not engaged. She noted that the Respondent had not adhered to the proposed payment plan (of paying £1,000 per month) suggested by the Respondent in August/September 2024 to start repaying the arrears.
18. Ms Bechany confirmed that she was not aware of the Respondent having given any reasons to her clients for the non-payment of rent and that she was not aware of the Respondent's home situation.
19. In requesting the postponement of the August 2024 case management discussion, the Respondent had indicated that he had two children living with him and that he was in the process of trying to sort out the payment of child maintenance.
20. Ms Bechany confirmed that there had been some difficulty in getting detailed information about the rent position and the paperwork relating to the increases in rent to £630.53 in July 2022 and, apparently, to £649.44 in April 2024, and that the former owners' letting agents had been slow in providing what she had requested from them (which information had not yet been received). It was noted that there were discrepancies in the amounts stated for certain dates in terms of various rent statements provided in the case papers.
21. Ms Bechany submitted that it would be reasonable for the Tribunal to grant an eviction order because:

- a. the arrears of rent as at the date of the CMD were £14,230.27, and there had been arrears since August 2022;
- b. the application was made in February 2024 and so had been ongoing for almost a year;
- c. the situation has become worse and the arrears have increased;
- d. the Respondent had failed to adhere to a payment plan which he had proposed;
- e. the Respondent had failed to explain why he was not paying the rent;
- f. the Applicant was still having to fulfil its obligations as a landlord and to pay a mortgage in respect of the Property; and
- g. the Respondent had failed to engage either with the Applicant or with the proceedings.

FINDING IN FACT

22. The Tenancy Agreement stated that:

- a. The start date of the tenancy was 10 January 2022;
- b. Rent was payable in advance at a rate of £588.50 per calendar month;
- c. Payments of rent were due to be paid on or before the 10th of the month;
- d. A rent deposit of £679.03 was payable; and
- e. Notices to be served under the Tenancy Agreement were to be served using hard copy by personal delivery or recorded delivery, or the email addresses set out in clauses 2 and 1 of the Tenancy Agreement.

23. Rothesay Life PLC became registered proprietor of the Property on 24 November 2023. The Tribunal was satisfied, on the balance of probabilities, that all rights of Pace Trustees Limited to recover any arrears of rent owed by the Respondent in respect of the Property and which existed as at 24 November 2023 were assigned to Rothesay Life PLC by virtue of an assignation of arrears dated 12 April 2024.

24. Similarly, the Tribunal was satisfied, on the balance of probabilities, that all rights of Rothesay Life PLC in respect of these proceedings had been assigned to Nevis Properties Limited by virtue of an assignation dated 5 December 2024.

25. Accordingly, the correct entity to be the applicant for the purposes of the CMD was the Applicant (i.e. Nevis Properties Limited).

26. It was noted that there were discrepancies in the amounts stated for certain dates in terms of various rent statements provided in the case papers. Notwithstanding this, the Tribunal was satisfied, on the balance of probabilities, that:

- a. as at each of (i) the date of service of the Notice to Leave (15 November 2023), (ii) the date of submitting the application to the Tribunal (14 February 2024) and (iii) the date of the CMD, the Respondent had been in arrears for one or more periods, for more than six consecutive months and the amount of the arrears was equivalent to more than six months' rent (based on the original rent, being 6 months at £588.50 per month, so £3,531);
- b. there was no prejudice to the Respondent as to whether the application was considered under ground 12 or ground 12A as both were satisfied, subject to consideration of it being reasonable to grant an eviction order, and both related to arrears of rent; and
- c. it was reasonable to grant an eviction order.

REASON FOR DECISION

27. The Tribunal was satisfied, on the balance of probabilities, that:

- a. the Notice to Leave was valid and had been validly served;
- b. pre-action information had been provided;
- c. for three or more consecutive months the Respondent had been in arrears of rent and the Respondent had substantial arrears of rent;
- d. given that the arrears had been accruing since July/August 2022, the delay in payment of the rent was not as primarily a result of a delay or failure in the payment of a relevant benefit; and
- e. it was reasonable to grant an eviction order in the circumstances of this case. This was on the basis that:
 - i. There had continuously been arrears (of some amount) since July 2022, a period of over 2 years 5 months prior to the CMD.
 - ii. The Respondent had not adhered to a payment plan which he had proposed (including in correspondence with the Tribunal in August 2024).
 - iii. It would not be in the interests of either party for the rent arrears to continue to increase.
 - iv. The Respondent had failed to engage with the proceedings, other than to request a postponement of the original case management discussion.

28. Accordingly, the Tribunal was satisfied, on the balance of probabilities, that both ground 12 (rent arrears) and ground 12A (substantial rent arrears) of schedule 3 to the 2016 Act applied.

DECISION

29. The Tribunal granted the application under section 51(1) of the 2016 Act for an eviction order on the basis of ground 12 and/or ground 12A.

Right of Appeal

In terms of Section 46 of the Tribunals (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.

P. Woodman

16 January 2025

Chair

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Date