

Housing and Property Chamber
First-tier Tribunal for Scotland



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/24/1575

Re: Property at 100 Oldwood Place, Eliburn, Livingston, EH54 6US ("the Property")

Parties:

Dawnside Holdings Ltd, Geddes House, Kirkton Road North, Livingston, EH54 6GU ("the Applicant")

Mr Zsolt Hollik, 100 Oldwood Place, Eliburn, Livingston, EH54 6US ("the Respondent")

Tribunal Members:

Gillian Buchanan (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

A Case Management Discussion ("the CMD") took place on 18 February 2025 by telephone conference. The Applicant was represented by Mr Alistair Donaldson. The Respondent was also in attendance. Ms Ivett Jean was appointed by the Tribunal as an interpreter for the Respondent and attended to translate the proceedings for him.

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

Background

- i. The Applicant is the heritable proprietor of the Property.
- ii. The application concerns a Private Residential Tenancy ("the PRT") entered into between the parties relative to the Property that commenced on 1 October 2023.
- iii. The rent agreed to be payable under the PRT was initially £850 per calendar month.
- iv. On 5 March 2024, the Applicant served on the Respondent a Notice to Leave requiring the Respondent remove from the Property by 7 April 2024 on the basis of Ground 12A of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act") in that the Respondent is in substantial rent arrears, being due a sum equivalent to at least 6 months' worth of rent. The amount stated to be due in terms of the Notice to Leave was £7,285.

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

The CMD

At the CMD Mr Donaldson for the Applicant made the following oral representations:-

- i. The Applicant still seeks an eviction order.
- ii. The current rent arrears are £16,965.
- iii. The PRT was entered into with effect from 1 October 2023. On around that date there was an intercompany transfer of properties, including the Property, from the Dawnside Developments to the Applicant.
- iv. The figure of £16,965 includes rent arrears accrued prior to the PRT. The total for the prior period is £6,185 with the balance of £10,780 being attributable to rent due under the PRT.
- v. There is no specific provision within the PRT referring to the prior rent arrears. Mr Donaldson referred to the wording at the top of page 1 of the PRT which states: –

"This agreement is to reflect the inter company transfer of the property ownership from Dawnside Developments Ltd to Dawnside Holdings Ltd. All terms and rights of both tenant and landlord remain the same."

- vi. He said that to he was advised that all prior debt due by the Respondent would carry forward.
- vii. The last payment made by the Respondent was on 3 January 2024. No rent has been paid for in excess of 12 months.
- viii. Rental amounts are increased on 1 April each year and the rent due under the PRT was increased to £880 on 1 April 2024. A rent increase notice would have been served on the Respondent in December 2023.
- ix. The Respondent remains in occupation of the Property.
- x. Mr Donaldson has had meetings and exchanged emails with the Respondent. No specific reason has been given as to why rent is not being paid. The Respondent has referred to a meeting with his financial adviser, to getting more work and then to being declared bankrupt. Mr Donaldson was not aware of the Respondent's bankruptcy until March 2024 when he received a letter from Dunedin Advisory.
- xi. Mr Donaldson accepted that the rent arrears referred to in terms of the Notice to Leave included the prior rent arrears of £6,185 which left rent arrears of only £1,100 attributable to the PRT. He accepted that the arrears of £1,100 did not amount to "substantial rent arrears" as defined being the equivalent of six months' worth of rent.
- xii. With regard to pre-action protocol letters, Mr Donaldson stated that he tried to work with the Respondent to find a solution. Several emails were exchanged and meetings took place in an effort to help the Respondent repay the debt and come to a solution. Once the Respondent stopped paying any rent the Notice to Leave was served.
- xiii. The Applicant owns over 40 properties.
- xiv. The Respondent's failure to pay rent is impacting the amount of money that the Applicant makes.
- xv. If the Respondent is evicted the Applicant will evaluate the condition of the Property and make a decision as to whether to sell or re-let.

At the CMD the Respondent made the following oral representations:-

- i. The Tribunal asked the Respondent why he had not paid any rent since January 2024. The Respondent stated that when the Court granted the bankruptcy order his obligation to pay rent was finished. The Tribunal stated to the Respondent that this was simply not correct. He remained liable to pay all ongoing rent from 26 May 2023, the effective date of his bankruptcy being 25 May 2023. The Respondent said that the information he was given was that he was not liable to make payment. In April 2024 he was advised by a Council financial adviser that he did not need to pay rent. He was advised that since the lease ceased to exist he didn't have to pay.
- ii. The Respondent accepted that he signed the PRT on 1 October 2023.
- iii. He said he had made a significant investment in the Property between 2015 when he first moved into the Property and 2024. He has no agreement with the Applicant as to the cost of that investment. He said the investment comprised landscaping the garden and work inside the Property. The Tribunal asked the Respondent if he had written permission to undertake that work and he said that he had a verbal agreement with the previous landlord. He also referred to there being if an email with the former landlord.
- iv. The Respondent is not currently working.
- v. He is not in receipt of any state benefits.
- vi. He lives alone with his four dogs.
- vii. He is being financially supported by his family in Hungary.
- viii. He said he is not sure what state benefits he is entitled to.
- ix. He said he had applied to the local authority for homelessness accommodation and the Council is awaiting the outcome of the eviction proceedings.
- x. He said if an eviction order is granted that he would need reasonable time to move out the Property. He would also need to find a home for his four dogs. He is not sure how long that would take.
- xi. He said that if the eviction that order was declined he didn't know what would happen.

The Tribunal adjourned briefly to consider the parties written and oral submissions.

Reasons for Decision

The PRT commenced on 1 October 2023. The eviction order sought by the Applicant is relative to the PRT.

The Notice to Leave served by the Applicant is on the basis of Ground 12A of Schedule 3 of the 2016 Act which required that there be "substantial rent arrears" amounting to the equivalent of six months' worth of rent.

At the time of serving the Notice to Leave on 5 March 2024 there were not "substantial rent arrears" (as defined) due under the PRT. The Notice to Leave erroneously included prior rent arrears due by the Respondent under a previous tenancy agreement. The prior rent arrears amounted to £6,185. As at the date of serving the Notice to Leave the rent arrears due under the PRT were only £1,100 which falls considerably short of the required amount due to meet the terms of Ground 12A. The Notice to Leave is not therefore competent. Accordingly it follows that these proceedings must fail notwithstanding the very significant rent arrears that the Respondent has allowed to accrue under the PRT.

The PRT makes no provision relative to prior rent arrears due under any previous tenancy agreement. The wording referred to by the Applicant is not sufficient.

It is unfortunate that at the time of the inter company transfer a new tenancy agreement was entered into relative to the Property. Quite why that was done was not explained. The previous tenancy agreement could simply have continued notwithstanding the inter company transfer.

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

18 February 2025
Date