



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/24/2116

Re: Property at Flat 2/2, 112 Calder Street, Glasgow, G42 7RB (“the Property”)

Parties:

Daytona Avante Ltd, Javid House, 115 Bath Street, Glasgow, G2 2SZ (“the Applicants”)

Mr Michael Freeman, Flat 2/2, 112 Calder Street, Glasgow, G42 7RB (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

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 8 May 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 Notice to Leave, dated 6 March 2024, advising the Respondent that the Applicants were 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 7 April 2024, and a series of Rent Statements showing arrears as at the date of the application of £15,950. The Respondent had paid absolutely no rent at all since March 2022. The Applicants were unable to provide a copy of a written tenancy agreement. On 6 November 2024, the Applicants’ agents provided the Tribunal with a copy of an email of 20 September 2024 to the Respondent

which referred to a meeting with him at the Property earlier in the day, at which he had told the Applicants' representative that the rent he had agreed for the Property had been £950 per month, and updated Rent Statements amending the monthly rent due to £950 per month, back-dating the higher level of rent due to the start of the tenancy, adjudged to be February 2020, and producing an arrears figure of £45,550. The amounts paid by the Respondent remained unchanged. On 30 January 2025, the Applicants' representatives supplied a further Rent Statement showing arrears of £48,400 at that date.

3. On 10 December 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 31 December 2024. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

4. A Case Management Discussion was held by means of a telephone conference call on the morning of 4 February 2025. The Applicant was represented by Miss Joanna Simpson of 1st Lets (Glasgow) Limited. The Respondent was not present or represented.
5. The Applicants' representative told the Tribunal that no payments had been received since the date of the application. They had taken over from other letting agents. Those agents had a "guaranteed rent" contract with the Applicants, whereby the Applicants were guaranteed rental income of £500 per month, whether or not the Property was empty or occupied. The application to the Tribunal had been accompanied by a copy of this contract, which commenced on 20 January 2020. The Applicants' representatives understood that a written tenancy agreement had been drawn up but had not been signed, possibly due to the intervention of the COVID-19 lockdown. The only records they had to go on were their clients' actual receipts, which were as set out in the Rent Statements. They stated that it was clear that the rent charged to the Respondent would have been higher than £500 per month (to enable the previous agents to make a profit), but that there is no evidence of its being £950 per month apart from an unsolicited remark by the Respondent at the meeting of 20 September 2024 that this was the figure he had agreed to pay when he moved in in February 2020.
6. The Applicants' representative told the Tribunal that, so far as she was aware, the Respondent lives alone in the Property. She was not aware of his having any disabilities or any physical or mental health issues and was not aware of any issues regarding payment of any benefits to which he was entitled. Their office is on the same street as the Property, but the Respondent has not engaged with them regarding his rent arrears or his personal situation. He had not taken the opportunity to challenge the rent figure stated in their email to him of 20 September 2024, but, should the Tribunal be unwilling to accept that the rent was £950 per month, the Applicants were content to restrict their right to recover rent to £500 per month, as this could be evidenced from the payments actually received by the Applicants.

Reasons for Decision

7. 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.
8. 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.
9. 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.
10. The Tribunal's view was that, whilst he had not challenged the rent figure stated in the Applicants' representatives' email to him of 20 September 2024, it could not be regarded as proving an admission by him that the rent agreed with the original agents was £950 per month. The Tribunal was, however, satisfied that, at the commencement of the tenancy, he had been paying at least £500, as this was the sum that the Applicants received.
11. 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.
12. The Tribunal noted that, even taking the rent to be £500 per month, the level of arrears is now enormous. At the date of the application it was £15,950 and, including the rent due on 1 February 2025, the arrears are now £20,950. The Respondent has paid nothing at all since March 2022 and has offered no explanation for his failure or asked the Tribunal to take any factors personal to him into account. It appears that he simply stopped paying rent and he has offered no reason for doing so.

13. 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.

14. 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

4 February 2025
Date