

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 Private Housing
(Tenancies) (Scotland) Act 2016 (“the 2016 Act”)**

Chamber Ref: FTS/HPC/EV/24/2583

Re: Property at 27/10 Hawthornbank Lane, Edinburgh, Midlothian, EH4 3BH (“the Property”)

Parties:

Mr Ross Mackay, 31 Keppel Bay View, 04-92, 098418, Singapore (“the Applicant”)

Mrs Sheryl Ashton, Mr Thomas Ashton, 27/10 Hawthornbank Lane, Edinburgh, Midlothian, EH4 3BH (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Ahsan Khan (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 against the Respondents in favour of the Applicant.

Background

1. The Applicant lodged an application for an eviction order in terms of Section 51 and Grounds 12 of the 2016 Act. A tenancy agreement, Notice to leave, section 11 notice and rent statement were lodged with the application. A related application for a payment order was also submitted.
2. A copy of the application was served on the Respondents by Sheriff Officer and the parties were notified that a case management discussion (“CMD”) would take place by telephone conference call on 15 April 2025 at 10am and that they were required to participate. Prior to the CMD, the Applicant lodged an updated rent statement, a request to amend the related application to reflect the increased arrears of rent and a copy of email correspondence with the

Respondents.

3. The CMD took place on 15 April 2025. The Applicant was represented by Mr Logan, Portfolio Manager, with the letting agent, Rettie & Co. The Respondents did not participate.

Summary of Discussion at CMD

4. Mr Logan told the Tribunal that the Respondents are still in occupation of the property. The arrears have increased to £20,529 64 as a further payment was due on 11 April 2025. However, they are now receiving Housing Benefit payments directly from the Local Authority and a payment is due shortly. This will reduce the arrears to the sum specified in the updated statement - £18,729.64. The only payments being received are from the Local Authority and Mr Logan understands that the Council are investigating the Respondents, as they were previously receiving benefit payments and not passing these on to the Applicant.
5. Mr Logan said that he believes that the Respondents reside at the property with two adult children. He has no information about the ages of the children or the family circumstances. He is not aware of any health issues, disabilities or current employment status. However, he is aware that the Respondents incurred arrears of rent at their previous property. In addition, it would appear that the tenancy reference they provided was not genuine as he has been in touch with the previous agent. In addition to the arrears of rent, there have been complaints of antisocial behaviour from other residents and allegations of theft and fraud. On 5 February 2025 he was contacted by the Police to come to the property and secure it. The Police had forced entry and arrested the Respondents in connection with a criminal offence. The Respondents have also failed to provide access to the letting agent and contractors and have a dog at the property without permission.
6. Mr Logan told the Tribunal that the Applicant has two other rental properties. The rent arrears are substantial and have caused him some difficulty in meeting financial obligations associated with the property. He also has concerns about the Respondents' conduct during the tenancy and has indicated that he might sell it when he recovers possession.

Findings in Fact

7. The Applicant is the owner and landlord of the property.
8. The Respondents are the tenants of the property in terms of a private residential tenancy agreement.
9. The Respondents are due to pay rent at the rate of £1800 per month.

10. The Respondents have been in arrears of rent since February 2024. The only payments made to the rent account since June 2024 have been direct payments of housing benefit made by the Local Authority. The Respondents previously failed to pass on housing benefit received by them to the Applicant.
11. The Respondents currently owe the sum of £18729.64 in unpaid rent.
12. The Applicant served a Notice to leave on the Respondents on 23 April 2024.
13. The property is occupied by the Respondents and two adult children.
14. The Respondents have failed to provide access to the property for inspection and repair.
15. The Respondents have an unauthorised pet at the property.
16. Other residents in the area have made complaints about antisocial behaviour and criminal activity by the Respondents.
17. The Applicant's agent was contacted by the Police to secure the property on 6 February 2025 after the Police had forced entry and arrested the Respondents.

Reasons for Decision

18. The application was submitted with a Notice to Leave dated 23 April 2024, together with a copy email which establishes that the Notice was sent to the Respondents on that date. The Notice states that an application to the Tribunal is to be made on ground 12, rent arrears over three consecutive months.
19. The application to the Tribunal was made after expiry of the notice period. The Tribunal is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a Section 11 Notice with evidence that it was sent to the relevant Local Authority. The Tribunal is therefore satisfied that the Applicant has complied with Section 56 of the 2016 Act.
20. Section 51(1) of the 2016 Act states, "The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies."
21. Ground 12 of Schedule 3 (as amended by the Coronavirus (Recovery and Reform (Scotland) Act 2022) states "(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. (3) The First-tier Tribunal may find that the ground named in sub-paragraph (1) applies if – (a) for three or more consecutive months the tenant has been in arrears of rent, and (b) the Tribunal is satisfied that it is reasonable on account of that fact to

issue an eviction order.”

22. Sub-Paragraph (4) states, “In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider - (a) whether the tenant’s being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, and (b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Minister in regulations.” Relevant benefits are defined in sub-paragraph (5) and include housing benefit and universal credit. The Pre Action-Requirements Regulations include the provision of clear information relating to the terms of the tenancy agreement, the level of the arrears, the tenant’s rights in relation to eviction proceedings and how the tenant can access information and advice.
23. From the documents submitted and the information provided at the CMD, the Tribunal is satisfied that the Respondents currently owe the sum of £18729.64 and that they have been in arrears of rent for three or more consecutive months, both at the date of service of the Notice to leave and the CMD. Ground 12 is therefore established.
24. The Tribunal proceeded to consider whether it would be reasonable to grant the order and noted the following: -
 - (a) The Tribunal is satisfied that the Applicant has complied with the Rent Arrears Pre-Action Protocol. The Applicant submitted copies of letters issued to the Respondent in compliance with the protocol.
 - (b) The Tribunal is also satisfied that there is no evidence that the arrears are attributable to a delay or failure in the payment of a relevant benefit. Since November 2024, the Applicant has been receiving housing benefit payments directly from the Local Authority. He has been advised by the Council that the benefit was previously paid to the Respondents themselves. These payments were not passed on to the Applicant.
 - (c) The arrears are substantial, and the Respondents have made no additional payments to reduce the arrears.
 - (d) The Respondents did not participate in the CMD or notify the Tribunal that the application is opposed.
 - (e) The Applicant has other concerns about the conduct of the tenancy. The Respondent is keeping a pet at the property without the consent of the Applicant and has failed to provide access for inspections and maintenance. There have also been complaints of antisocial behaviour and allegations of criminal activity by the Respondents at the property. The Police have attended on at least one occasion, forcing entry to the property and arresting the occupants.
25. The Tribunal concludes that the Applicant has complied with the requirements of the 2016 Act that ground 12 has been established. For the reasons outlined

in paragraph 24, the Tribunal is also satisfied that it would be reasonable to grant the order for eviction.

Decision

- 26.** The Tribunal determines that an eviction order should be granted against the Respondent.

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.

Josephine Bonnar

Legal Member:

Date: 15 April 2025