



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/25/0402

Re: Property at Flat C, 16 Niddrie Mill Crescent, Edinburgh, EH15 3ET ("the Property")

Parties:

Colaks Properties Limited, Flat 6, 1 Murchie Crescent, Edinburgh, EH16 4JX ("the Applicant")

Mr Damian Pawel, Mrs Paulina Pawelczyk, Flat C, 16 Niddrie Mill Crescent, Edinburgh, EH1 3ET ("the Respondents")

Tribunal Members:

Andrew Cowan (Legal Member) and David Fotheringham (Ordinary Member)

Decision

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

Background

1. This is an application for an eviction order in regard to a Private Residential Tenancy ("PRT") made in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (as amended) ("the Rules"). The PRT is between the Parties and relates to the Property. The tenancy commenced 7th February 2023.
2. The application relies upon a Notice to Leave dated 23rd December 2024, issued in terms of section 52 of the Private Housing (Tenancies) (Scotland) Act 2016. The notice was served upon the Respondent by Sheriff Officers on 24th December 2024, all in accordance with the provisions of the PRT. The Notice relied upon Ground 12 of Schedule 3 of Part 1 of the 2016 Act, in that "the tenant has been in rent arrears for three or more consecutive months".

The Notice to Leave intimated that an application to the Tribunal would not be made before 22nd January 2025.

3. The Application papers included evidence that a section 11 notice, in terms of the Homelessness Etc. (Scotland) Act 2003, had been served upon City of Edinburgh Council by email on 31st January 2025.

Case Management Discussion

4. A Case Management Discussion ("CMD") took place by teleconference on 28th April 2025. The Applicant was represented at the CMD Mr David Gray of Gilson Gray LLP. The Respondents also joined the CMD conference call.
5. At the CMD the Tribunal was able to consider:
 - a. The terms of the tenancy agreement between the parties. The tenancy agreement is a Private Residential Tenancy Agreement in relation to the Property. The tenancy between the parties had commenced on 7th February 2023. The monthly rent due in terms of the tenancy agreement between the parties is £1200.00. No increase has been made to the amount of rent due during the term of the tenancy.
 - b. A statement of rent and arrears had been lodged with the application. That statement showed total rent arrears due by the Respondents as of 1st December 2024 in the sum of £8300.00.

Findings in Fact and Law

6. The Applicant is the owner of the Property.
7. The Applicant let the Property to the Respondents under a Private Residential Tenancy with commencement on 7th February 2023 ("the Tenancy"). The rent charged under the tenancy agreement is £1200 per month.
8. The Applicant has issued a Notice to Leave dated 23rd December 2024 in terms of section 52 of the Private Housing (Tenancies) (Scotland) Act 2016. The notice was served upon the Respondent by sheriff officers on 24th December 2024.
9. The Applicant has raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 12 of Schedule 3 of Part 1 of the 2016 Act, in terms of an Application to the Tribunal dated 21st June 2024.
10. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served City Of Edinburgh Council on 31st January 2025.

11. The Respondents have been in arrears of rent due, in terms of the tenancy between the parties, from March 2024. Since that date the Respondents' arrears of rent have continued to accrue. The Respondents' last payment of rent was a payment of £300 which was paid in August 2024. The Respondents have made no further payments towards the rent due, or the arrears of rent accrued since that date. The amount of rent arrears due by the Respondents to the Applicant as at the date of the CMD is £15500.
12. The Respondent live together in the Property. They have no dependants.
13. The Applicant has provided information and support to the Respondents in compliance with the Rent Arrears Pre-Action Requirements Regulations.
14. The Respondents wish to move from the Property.
15. It is reasonable to issue an eviction order.

Reasons for Decision

16. The Tribunal were satisfied that the Notice to Leave had been competently drafted and served upon the Respondent.
17. The Tribunal were satisfied that it had had sufficient information upon which to make a decision at the CMD, having considered the written and oral representations made by the parties. The Rules allow, at rule 17(4), for a decision to be made at a CMD as at a hearing before a full panel of the Tribunal. There was no material disagreement between the parties on the evidence before the Tribunal.
18. Ground 12 of Schedule 3 to the 2016 Act (as amended and applying to this application) states that:
 - (1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months....
and that...
 - (3) The First-tier Tribunal may find that the ground named by 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.

19. The Tribunal were satisfied, on the uncontested evidence provided, that the Respondent has been in arrears of rent for three or more months. The Respondents accepted that they are in arrears of rent from March 2024 and that they have accrued arrears of £15500.00 as at the date of this hearing. On that basis the Tribunal determined that paragraph 3(1)(a) of Ground 12 was satisfied.
20. The Tribunal then considered whether it was reasonable to issue an eviction order under paragraph 3(b) of Ground 12.
21. In determining whether it is reasonable to grant the order, the Tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties
22. In this case the Tribunal finds that it is reasonable to grant the order.
23. At the CMD the Applicant's solicitor referred to the statement of rent which had been lodged with the Tribunal. He confirmed that the Respondents had been in arrears of rent from March 2024. It was further confirmed that the Respondent had accrued arrears of rent in the sum of £15500 as at the date of the CMD. The Applicant's solicitors have written to the Respondent reminding them of their obligation to pay rent and to request payment of rent arrears which have accrued. The Respondents have been provided with information and advice in compliance with the pre-action protocol prescribed by the Scottish Ministers. The Applicant wishes to recover possession of the property because of the level of rent arrears which have been accrued by the Respondent. The Applicant's solicitor advised that the Applicant cannot afford to allow the Respondents to continue to live in the Property whilst rent arrears continue to accrue. The Applicant considers that the Respondents have accrued significant rent arrears, and that the Applicant is unlikely to recover these sums from the Respondents.
24. The Respondents confirmed to the Tribunal that they agreed that they had accrued rent arrears of £15500 by the date of the CMD. They intended to start making payment of the arrears due when they were able to do so. The Respondents confirmed that they wished to move out of the Property as soon as possible. They had approached the local authority to seek alternative accommodation but had been advised that the local authority would not consider them for rehousing until such time as the Tribunal had granted an order which terminated the tenancy of the Property. The Respondents did not wish to oppose the grant of an order for eviction for this reason.
25. The Tribunal consider that it is reasonable to grant the eviction order. In reaching a decision on whether it was reasonable to grant the order sought the Tribunal consider that the balance of reasonableness is weighted towards the Applicant. The Respondent has incurred significant rent arrears. The Respondents do not oppose the application for an eviction order.

26. As there were no material disputes on the facts, the Tribunal exercised the power within rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that a final order should be made at the CMD.

Decision

27. In all the circumstances, the Tribunal grant an order against the Respondent for eviction from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016.

28. The decision of the Tribunal is 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.

Andrew Cowan

9th June 2025

Legal Member/Chair

Date