

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 (“the Act”)

Chamber Ref: FTS/HPC/EV/24/2795

Re: Property at 70 Niddrie Mains Drive, Edinburgh, EH16 4RS (“the Property”)

Parties:

Mr Mazhar Khan, Mrs Farzana Khan, 15 Northfield Park, Edinburgh, EH8 7QU (“the Applicant”)

Miss Malgorzata Dorota Stec, 70 Niddrie Mains Drive, Edinburgh, EH16 4RS (“the Respondent”)

Tribunal Members:

Ewan Miller (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent was in rent arrears for three or more consecutive months. As a result, the Tribunal decided that it was reasonable in the circumstances to grant an order for eviction in favour of the Applicant against the Respondent under Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016

Background

The Applicant was the owner of the Property. He had let the Property to the Respondent on a Private Residential Tenancy in November 2019. The Applicant alleged that the Respondent had failed to make payment of all rent due under the lease and, as a result, he had applied to the Tribunal seeking an order for eviction against the Respondent under Ground 12 of the Act (rent arrears for three or more consecutive months).

The Tribunal had before it, inter alia, the following documentation:-

- Land Certificate MID215918 evidencing the Applicant's ownership of the Property;
- Tribunal Application Form E under Rule 109;
- Copy of the Private Residential Tenancy agreement between the Applicant and the Respondent dated 29 November 2019;
- Copy Notice to Leave dated 25 March 2024 and proof of posting;
- Section 11 Homelessness Notice;
- Rent Increase Notice dated 12 June 2024;
- Copy CMD Discussion Note and Direction dated 13 December 2024;
- Rent arrears statement prepared by the Applicant dated 2 January 2025;
- Various pieces of correspondence between the parties via text, bank statements, screenshots etc;
- Letter from the Respondent dated 26 November 2024;

Case Management Discussion (CMD)

The Tribunal had held a CMD on 13 December 2024 by teleconference. The Applicant attended as did his representative Mr Ahmed. The Respondent was not present or represented. The Tribunal at the first CMD were not clear on the amount of arrears alleged to be outstanding and issued a Direction for a full statement of account of rent for the Property from 30 November 2019 to date to be provided. This was provided by the Applicant early in 2025. The first CMD was continued to a later date.

The second CMD took place on 20 May 2025 at 10am, again by teleconference. The Tribunal comprised Mr E K Miller (Chair and Legal Member) and Ms J Heppenstall (Ordinary Member). The Applicant was not present on the call but his son was. He was represented by Mr Ahmed again. The Respondent was not present or represented.

Mr Ahmed, for the Applicant, submitted that there had been a history of rent arrears since November 2020. Payments were made most months but not always in full and, it was alleged, the rental arrears had crept up so that by November 2024 there was almost £4,000 of rent arrears. At no point since November 2020 had the arrears been cleared or reduced.

It was accepted by the Applicant, that the Respondent had paid for certain items and repairs at the Property. The parties had agreed that the Respondent could offset these against the rent. These offsets were shown in the rent statement.

The Respondent had moved on to Universal Credit around November 2023 and the payments had been made in full for several months as a result and the arrears had stabilised at around £2900. A rent increase to £900 had been made in September 2024 and the increase was not being paid. As a result the rent arrears were increasing by £100 a month.

The Applicant submitted that it was their understanding that the Respondent had applied to be rehoused but that this would not happen until an eviction order was granted and the Respondent was given priority by the local authority as a result.

The Tribunal had before it a letter from the Respondent from prior to the first CMD. She did not appear to dispute that there were arrears of rent, although she did dispute that they were as high as alleged by the Applicant.

Findings in Fact

The Tribunal found the following facts to be established:-

- The Applicant was the owner of the Property;
- The Applicant had let the Property to the Respondent in November 2019 at £800 per calendar month;
- The rent had increased to £900 per calendar month from August 2024;
- There were arrears of rent outstanding of c£4000 as at the end of November 2024;
- There had been around 48 consecutive months of rent arrears as at November 2024

Reasons for the Decision

The Tribunal considered the evidence before it. The Applicant had served an appropriate Notice to Leave timeously and served the appropriate s11 Notice. Whilst pre-action contact was limited, there did appear to be messages between the parties in this regard.

At the initial CMD the exact position in relation to the amount of arrears was not clear as there was no single document setting out the position. The Applicant had rectified this by setting out the entire rent history of the lease payments prior to the second CMD. The information in this was consistent with bank statements and the rent requests sent by the Applicant to the Respondent. The statement took account of agreed expenses between the parties that were allowed to be offset against the rent. The Applicant's representative was clear in the information he presented at the second CMD and there was nothing to suggest the information before the Tribunal was incorrect.

From the Respondent's side, there was a letter from 26 November 2024 acknowledging there were arrears but claiming the number was smaller. The claim was not supported by any bank statements or other documents other than the Respondent's own assertion. As a result it was lacking in specification. On each of the two CMD callings, an interpreter had been organised at the request of the Respondent. On each occasion the Respondent did not take part or submit any other documentation. As a result, the Tribunal had no substantive evidence before it to dislodge or materially challenge the Applicant's evidence.

The Tribunal considered the evidence before it and was satisfied that, on the balance of probabilities, the statement of arrears provided by the Applicant was correct. There was nothing material from the Respondent's side to challenge this. Accordingly, the Tribunal accepted that there were around £4000 of rent arrears at the end of 2024 and that these had accrued since November 2020. Accordingly, Ground 12 of Schedule 3 of the Act had been met.

The Tribunal is, nonetheless, obliged to consider whether it is reasonable to grant the order for eviction, taking in to account all the circumstances before it. The Respondent had not taken part in either CMD or submitted any other information about her personal situation or circumstances of any other residents in the Property. As a result, there was no other information before the Tribunal that they could consider that might have an impact on whether or not it was reasonable to grant the order.

As a result, and taking in to account the amount of arrears and the considerable length of time they had been outstanding, the Tribunal considered it reasonable to grant the order for eviction and resolved to do so.

Decision

The Tribunal determined that in terms of Ground 12 of Schedule 3 of the Act there had were more than 3 consecutive months of rent arrears and that in the circumstances it was reasonable to grant an order for eviction requiring the Respondent to leave the Property

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.

Ewan Miller

Legal Member/Chair

Date: 26 May 2025