



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 51(1) of the Private Housing
(Tenancies) (Scotland) Act 2016**

Chamber Ref: FTS/HPC/EV/20/0996

**Re: Property at Flat 15, 2B Sandpiper Drive, Newhaven, Edinburgh, EH6 4UQ
("the Property")**

Parties:

**Western Harbour NHT LLP, c/o Rettie and Co, 4 Jamaica Street, Edinburgh, EH3
6HH ("the Applicant")**

**Ms Kelly Given, Flat 15, 2B Sandpiper Drive, Newhaven, Edinburgh, EH6 4UQ
("the Respondent")**

Tribunal Members:

Helen Forbes (Legal Member)

Decision (in absence of the Respondent)

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

Background

1. This is an application dated 23rd March 2020, made under Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended ("the Rules") and Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the Act"). The Applicant is seeking an order for eviction in terms of ground 12 of the Act, in respect of a private residential tenancy between the parties that commenced on 8th August 2019. The Applicant's representative lodged a copy of the tenancy agreement, together with copy Notice to Leave dated and served on 19th February 2020, rent statement, and copy Section 11 Notice submitted on 23rd March 2020.

2. A Case Management Discussion (“CMD”) took place by teleconference call on 18th August 2020. The Applicant was represented by Ms Matheson. The Respondent was in attendance. The CMD was continued to allow the Respondent to take advice as to whether her arrears had arisen wholly or partly as a consequence of the delay or failure in the payment of a relevant benefit and whether any such delay or failure was due to an act or omission of the Respondent; and on the legal position if she was to pay the arrears prior to the next CMD. The Respondent said that she had been in touch with an advice agency and they would be in a position to represent her.
3. On 20th August 2020, a Direction dated 18th August 2020 was issued by the Tribunal to parties. The Direction required the Respondent to provide the following three working days before the next CMD:
 1. *Medical evidence of her disability diagnosis;*
 2. *Evidence, including documentation, of her application for relevant benefits, which evidence must show the dates and outcome of any applications, so that the Tribunal can consider whether the arrears are wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, and whether any such delay or failure is due to an act or omission of the Respondent.*
4. By letter dated 24th August 2020, which was provided to parties by email on that date, parties were notified that a CMD had been set down for 15th September 2020.
5. At 9.45 a.m. on 15th September 2020 an email was received by the Housing and Property Chamber from the Respondent’s email address written by the Respondent’s mother requesting that proceedings be delayed for a very short period due to the Respondent being unwell and having a power cut and no access to a telephone. The reason stated for the delay was ‘to allow her to get stronger’. The Respondent’s mother stated that she could provide ‘a fit note and correspondence with Scottish Power.’

Case Management Discussion

6. A CMD took place by teleconference call on 15th September 2020. The Applicant was represented by Ms Matheson. The Respondent was not in attendance.
7. The Tribunal considered the terms of Rule 29 of the Rules. The Tribunal determined that the Respondent had been given reasonable notice of the time and date of the CMD. The Tribunal determined that the requirements of Rule 24(1) had been satisfied and that it was appropriate to proceed with the application in the absence of the Respondent upon the representations of the Applicant’s representative and the material before the Tribunal.

8. Ms Matheson opposed the request for postponement made on behalf of the Respondent. Neither the Applicant nor their representative have had any contact from the Respondent. The Respondent had not complied with the Direction of the Tribunal. The arrears are rising and ground 12 is met.
9. The Tribunal considered the request for a postponement. The Tribunal considered the overriding objective set out in Rule 2, which requires the Tribunal to deal with the proceedings justly. The Tribunal noted that the last CMD was adjourned to allow the Respondent to take advice and produce information and documentation as required by the Direction. No such information or documentation was lodged by the Respondent, and there was no contact from any advice agency or representative. No explanation for the failure to lodge the information and documentation was put forward on behalf of the Respondent. The Tribunal noted that no evidence was produced of any fact or matter relied on in support of the application for postponement, as required by Rule 28. Bearing in mind the requirement of Rule 2(e) to avoid delay, the Tribunal did not grant the Respondent's request for a postponement.
10. Ms Matheson moved for an eviction order to be granted, as the statutory test was met, in that there have been arrears of rent for a continuous period of three or more consecutive months and the Respondent is in arrears of rent by an amount greater than the amount payable as one month's rent.

Findings in Fact

11.
 - (i) The parties entered into a private residential tenancy agreement in respect of the Property commencing on 8th August 2019. The rent was £621.16 per month.
 - (ii) The Respondent has been in arrears of rent for three or more consecutive months.
 - (iii) Notice to Leave has been served upon the Respondent.
 - (iv) At the date of the CMD, the Respondent was in arrears of rent by an amount greater than the amount payable as one month's rent.
 - (v) The Respondent's rent arrears are not due to a delay or failure in the payment of a relevant benefit.

Reasons for Decision

12. Ground 12 of Schedule 3 of the Act provides that it is an eviction ground if the tenant has been in rent arrears for three or more consecutive months. The Tribunal must find that this applies if (1) at the beginning of the day on which the Tribunal first considers the application for an eviction order, 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; (2) the tenant has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months; and (3) 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.

13. The Tribunal is satisfied that Ground 12 has been established. No evidence was provided to the Tribunal to show that the arrears were due to a delay or failure in the payment of a relevant benefit.

14. The Tribunal is satisfied that the necessary Notice to Leave has been correctly issued to the Respondent in terms of the Act.

15. In terms of section 51(1) of the Act, the Tribunal must issue an eviction order in the circumstances.

Decision

16. An eviction order in respect of the Property is 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.

Helen Forbes

Legal Member/Chair

15th September 2020
Date