



**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/22/4243**

**Re: Property at (3F2), 87 Gilmore Place, Edinburgh, EH3 9NU (“the Property”)**

**Parties:**

**Mrs Nusrat Ahmed, 3 Belford Avenue, Edinburgh, EH4 3EH (“the Applicant”)**

**Mr Jaroslaw Swietlak, (3F2), 87 Gilmore Place, Edinburgh, EH3 9NU (“the Respondent”)**

**Tribunal Members:**

**Gabrielle Miller (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for recovery and possession should be granted in favour of the Applicant.**

**Background**

1. An application was received by the Housing and Property Chamber dated 24<sup>th</sup> November 2022. The application was submitted under Rule 109 of The First-tier for Scotland Housing and Property Chamber (Procedure) (Scotland) Regulations 2017 (“the 2017 Regulations”). The application was based on the Respondent not adhering to grounds 11, 12 and 14 of the Private Housing (Tenancies) (Scotland) Act 2016.
2. On 16<sup>th</sup> March 2023, all parties were written to with the date for the Case Management Discussion (“CMD”) of 24<sup>th</sup> April 2023 at 10am by teleconferencing. The letter also requested all written representations be submitted by 6<sup>th</sup> April 2023.
3. On 17<sup>th</sup> March 2023, sheriff officers served the letter with notice of the hearing date and documentation upon the Respondent by personal service. This was evidenced by Certificate of Intimation dated 17<sup>th</sup> March 2023.

4. On 13<sup>th</sup> April 2023, Mr Andrew Wilson, Edinburgh Housing and Advice Partnership emailed to the Housing and Property Chamber advising that he was now representing the Respondent.
5. On 9<sup>th</sup> April 2023, the Applicant emailed the Housing and Property Chamber advising that she would not be attending the CMD but Mr Ihsan Ahmed would attend in her place.
6. On 14<sup>th</sup> June the Applicant emailed the Housing and Property Chamber with a response to the Direction issued on 24<sup>th</sup> April 2023. This included a rent statement for the period 28<sup>th</sup> January 2022 to 1<sup>st</sup> July 2023 and a list of witnesses.
7. On 29<sup>th</sup> June 2023 the Respondent's representative, Mr Wilson, emailed the Housing and Property Chamber. He said that the Respondent had been accepted as unintentionally homeless. He was now seeking to be immediately rehoused by City of Edinburgh Council.

#### The Case Management Discussion

8. A CMD was held on 24<sup>th</sup> April 2023 at 10am by teleconferencing. The Applicant was not present. Mr Ihsan Ahmed, the Applicant's husband, appeared on behalf of the Applicant. The Respondent was present. He was represented by Mr Andrew Wilson, Edinburgh Housing and Advice Partnership, was present. Mr Ahmed told the Tribunal that an order for eviction was still being sought. The arrears were now around £1600. There is still antisocial behaviour continuing with the last report being on 16<sup>th</sup> February 2023. Mr Wilson said that the Respondent refuted the allegations in terms of grounds 11 and 14. Mr Wilson said that the Respondent disputes that he has had people stay over in his room at night (ground 11) and does not consider that there has been any antisocial behaviour. Mr Wilson said that there was insufficient evidence in terms of the arrears and could not get instructions on ground 12 until there was further evidence such as a rent account showing the arrears. Mr Wilson noted that it would be beneficial for the Applicant to lodge a timeline of events. The Respondent said that he disputed the behaviour. He has a condition that means that he has spinal issues. He has neuropathic pain and bladder issues resulting from this. Replying to the Respondents comments, Mr Ahmed noted that the Respondent has to climb 3-4 flights of stairs daily. It has been reported that people are in and out of his room both day and night. There is an onsite manager who is in charge of health and safety as well as the wellbeing of the other tenants. He noted that there was a tenant who is vulnerable and afraid to use the bathroom at night when non tenants are in the Property. The Tribunal noted that parties were in dispute. The Tribunal was bound to move this to a hearing to allow parties to present evidence regarding their position. The Tribunal noted that a rent account will need to be lodged. It should be lodged on the form of columns showing rent due (including date) rent paid and outstanding amount due, if any. If the Respondent wishes to rely upon medical issues medical evidence should be submitted noting that it will be shared with

the Applicant and should be redacted accordingly. The case was adjourned to proceed to a hearing. A direction was issued

### The hearing

9. A hearing was held on 30<sup>th</sup> June 2023 at 10am by teleconferencing. The Applicant was not present. Mr Ihsan Ahmed, the Applicant's husband, appeared on behalf of the Applicant. The Respondent was not present. He was represented by Mr Andrew Wilson, Edinburgh Housing and Advice Partnership.
10. Mr Wilson's email, dated 29<sup>th</sup> June 2023, to the Housing and Property Chamber suggested that he wished to postpone the hearing to allow the Respondent to be rehoused by City of Edinburgh Council. Mr Ahmed was opposed to a postponement. He noted that the health issues raised in the email from Mr Wilson were not substantiated by any medical evidence. He noted that given that it is claimed to be an enduring condition that there has been time for the Respondent to supply the relevant medical evidence.
11. Mr Wilson said that the Respondent was assessed yesterday as involuntary homeless. An occupational therapy report has only arrived yesterday. This meant that the Respondent would now be assessed and be immediately accommodated which would suit his medical needs. The Respondent was at the housing department at the time of the hearing to be assessed for the emergency accommodation. Mr Wilson said that the Respondent anticipated being re housed that day. Mr Wilson said that there was no opposition to the order being granted or the grounds that they were granted upon.
12. There was discussion between the parties and the Tribunal about the requirement to hear evidence. The Tribunal considered that there was no opposition to an order being granted or a defence lodged by the Respondent. It is reasonable to grant an order for eviction.

### Findings and reason for decision

13. A Private Rented Tenancy Agreement commenced 10<sup>th</sup> May 2019.
14. The Respondent has persistently failed to pay his rent charge of £85 per week.
15. Arrears accrued to more than one months rent payment at the date of application and was more than three months rent payments at the date of the hearing.
16. The granting of an order was not opposed. No defence to any ground was submitted.
17. The arrears have risen to £1613 from when the application was lodged.
18. There were a number of complaints against the Respondent's behaviour detailed in the application and lodged by the Applicant in response to the direction. These were not disputed by the Respondent.

19. Taking all the above into account, the Tribunal found that it was reasonable to grant an order for eviction.

### Decision

20. The Tribunal found that ground 12 and 14 had been established and granted an order in favour of the Applicant. As ground 14 has been established the Order will be sent to the Applicants to legally enforce after the end of the appeal period has lapsed.

### **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.**



**Gabrielle Miller**

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**Legal Member/Chair**

**30<sup>th</sup> June 2023**

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**Date**