



**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/22/1319

Re: Property at 69A Clermiston Road, Edinburgh, EH12 6XA (“the Property”)

Parties:

Mrs Tamil Natarajan, 1 Corstorphine Hill Crescent, Corstorphine, EH12 6LH (“the Applicant”)

**Ms Shaymma Soud Al-Riyami, Mr Danut Tataru, 69A Clermiston Road,
Edinburgh, EH12 6XA; 69A Clermiston Road, Edinburgh, EH12 6XA (“the Respondent”)**

Tribunal Members:

Petra Hennig-McFatrige (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Respondent)

A: Background

1. The application for an order for eviction under S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act) was made by the Applicant on 6 May 2022 under Ground 12 of schedule 3 of the Act.
2. The following documents were lodged to support the application:
 - a. Copy tenancy agreement between the parties over the property commencing on 24 August 2021.
 - b. Tenancy rent statement from 24 August 2021 to 23 June 2022
 - c. Notice to leave dated 4 April 2022 and email sending same to Respondents on 4 April 2022
 - d. S11 Notice with email of service on 6 May 2022
 - e. PARS letters sent by email dated 10 February 2022, 25 January 2022, 17 January 2022.
 - f. authorisation from Applicant for agent Northwood Edinburgh 1 June 2022

3. On 5 August 2022 the application and notification of the Case Management Discussion (CMD) was served by Sheriff Officers on the Respondents. The Tribunal was satisfied that the Respondents had the required notice of the CMD as set out in Rules 17 (2) and 24 (2) of the Procedural Rules.
4. No representations from the Respondents were received by the Tribunal.
5. The case documents are referred to for their terms and held to be incorporated herein.

B: Case Management Discussion

1. The Applicant attended the CMD with her husband and joint owner of the property Mr Srinivasan Natarajan. Both were represented at the CMD by Mr Hugh Logan and Mr Stuart Miller from Northwood Edinburgh, Letting Agents. The Respondent did not participate in the teleconference.
2. The legal member explained the purpose of the CMD.
3. The first matter which was discussed was whether or not the second named applicant, Mr Natarajan, who was not named as landlord on the tenancy agreement should remain as the joint applicant. He advised that the property is jointly owned but that he had agreed that the applicant could act as sole landlord and sole applicant and the representatives confirmed that she had been their main contact. Thus the Tribunal was content to amend the applicant details to only Mrs Tamil Natarajan in terms of rule 32 of the rules of procedure. As this has no impact on the nature of the application and the material issues regarding the eviction grounds stated the Tribunal considered that this did not necessitate any further procedural action.
4. The agents confirmed that the arrears continued and currently sit at £9,950 as no payments had been received since the application was made and the arrears have increased due to there not having been any payment for the month of September in advance. Mr Miller and Mr Logan explained that the reason for the difference in dates stated in clause 8 and in the rent statement lodged arose because the tenancy was meant to start on 30 August 2021 and the Respondents had asked to move in slightly earlier. The start date had been amended in the tenancy agreement to 24 August 2021 but due to an oversight the due date for the rent stated in clause 8 had not been amended. They stated either way the arrears at present are over 9 months rent and the rent due for the month of September 2022 had also not been paid. The Applicant and her representatives advised that the Respondents were a professional couple. Northwood Edinburgh had been informed when the Respondents were looking to rent the property that the first named Respondent had studied law in England and had come to Scotland to start employment for a private health company. Both Respondents had also been registered as directors for a company and thus the agents had recommended them as tenants to the applicant. Northwood Edinburgh had made significant efforts to engage the Respondents regarding the rent arrears and had written several letters and telephoned the Respondents but only received a reaction at a house visit by Mr Miller when the second named Respondent had stated they "would move when the bailiffs came". The first named Respondent had actually asked at one stage for a Notice to be served but this had been before the grounds for such a notice had been established. No payment offer was made. No reason for non payment given. The Applicant is not aware of there being any health or family issues which would make the Respondents vulnerable and the Respondents have no given a reason

why rent would not be due. They have refused to engage in making any payment arrangements. The Applicant has no information that the Respondents may be in receipt of benefits and has not been given a reason for the non payment of rent. The Applicant stated that she now had financial problems as the non payment of rent impacted her mortgage obligations.

C: Findings in Fact:

Based on the evidence lodged and the representations of the participants at the CMD the Tribunal makes the following findings in fact:

1. The property was let on a Private Residential Tenancy Agreement commencing on 24 August 2021.
2. The parties were the landlord and tenant of said Tenancy Agreement.
3. The tenancy continues.
4. The Applicant has title and interest to pursue the application as the joint owner of the property authorised to act also by the other joint owner.
5. The monthly rent, payable in advance, was £995 as per clause 8 of the tenancy agreement.
6. Rent arrears accrued as per the Rent Statement lodged.
7. As at 2 September 2022 arrears of £9,995 have accrued and payment of that amount is due from the Respondents to the Applicant.
8. The Respondents have been in arrears of rent since November 2021, the last payment having been received on 26 October 2021 and thus for a period vastly exceeding 3 months both at the time the notice to leave was served and at the date of the CMD.
9. The Applicant had provided repeated and extensive offers of assistance to the Respondent which he did not engage with.
10. The Respondents had provided information to the letting agent that they were a professional couple with the first named Respondent being in employment and both also being company directors when the tenancy started.
11. The Respondents gave no reason why the rent would not be due.
12. The Applicant's representatives had written to the Respondents and contacted the Respondents repeatedly regarding the rent arrears situation as set out in the correspondence and the Respondents did not engage in resolving the situation.
13. The notice to leave was served by email on the Respondents by the Applicant's representative on 4 April 2022 narrating the ground for the notice being ground 12 and providing the appropriate 28 day notice period.
14. The rent arrears are not a consequence of delay or failure of payment of relevant benefits.
15. The Applicant provided the required S 11 notice and proof of service of same on the local authority.

D: Reasons for decision

1. Relevant legislation:

In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

- (a) in any place where a hearing may be held;
- (b) by videoconference; or
- (c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

- (a) identifying the issues to be resolved;
- (b) identifying what facts are agreed between the parties;
- (c) raising with parties any issues it requires to be addressed;
- (d) discussing what witnesses, documents and other evidence will be required;
- (e) discussing whether or not a hearing is required; and
- (f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

Power to determine the proceedings without a hearing

However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

- (a) may make a decision without a hearing if the First-tier Tribunal considers that—
 - (i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and
 - (ii) to do so will not be contrary to the interests of the parties; and
- (b) must make a decision without a hearing where the decision relates to—
 - (i) correcting; or
 - (ii) reviewing on a point of law,a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties

2016 Act

51 First-tier Tribunal's power to issue an eviction order

(1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may or must find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

Grounds under Schedule 3 of the 2016 Act

Ground 12 Rent arrears

12(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 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.
- (3A) Sub-paragraph (3B) applies where the First-tier Tribunal is satisfied—
 - (a) that the eviction ground named by sub-paragraph (1) applies, and
 - (b) that all or part of the rent in respect of which the tenant is in arrears as mentioned in that eviction ground relates to the period during which paragraph 5 of schedule 1 of the Coronavirus (Scotland) (No.2) Act 2020 is in force.
- (3B) Where this sub-paragraph applies, in considering for the purposes of sub-paragraph (3)(b) whether it is reasonable to issue an eviction order against the tenant, the First-tier Tribunal is to consider the extent to which the landlord has complied with pre-action requirements before applying for the eviction order.
- (4) In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider 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.
- (5) For the purposes of this paragraph—
 - (a) references to a relevant benefit are to—
 - (i) a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971),
 - (ii) a payment on account awarded under regulation 91 of those Regulations,
 - (iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,
 - (iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,
 - (b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.
- (6) In sub-paragraph (3B), “pre-action requirements” means such requirements as the Scottish Ministers may specify in regulations.
- (7) Regulations under sub-paragraph (6) may in particular make provision about—
 - (a) information to be provided by a landlord to a tenant including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy,
 - (b) steps to be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,
 - (c) such other matters as the Scottish Ministers consider appropriate.

2. The Respondents have not made any representations and did not attend the CMD. The Respondents had fair notice of the representations of the Applicant forming the reasons for the application and have not challenged these. As no representations were received from the Respondents by the Tribunal, the facts of the case are not in dispute. This includes the matter of the accruing rent arrears as these were explicitly referred to in the notice to leave. The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case. The Respondents were made aware that the Tribunal could consider the case on its merits and make a decision at the CMD. No defence was lodged to the application.

3. The documents lodged are referred to for their terms and held to be incorporated herein. The Tribunal makes the decision on the basis of the documents lodged on behalf of the Applicant and the representations made by her, her husband and Mr Miller and Mr Logan at the CMD.

4. In terms of S 54 of the Act a 28 day notice period applied and was given. The Applicant had served the notice required in terms of S 56 of the Act on the local authority and had complied with all formal requirements under the 2016 Act.

5. The Tribunal found that Ground 12 (2) of Schedule 3 and 3A of the 2016 Act applies in this case. This is a discretionary ground of eviction. There is clear evidence of the rent arrears accruing and some arrears having been in place since November 2021 and thus for nine months as set out in the rent statements and the arrears now stand at £9,950. The Tribunal was satisfied that in terms of Ground 12 3(B) the Applicant has complied with all pre action requirements by sending numerous letters to the Respondents referring to the matters stated in the relevant Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 and in particular signposting the Respondents to relevant information regarding the arrears situation, the terms of the tenancy agreement, information regarding assistance available such as Tenant Grant and Scottish Welfare Fund, information regarding the free resolution service from SafeDeposit Scotland and free and independent advice services. No payments apart from the payments listed in the rent statement submitted have been received and the Respondents have not engaged with the numerous attempts of the Applicant and her agents to resolve the matter.

6 The Respondents have not provided any information regarding a change in their financial situation and had ignored all correspondence sent to them regarding rent arrears. The Respondents have not engaged in the process before the First-tier Tribunal and have not raised any issues as to why it would not be reasonable to grant an eviction order. No specific issues regarding reasonableness arise from the information available. The Respondents are a professional couple with no underage dependent children. No specific needs of the Respondents to live at the specific address have been raised. They have not provided any information advising of problems accessing suitable alternative accommodation. The length of time of occupancy of the property has been considered by the Tribunal but is in and of itself not a reason to make an eviction order unreasonable.

7. The Respondents have not provided any information indicating that the rent arrears may have arisen from a late or incorrect benefit payment. There has been a prolonged and persistent failure by the Respondents to address the arrears despite the repeated and pro-active steps on behalf of the Applicant to try and engage the Respondents.

8. The landlord in this case has been both patient and pro-active in trying to manage the situation. The non payment of rent has no resulted in financial difficulties for the Applicant.

9. In the case of *City of Glasgow District Council v Erhaiganoma* 1993 SCLR 592, The Inner House of the Court of Session stated at page 594 that “Where prima facie reasonableness has been made out, we think that it is then for the tenant to put circumstances before the court to show otherwise.”. In the present case the Applicant had provided evidence of significant and persistent rent arrears and repeated attempts on the part of the landlord and her agents to engage the tenants in efforts to address the arrears. The Respondents had put forward no circumstances to show that it would not be reasonable for the Tribunal to issue an eviction order. In all the

circumstances the Tribunal thus finds that it is reasonable to grant the eviction order on ground 12 of schedule 3 of the Act.

14. In terms of S 51(1) of the 2016 Act the Tribunal thus grants the application for an eviction order as it is satisfied that one of the eviction grounds in schedule 3 of the Act applies.

15. The Tribunal, having regard to the appeal period, determines that in terms of S 51(4) of the Act the tenancy ends on 3 October 2022.

Decision

The Tribunal grants an order for eviction in terms of S 51 of the Act on Ground 12 of Schedule 3 of the Act. The decision 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.



**Petra Hennig McFatridge
Legal Member/Chair**

**2 September 2022
Date**