

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 and Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/EV/18/3054

**Re: Property at 20/1 Howe Street, Edinburgh, EH3 6TG
 (“the Property”)**

Parties:

**Ms Amy Irving, c/o Ben Property, 3 Manor Place, Edinburgh, EH3 7DH
 (“the Applicant”)**

**Lindsays, Solicitors, Caledonian Exchange, 19A Canning Street, Edinburgh,
 EH3 8HE
 (“the Applicant’s Representative”)**

**Miss Natasha Hope and Mr William MacIntyre, 20/1 Howe Street, Edinburgh,
 EH3 6TG
 (“the Respondents”)**

Tribunal Members:

Susanne L. M. Tanner Q.C. (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) was satisfied that Ground 12 in Schedule 3, Part 3 to the 2016 Act was established by the Applicant, in that on the day the tribunal considered the application for an eviction on its merits the Respondents were in rent arrears greater than one months’ rent and had been in arrears of rent for a continuous period of more than three consecutive months up to and including that day; that rent arrears were not wholly or partly a consequence of a delay or failure in payment of a relevant benefit or universal credit; and made an order for eviction in terms of Section 51 of the 2016 Act.

Reasons

1. Procedural Background

- 1.1. The Applicant's Representative made an application to the tribunal on 13 November 2018 in terms of Section 51 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act") and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules").
- 1.2. The Applicant sought the Respondent's eviction from the Property in terms of Section 51 of the 2016 Act under Grounds 12 of Schedule 3 to the 1988 Act.
- 1.3. The Applicant lodged with the Application:
 - 1.3.1. A paper apart entitled "Form E – Section 4 – Tenant Occupier details / Possession / Eviction Grounds".
 - 1.3.2. a copy of the Private Residential Tenancy agreement between the Applicant and the Respondents dated 14 June 2018;
 - 1.3.3. a copy of the Notice to Leave to the First Respondent dated 11 October 2018, with proof of service on 12 October 2018;
 - 1.3.4. a copy of the Notice to Leave to the Second Respondent dated 11 October 2018, with proof of service on 12 October 2018;
 - 1.3.5. Section 11 notice sent to the local authority, with proof of service;
 - 1.3.6. Copy rental statements for the Property from 4 June 2018 to 8 November 2018.
- 1.4. The Application was accepted for determination by a tribunal on 30 November 2018. Both parties were notified by letters dated 28 December 2018 of the date, time and place of Case Management Discussion ("CMD") in relation to the Application on 18 January 2019. The Respondents were invited to make written representations in response to the Application by 15 January 2019. All parties were advised that they were required to attend the CMD. The parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application which may involve making or refusing an eviction order. The parties were also advised that if they do not attend the CMD this will not stop a decision or order being made if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair.

1.5. The Respondents did not submit any representations or make any contact with the tribunal.

2. CMD: 18 January 2019 at 1400h, Riverside House, 2nd Floor, 502 Gorgie Road, Edinburgh, EH11 3AF

2.1. Mr Gardiner from the Applicant's Representative attended the CMD on behalf of the Applicant, accompanied by Kendall Allan.

2.2. The other attendees on behalf of the Applicant who observed the hearing were Catherine Irving, Jamie Kerr and Lena Cowan from Ben Property, Letting Agency.

2.3. The Respondents did not attend the CMD and made no contact with the tribunal's administration or venue.

2.4. Mr Gardiner lodged an updated written submission dated 15 January 2019 in respect of this Application and the related payment action together with 3 productions: (1) and (2) are updated rent statements to 8 January 2019 and (3) confirmation from the letting agent that the Respondents have never advised them of any payments which they have made which are not showing on the account and there are no unallocated payments sitting which could have been made by them. The tribunal Chair confirmed with the tribunal Clerk that the submission and productions were received by the tribunal's administration on 15 January 2019 and sent to the Respondents by mail on 16 January 2019.

2.5. The tribunal noted that the Private Residential Tenancy was signed on behalf of the letting agent on 8 June 2018. It appeared to have been signed by the First Respondent, Mr William Macintyre on 14 June 2018, although the date of 8 June and initials were noted below the signing box. It appears to have been signed below the signing box by the Second Respondent, Natasha Hope, on 8 or 14 June 2018. The tribunal Chair asked Mr Gardiner if he could explain the signing issue and he discussed the matter with the representatives of the letting agent who were in attendance at the CMD. He advised that the lease was signed by Alexandra Betteridge from the letting agent on 8 June 2018, which was the day that the Respondents were due to come into the office to sign and collect the keys. They did not come into the office until 14 June 2018, on which date both Respondents signed the agreement in the office. The Respondents may have added the date of 8 June 2018 next to 14 June 2018 as that was the start date of the tenancy, but it was signed by both of them on 14 June 2018. They also initialled the other pages of the agreement.

- 2.6. The start date for the tenancy was 8 June 2018. The rent payable is £1250.00 per calendar month payable monthly in advance on the date of entry and thereafter on or before 8th of each month.
- 2.7. Ms Gardiner referred to the updated rental statements (Applicant's documents (1) and (2)) confirmed that the rent has remained at £1250.00 per calendar month from 8 June 2018 to date. No payments have been made subsequent to the payment of £1250.00 due on 8 June 2018 which was paid by the Respondents on 14 June 2018. Reference was made to Applicant's Document (3) confirming that there are no unallocated payments with the letting agent. The unpaid rent outstanding as at 18 January 2019, including the payment of £1250.00 which was due to be made on 8 January 2019, is £8750.00. That sum is more than one months' rent. There have been rent arrears over a period in excess of three months.
- 2.8. The Notices to Leave which were served on the Respondents on 12 October 2018 both include notice that the ground upon which eviction is sought is Ground 12 of Schedule 3 of the 2016 Act.
- 2.9. Mr Gardiner advised that the last correspondence between the letting agents and the Respondents was in December 2018, after the Application had been made, at which point the Respondents were aware of the level of rent arrears and stated that they were attempting to get their affairs in order to pay the rent "soon". There have been no payments made by the Respondents since that time.
- 2.10. There is no information before the tribunal to suggest that there has been any delay or failure in payment to the Respondents of relevant benefits.
- 2.11. On the basis of the above facts, Mr Gardiner sought an eviction order in terms of Section 51 of the 2016 Act.
- 2.12. The tribunal Chair stated that a decision had been made today and that an order for eviction would be made. The Applicant's representative confirmed that he and the Applicant were aware that as the tribunal made the decision to make an order for possession in the absence of the Respondents, the Respondents could make an application for recall in terms of Rule 30 of the 2017 Rules within 14 days of the decision, which would prevent any further action being taken by any other party to enforce the decision for which recall is sought until the application is determined by the tribunal under Rule 30(9).
- 2.13. The CMD concluded.

3. The tribunal makes the following findings-in-fact:

- 3.1. There is a Private Residential Tenancy between the Applicant and the Respondents for the Property dated 14 June 2018.
- 3.2. The start date for the tenancy was 8 June 2018.
- 3.3. The rent payable is £1250.00 per calendar month payable monthly in advance on the date of entry and thereafter on or before 8th of each month.
- 3.4. The rent has remained at £125.00 per calendar month from 8 June 2018 to 8 January 2019.
- 3.5. The Respondents paid £1250.00 on 14 June 2018 in respect of the rent payment of £1250.00 due on 8 June 2018.
- 3.6. No payments have been made subsequent to the payment of £1250.00 which was paid by the Respondents on 14 June 2018.
- 3.7. The unpaid rent outstanding as at 18 January 2019, including the payment of £1250.00 which was due to be made on 8 January 2019, is £8750.00. That sum is more than one months' rent.
- 3.8. As at 18 June 2019 there have been rent arrears over a period in excess of three months.
- 3.9. The Notices to Leave which were served on the Respondents both include notice that the ground upon which eviction is sought is Ground 12 of Schedule 3 of the 2016 Act.
- 3.10. The rent arrears are not a consequence of delay or failure in payment to the Respondents of relevant benefits.

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.

Susanne Tanner

18 January 2019

Susanne L. M. Tanner Q.C.
Legal Member/Chair