

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(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”)

Chamber Ref: FTS/HPC/EV/22/1896

**Re: 587 Lanark Road, 1F1, Edinburgh, EH14 5DA
 (“the Property”)**

Parties:

**Scottish Midland Co-operative Society Limited, a registered society (registration number 2059R), having its registered address at Hillwood House, 2 Harvest Drive, Newbridge, EH28 8QJ
 (“the Applicant”)**

**Mr Gavin O’Reilly, 587 Lanark Road, 1F1, Edinburgh, EH14 5DA
 (“the Respondent”)**

Tribunal Members:

Pamela Woodman (Legal Member) and Gerard Darroch (Ordinary Member)

Present:

The case management discussion in relation to case reference FTS/HPC/EV/22/1896 took place at 2pm on Friday 21 October 2022 by teleconference call (“**the CMD**”). The Applicant was represented by David Gray of Gilson Gray LLP (“**Applicants’ Representatives**”) and the Applicant’s Group Property Director, Graham McLean, was also present. The Respondent was not present nor represented at the CMD. The clerk to the Tribunal was Ailsa Taylor.

DECISION (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:

BACKGROUND

1. The Applicant made an application to the Tribunal under section 51(1) of the 2016 Act and in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the

schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended. More specifically, the application was made in terms of rule 109 (*Application for an eviction order in relation to a private residential tenancy*) of the HPC Rules.

2. The order sought from the Tribunal was an eviction order against the Respondent in respect of the Property.
3. The application was dated 15 June 2022 and was accompanied by copies of the following:
 - a. Private residential tenancy agreement between the Applicant and the Respondent dated 20 August 2020 (“**Tenancy Agreement**”);
 - b. Notice to leave addressed to the Respondent at the Property issued by the Applicant’s Representatives dated 3 May 2021 (“**Notice to Leave**”) stating that:
 - i. the eviction ground being used was “You are in rent arrears over three consecutive months” (which related to ground 12 set out in schedule 3 to the 2016 Act);
 - ii. the explanation given was that “Rent is due at a rate of £665 per calendar month in advance. There was a shortfall in rent paid on 28th January 2021 to the sum of £302.50. No rent has been paid to the Landlord in January, February, March, April or May 2022. Rent Arrears now stand at £2,962.50. You are in rent arrears of over three consecutive months of rent”; and
 - iii. an application would not be submitted to the Tribunal before 3 June 2022;
 - c. Covering e-mail from Tania Royle (whom it was confirmed by Mr Gray worked for the Applicant’s Representatives at that time) dated 3 May 2022 addressed to the e-mail address for the Respondent given in the Tenancy Agreement attaching the “Notice to Leave, Rent Statement and Copy Tenancy Agreement”;

[Given that the version of the form used was that to be used from 30 March 2022 onwards and the covering e-mail was dated 3 May 2022, the Tribunal Members were satisfied on the balance of probabilities that the reference to 2021 in the signature section of the Notice to Leave was a typographical error.]

- d. Pre-action requirements letter from the Applicant’s Representatives addressed to the Respondent at the Property dated 5 April 2022, sent by Royal Mail signed for post and by e-mail to the e-mail address for the Respondent given in the Tenancy Agreement;

- e. Further pre-action requirements letter from the Applicant's Representatives dated 7 June 2022 addressed to the Respondent at the Property, sent by Royal Mail signed for post and by e-mail to the e-mail address for the Respondent given in the Tenancy Agreement;
 - f. Decision of the Tribunal dated 9 June 2022 with regard to case reference FTS/HPC/CV/22/0552;
 - g. Notice under section 11(3) of the Homelessness etc. (Scotland) Act 2003 from the Applicant's Representatives sent to the local authority on 15 June 2022.
4. Following a request from the Tribunal administration team, a rent statement covering the period from 28 August 2020 to 28 June 2022 ("**Rent Statement**") was provided by the Applicant's Representatives on 14 July 2022, which showed arrears of £4,242,50 s at 28 June 2022.
 5. A notice of acceptance of the application was issued dated 11 August 2022 under rule 9 of the HPC Rules, which confirmed that the application paperwork had been received by the Tribunal between 15 June 2022 and 14 July 2022.
 6. The Tribunal had received a copy of the certificate of intimation issued by Roderick Stevenson (sheriff officer) of Walker Love which confirmed that the letters (in respect of the cases with reference FTS/HPC/EV/22/1896) with enclosures from the Tribunal had been served on the Respondent on 8 September 2022 by depositing them within the letterbox of the Property. This letter notified the Respondent of the date and time of the CMD and requested written representations by 28 September 2022 among other things.
 7. The Respondent had been invited to provide written representations by 28 September 2022 but had not done so.
 8. The Tribunal noted that the Applicant was the registered landlord of the Property.
 9. This decision arises out of the CMD.

PRELIMINARY MATTERS

10. Upon enquiry from the Tribunal, Mr McLean confirmed that an inspection of the Property had been carried out towards the end of September 2022 and it appeared that the Respondent had not been in the Property for some time, albeit that his belongings were still in the Property. He stated that this assumption was made because, amongst other things, there was a large pile of mail at the front door (so large that it made it difficult to get into the Property) and the milk in the fridge had a use by date in December 2021. It was also noted that the last payment of rent by the Respondent had been in December 2021.

11. The Tribunal Members considered whether or not it was competent to proceed in the absence of the Respondent in the particular circumstances of this case and decided that it was, for the following reasons:
- a. It was accepted, based on the submissions made on behalf of the Applicant and on the balance of probabilities, that the keys to the Property had not been handed back to the Applicant and so the Respondent had access to the Property to collect his mail;
 - b. Sheriff officers had issued a certificate of intimation in respect of service by posting through the letterbox of the Property, such that notice of the CMD had been given as required by rule 24(1) of the HPC Rules, albeit that it may not have been collected by the Respondent;
 - c. Both the Notice to Leave and the two pre-action requirements letters had also been sent by e-mail to the e-mail address for the Respondent given in the Tenancy Agreement and so he would have had notice that proceedings were likely to be commenced against him;
 - d. If the Respondent had in fact already abandoned the Property, then there would be no material prejudice caused to the Respondent through the consideration of an application for an eviction order; and
 - e. In the context of the overriding objective, it was in the interests of justice to avoid any further delay and to hear the case today, including in the context of seeking to bring an end to the arrears of rent accruing from the perspective of both the Applicant and the Respondent.

PROCEEDINGS, NAMELY THE CMD

12. The Applicant's Representatives confirmed that the arrears of rent had increased since the application was made and were now standing at £6,287.50 (as set out in the updated rental schedule provided in advance of the CMD). This was an amount of more than three months' rent.
13. The Applicant's Representatives confirmed that the orders for payment in respect of rent arrears obtained from the Tribunal in other cases had been released to the Applicant's Representatives but had not yet been enforced.
14. The Applicant's Representatives submitted that it would be reasonable to grant an eviction order for the following reasons:
- a. The Notice to Leave had been properly served;
 - b. The Respondent had not engaged with the Applicant or the Applicant's Representatives at all;
 - c. It appeared that the Respondent had already left the Property;

- d. The rent arrears position continued to deteriorate and it was not tenable to allow the arrears to continue to accrue;
- e. The Applicant was not aware that the Respondent was on benefits;
- f. The Applicant had not been informed by the Respondent of any disability or vulnerability and, to their knowledge, had no dependents living with him.

FINDING IN FACT

15. The Tribunal noted that the Tenancy Agreement stated as follows:

- a. Notices to be served by one party on the other “will be made in writing using...the email addresses set out in clauses...1” (and clause 1 included an e-mail address for the Respondent);
- b. The start date of the tenancy was 28 August 2020; and
- c. The rent was £615 per calendar month, payable in advance, on or before the 28th of the month. It was noted by the Tribunal that this appears to have increased to £665 per calendar month in January 2022.

16. The Tribunal was satisfied, on the balance of probabilities, that there were arrears of rent of at least £1,845 (being 3 times £615), or alternatively £1,995 (being 3 times £665), as at the date of service of the Notice to Leave and as at the date of the CMD.

REASON FOR DECISION

17. The Tribunal was satisfied, on the balance of probabilities:

- a. the Notice to Leave was valid and had been validly served;
- b. the pre-action requirements had been met;
- c. for three or more consecutive months the Respondent had been in arrears of rent; and
- d. the delay in payment of the rent was not as a result of a delay or failure in the payment of a relevant benefit, there being no evidence before it that the Respondent had been relying upon any benefit to pay his rent since, at the very least, February 2021 (prior to which time payments of rent were ordinarily being made in two instalments but it was not known if this was related to benefits or not).

18. The Tribunal was also satisfied, on the balance of probabilities, that it was reasonable to grant an eviction order given that the Respondent appeared to have left the Property, there were over 9 months of rent arrears, the rent arrears were increasing, no payment of (or towards arrears of) rent had been made since December 2021, and the Respondent had not engaged with the Applicant (or the

Applicant's Representatives) or the Tribunal's administration team in relation to this CMD.

DECISION

19. The Tribunal granted the application under section 51(1) of the 2016 Act for an eviction order.
20. The Applicant's Representatives are directed (to which they agreed during the CMD) to send a copy of this decision to the Respondent by e-mail to the e-mail address for the Respondent contained in the Tenancy Agreement promptly after receipt.
21. The Tribunal refused the Applicant's application for costs on the basis that the application to the Tribunal had been made under rule 109 and not rule 111 of the HPC Rules and also that the costs claimed were not an "unreasonable or unnecessary" expense in relation to the conduct of the case (in terms of rule 40 of the HPC Rules).

Right of Appeal

In terms of Section 46 of the Tribunals (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.



Pamela Woodman

21 October 2022

Chair

Date