



**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/22/0710**

**Re: Property at 9 Sunnybank Terrace, Edinburgh, EH7 5TW (“the Property”)**

**Parties:**

**Mr Brian Irving, 5 Vandeleur Place, Edinburgh, EH7 6UF (“the Applicant”)**

**Ms Rabia Cheema, 9 Sunnybank Terrace, Edinburgh, EH7 5TW (“the Respondent”)**

**Tribunal Members:**

**Richard Mill (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision**

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

**Introduction**

1. This application is under Rule 109 and Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016.
2. Intimation of the application and of the Case Management Discussion (CMD) was effected upon the respondent by Sheriff Officers on 27 April 2022.
3. The CMD took place on 7 June 2022 at 10.00 am. The applicant was represented by Ms Kirsty Donnelly of Messrs TC Young Solicitors. The respondent joined the hearing personally.

## Findings and Reasons

4. The property is 9 Sunnybank Terrace, Edinburgh EH7 5TW.
5. The applicant is Mr Brian Irving. He is the heritable proprietor and registered landlord. The respondent is Ms Rabia Cheema who is the tenant.
6. The parties entered into a tenancy agreement which commenced on 9 November 2020. The rent was stipulated at £700 per month.
7. The written lease purported to be a short assured tenancy under the 1988 Act. This was not possible and such leases have not been capable of being created since 1 December 2017. The lease between the parties is a private residential tenancy under the 2016 Act.
8. The respondent has fallen into arrears of rent. At the time that the Notice to Leave was prepared, the rent arrears stood at £3,500. As at the date of application, the rent arrears had risen to £7,700. In advance of the hearing an amendment application had been made as the arrears has risen to £9,800. The Respondent accepted that this substantial level of arrears of rent are due.
9. The current eviction proceedings are based upon the arrears of rent and the relevant ground relied upon is ground 12, contained within Part 1, Schedule 3 to the 2016 Act, namely that the respondent is in rent arrears over three consecutive months.
10. Ground 12 as originally drafted was a mandatory ground for eviction. Since the coming into force of the Coronavirus (Scotland) Act 2020, all eviction grounds are discretionary. Additionally the notice periods have been extended by virtue of the 2020 Act. The relevant notice period under ground 12 was previously one of 28 days and was one of 6 months at the time that the Notice to Leave was served.
11. The Notice to Leave which is relied upon is dated 24 August 2021. With reference to Section 62 of the Act, the day specified as being the earliest day upon which proceedings before the Tribunal can be raised requires to be a total of the notice period of 6 months plus an additional three days. That date referred to within the Notice to Leave was specified as 27 February 2022. This is the correct notice period. The Notice to Leave was valid and can be relied upon. The Notice to Leave is evidenced to have been sent to the respondent by email on 24 August 2021.

12. The Tribunal was satisfied that more than three consecutive months of rent was unpaid at the time that the Notice to Leave was served and also at the date of the hearing. This establishes ground 12.
13. The Tribunal proceeded to consider the issue of reasonableness.
14. The Respondent offered no opposition to the application. She advised that she fully understood that she had to leave and indeed that it was well overdue for her to remove herself from the property. She acknowledged the impact of her failing to pay rent upon the applicant.
15. The respondent revealed that she has mental health problems. She did however present in such a way that the Tribunal concluded confidently that she has capacity to fully understand the application and its consequences and has the capacity to arrange for advice and representation should she wish to obtain it. The respondent also referred to a number of other circumstances which have impacted upon her approach to matters. She was made redundant after having been furloughed due to the Covid-19 pandemic though did obtain alternate employment for a period. She is now in receipt of Universal Credit, including the housing element but has chosen to spend these monies on personal matters such as car insurance and car repairs.
16. A relevant section 11 Notice under the Homelessness etc (Scotland) Act 2003 has been issued to City of Edinburgh Council. It is most likely that alternate accommodation will be made available to the respondent upon being evicted though this may involve hostel type accommodation which will not house her many animals.
17. Under Part 2 of Schedule 1 to the Coronavirus (Scotland) No 2 Act 2020, Scottish Ministers were given the power to make Regulations setting out pre-action requirements for landlords in relation to certain cases. The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 were subsequently brought into force and apply in respect of any application made to the Tribunal on or after 6 October 2020.
18. The applicant has complied with the pre-action requirements. Copy correspondence issued on behalf of the applicant to the respondent in relation to the arrears of rent and options available has been produced. In particular a letter dated 22 July 2021 was issued to the respondent with the required information.
19. The respondent has not taken advantage of the tenant loan scheme (which closed to new applications from 31 December 2021) nor the tenant grant fund (which can cover rent arrears for the period 23 March 2021 to 9 August 2021).

Copy correspondence issued on behalf of the applicant to the respondent in relation to the arrears of rent and options available has been produced.

20. The Tribunal took into account the significant arrears of rent which is a relevant factor to weigh up in the reasonableness balancing exercise. It is unreasonable to expect the applicant to maintain the property for the respondent in the absence of her making rental payments.
21. The respondent has a number of dogs and cats. There have been complaints from neighbours that they have been allowed to foul the shared garden ground of the property. Photographic evidence has been produced to the Tribunal to substantiate this.
22. In all of the circumstances, the Tribunal determined to grant the Eviction Order sought. In recognition of the respondent's personal circumstances the Tribunal extended the earliest date that an eviction can be carried out beyond the standard 30 day period. This was extended to 1 August 2022.

### **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.**

**R. M**

**7 June 2022**

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**Legal Member/Chair**

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**Date**