



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

Chamber Ref: FTS/HPC/EV/22/3375

Re: Property at 1 Corstorphine House Terrace, Corstorphine, Edinburgh, EH12 7AE (“the Property”)

Parties:

Mrs Elaine Bracher, 17 St Ninians Road, Edinburgh, EH12 8AP (“the Applicant”)

Nicola Valenti Maxwell, 1 Corstorphine House Terrace, Corstorphine, Edinburgh, EH12 7AE (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for the eviction of the Respondent from the property.

Background

1. By application dated 14 September 2022 the Applicant’s representatives, Gilson Gray LLP, Solicitors, applied to the Tribunal for an order for the eviction of the Respondent from the property under Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant’s representatives submitted a copy of the tenancy agreement together with a Notice to Leave and Sheriff Officer’s execution of service, Pre-action correspondence, Section 11 Notice to Local Authority and a rent statement in support of the application.
2. By Notice of Acceptance dated 13 October 2022 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 19 December 2022.
4. The Respondent submitted written representations by email on 16 January 2023.
5. A CMD was held by teleconference on 16 January 2023. The Applicant did not attend but was represented by Mr Gray from the Applicant's representatives. The Respondent did not attend. From the Respondent's written representations, it appeared that she was in hospital and unable to attend the CMD. It also appeared there was a prospect of the arrears being paid and that the Respondent had applied for Universal Credit. The Tribunal noted that the Respondent's son may be due an inheritance from his late father's estate that could clear the debt. The Tribunal considered that the interests of justice required that the Respondent be given an opportunity to be heard at a hearing. The Tribunal adjourned the CMD to a hearing and issued Directions to the Respondent to produce confirmation from the hospital or her GP of her stay in hospital and also full details of her proposed defence and circumstances by 28 February 2023.

The Hearing

6. A hearing was held by teleconference on 29 March 2023. The Applicant did not attend but was again represented by Mr Gray. The Respondent did not attend nor was she represented. The Tribunal being satisfied that proper intimation of the hearing had been given to the Respondent determined to proceed in her absence.
7. Mr Gray confirmed that the Respondent remained in occupation of the property. He also confirmed that no rent had been paid and that the sum due was £13805.75 as shown on the rent statement submitted on 8 March. Mr Gray said that he had received a phone call on 21 March 2023 from Karen Stevenson from the Tenant Support Fund requesting a copy of the tenancy agreement but had heard nothing further and had been told in any event that any award would not be anywhere near the outstanding debt.
8. Mr Gray confirmed the tenancy was a Private Residential Tenancy that commenced on 13 May 2022 at a rent of £1450.00 per calendar month. He also confirmed that the Respondent had accrued rent arrears over three consecutive months resulting in a Notice to Leave being served on her by Sheriff Officers on 9 August 2022. Mr Gray confirmed that no further rent had been paid and that as at 1 March 2023 the rent due by the Respondent amounted to £13805.75.

9. The Tribunal noted that a Section 11 Notice had been sent by email to the City of Edinburgh Council on 14 September 2022 and that pre-action letters had been sent to the Respondent.
10. Mr Gray submitted that as the Respondent had failed to attend the hearing and had failed to comply with the Tribunal's Directions and given the very significant level of arrears it was reasonable that the order for eviction should be granted. In reply to a query from the Tribunal Mr Gray confirmed that the property was the Applicant's only rental property. He said he did not have any further information about the Applicant's circumstances.

Findings in Fact

11. The parties entered into a Private Residential Tenancy agreement that commenced on 13 May 2022 at a rent of £1450.00 per calendar month.
12. The Respondent fell into rent arrears from the commencement of the tenancy.
13. The Respondent had three consecutive months of arrears at the date of service of a Notice to Leave by Sheriff Officers on 9 August 2022.
14. The Applicant's representatives sent a pre-action letter dated 15 August 2022 to the Respondent.
15. The Applicant's representatives sent a Section 11 Notice to the City of Edinburgh Council by email on 14 September 2022.
16. The Respondent has incurred rent arrears amounting to £13805.75 as at 1 March 2023.
17. The property is the Applicant's only rental property.
18. The property is occupied by the Respondent and her son.
19. The Respondent has paid a total of £1600.00 in rent since the commencement of the tenancy.
20. The Respondent has failed to comply with the Tribunal's Directions dated 16 January 2023.

Reasons for Decision

21. The Tribunal was satisfied from the written representations and documents together with the oral submissions that the parties entered into a Private Residential Tenancy that commenced on 13 May 2022 at a rent of £1450.00 per calendar month. The Tribunal was also satisfied that the Respondent has

failed to pay rent and has accumulated a debt of £13805.75. The Tribunal was satisfied that the Respondent had been properly served with a Notice to Leave under Ground 12 of Schedule 3 of the 2016 Act and that an appropriate pre-action letter had been sent to her and that the local authority had been sent a Section 11 Notice. The Tribunal was therefore satisfied that subject to it being reasonable in terms of the Coronavirus Recovery and Reform (Scotland) Act 2022 the Applicant was entitled to an order for eviction.

22. In reaching its decision on whether it was reasonable to grant the order the Tribunal took account of the very substantial level of arrears and the fact that the Respondent had only paid a total of £1600.00 of rent throughout the period of the tenancy. The Tribunal also took account of the fact that despite being given every opportunity to provide an explanation and vouching for her failure to attend the CMD and to provide written submissions on any defence of the application and attend the hearing the Respondent had done nothing. The Tribunal was particularly concerned that the Respondent had totally failed to comply with its direction of 16 January 2023. The Tribunal took into account that the Respondent has a son living in the property with her but on balance was satisfied that given the level of arrears and the failure of the Respondent to co-operate with the Tribunal that it was reasonable that the order should be granted.

Decision

23. The Tribunal having carefully considered the written representations and documents together with the oral submissions finds the Applicant entitled to an order for the eviction of the Respondent from the property under Ground 12 of Schedule 3 of the 2016 Act.

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.

**Graham Harding
Legal Member/Chair**

**29
Date**

March

2023

