



**Decision 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/23/0152

Re: Property at 5 St Margarets Place, Edinburgh, EH9 1AY (“the Property”)

Parties:

Mr Brian Wilson, 5 Middlebank Holdings, Dunfermline, Fife, KY11 8QL (“the Applicant”)

Ms Krisztina Beata Fodor, Mr David Robert Lennox, 5 St Margarets Place, Edinburgh, EH9 1AY; 5 St Margarets Place, Edinburgh, EH9 1AY (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted in terms of Grounds 4A and 12A of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 in that there are substantial rent arrears accrued in terms of the tenancy and the landlord intends to live in the let property to alleviate financial hardship and it is reasonable to grant an eviction order on account of these facts. No order was granted in terms of Grounds 4 and 12 of the Act as these were not insisted upon on behalf of the Applicant.

Background

1.This application for an eviction order was first received by the Tribunal on 13th January 2023 and accepted by the Tribunal on 13th March 2023.A case management discussion was initially fixed for 21st April 10am along with a related application for a payment order with reference HPC/CV/23/0977.

Case Management Discussions

2.The case management discussion on 21st April 2023 was postponed by the Tribunal at the request of the second Respondent and a new case management discussion for both applications was fixed for 16th June 2023 at 2pm.At the case management discussion on 16th June 2023 the application was continued to a further case management discussion on 18th July 2023 at 10am to allow the Respondents to take advice on their position as regards the eviction application.

3.The case management discussion on 18th July 2023 was attended by the Applicant and he was represented by Mr McKeown Trainee Solicitor of Jackson Boyd solicitors. Both of the Respondents were present at the teleconference and Mr Lennox spoke for them.

4.The Tribunal had sight of the initial eviction application, a tenancy agreement, a Notice to Leave setting out Ground 12 (rent arrears over three consecutive months) as the eviction ground, an e mail sending this Notice to Leave, a notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003, an email sending this notice to the local authority, a rent statement, and a pre action protocol email sent to each of the Respondents. In addition to these documents on 20th February 2023 the Applicant's representative submitted a further Notice to Leave with a new eviction Ground added, Ground 12A, substantial rent arrears (equivalent to 6 months' rent) and an email sending this notice to the Respondents on 20th February 2023.All of these papers were sent to the Respondents by the Tribunal in advance of the first case management discussion being fixed.

5.On 2nd June the Applicant's representative sent in an amended application form with an additional Notice to Leave adding in new eviction Grounds 4 and 4A being that the landlord intends to live at the let property and the landlord intends to live at the let property to alleviate financial hardship. The payment order application was also resubmitted seeking a higher sum by way of rent arrears which at that time were said to stand at £23350.Along with the additional application forms the Applicant's solicitor had lodged an up-to-date rent statement, an affidavit from the Applicant, and an email sending the Notice to Leave to the Respondents, dated 13 March 2023 and an email from a financial planner.

6.The Tribunal had issued a Direction after the case management discussion on 16th June 2023 and in response to that the Applicant's representative had lodged mortgage documentation, a note of income and outgoings of the Applicant and an amended application form showing all four eviction grounds.

7.The Respondents had been directed to lodge written representations regarding their position on the eviction order but no representations had been received.

8.The parties had entered a private residential tenancy at the property from 20th December 2021 with monthly rent payable in the sum of £1950.Rent arrears had started to accrue in March 2022 and although rent amounting to £5900 had been paid for the period from August 20th to 19th November 2022 no rent at all had been paid since then.

9. Mr McKeown for the Applicant indicated that the rent arrears now stood at £25,300 when the most recent payment of rent due was included in the total rent arrears figure.

10. For the Respondents Mr Lennox indicated that they accepted an eviction order. He said that he had recently started a new position in a financial crime unit for a financial services company. He said that he had been attempting to make a payment through Santander Bank towards the rent arrears. He apologised for the position that they had put Mr. Wilson the landlord in in relation to the unpaid rent. He said that the sum of £20,000 was going through anti money laundering checks with his bank and that he had paid this sum into the bank the previous Wednesday. He said he had been told it would take three to five working days to “go through” but he had no evidence to show that this payment had been made.

11. Mr McKeown for the Applicant requested an eviction order saying that in early June Mr Lennox had emailed saying that he would attempt to make payment of £20000. No payment had been forthcoming, and the Letting Agent had received nothing. Mr McKeown pointed out that Mr Lennox had said nothing about why the Respondents had not complied with the Tribunal’s direction to set out their position on the eviction in advance of the case management discussion. He said there had been promises to make a payment but no payment had been received, two case management discussions had already been fixed and he was seeking an eviction order. Mr Lennox apologised to the tribunal for not having set out his position in writing and said that this was his oversight. He confirmed that he had received nothing from Santander to show that a payment had been made or was going through the banking process.

12. Mr Lennox confirmed to the tribunal that he and Ms Fodor did not object to an eviction order being granted and confirmed they had received notification of all four eviction grounds and understood the various grounds which the Applicant was relying on. The Tribunal Legal member explained to Mr Nixon and Ms Fodor the nature of all of the grounds and set out which of them were affected by delays in the carrying out of eviction orders as a result of the Cost of Living (Tenant Protection) (Scotland) Act 2022. Mr Lennox simply wanted to know the date when they would be required to leave the property and the approximate timescales were explained in the event that an order was granted.

13. Mr McKeown and his client confirmed that he rented out two properties of which this property was one. He pays a mortgage on this property and on the other rented property. The mortgage on the second rented property is covered by the monthly rent being paid. He rented out the property referred to in the application when he was living with a partner and noted that the tenants were not paying the monthly rent of £1950 and had not paid it for some time. He previously had his own company, operating as an IT contractor but the company required to be liquidated in December 2022. He currently has no income and is relying on an overdraft to pay his outgoings. He broke up with his partner but is living with his ex-partner currently but the situation is not sustainable in the long term and he has insufficient funds to rent a property for himself. His position was that in order to assist with his current financial difficulties he required to move back into the rented property as he could not stay with his ex-partner

indefinitely.

14. He said that if the tenants did not move out, he would become homeless. Although he would still have financial difficulties due to his current lack of income the situation would improve if he could move back into the property as he would not have to contribute to live with his ex-partner. He was also currently trying to access funds from a pension but this was proving to be difficult.

15. Mr Mckeown submitted that it was reasonable to grant an eviction order given the circumstances of the Applicant and the high level of rent arrears. He was confining his primary request for eviction to Grounds 4A and 12A and was not insisting on an order in terms of Grounds 4 and 12 if the order was granted on Grounds 4A and 12A.

16. Mr Lennox confirmed that the Respondents were not seeking to argue that it was not reasonable to grant an eviction order. As regards their circumstances he highlighted that he too had had a company but that this had required to be wound up and he had spent time looking for a job in the IT sector and had taken a job with a financial services company. They had fallen behind with the rent due to their circumstances. He was taking steps to secure a new tenancy for he and Ms Fodor but had not yet managed to secure one. He said it was not going to be easy but he understood that something had to be done and he understood that rent required to be paid.

17. The Tribunal considered the Notices to Leave and the Notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 and noted that these appeared to be in proper form and the Notices to Leave gave correct notice periods.

18. The Tribunal was satisfied it had sufficient information upon which to make a decision and that the proceedings had been fair.

Findings in Fact

19. The parties entered a private residential tenancy at the property with effect from 20th December 2021.

20. The monthly rent payable in terms of this tenancy is £1950.

21. The Respondents started to accrue rent arrears in terms of the tenancy in March 2022 and no rent has been paid since November 2022.

22. Accrued rent arrears as of 28th July 2023 are £23350.

23. A Notice to Leave in proper form seeking to give notice of eviction proceedings on the ground of rent arrears over three consecutive months was sent to the Respondents on 7th December 2022.

24. A Notice to Leave in proper form seeking to give notice of eviction proceedings on the ground of substantial rent arrears was sent to the Respondents by email dated

20th February 2023.

25.As of 20th February 2023 the date of service of the Notice to Leave in terms of Ground 12A, rent arrears exceeded the amount due for six months rent and the rent had been in arrears for a continuous period of more than three consecutive months.

26.A Notice to Leave in proper form seeking to give notice of eviction proceedings on Grounds 4 and 4A, the landlord intends to live at the property and that he intends to live at the property to alleviate financial hardship were sent to the Respondents on 13th March 2023.

27.Pre action protocol letters were sent to the Respondents on 22nd July 2022.

28.A Notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 was sent to Edinburgh City Council in relation to this application on 13th January 2023.

29.Rent arrears at the property have not accrued due to any failure or delay in the payment of a relevant benefit.

30.The Applicant currently has no income and lives with an ex-partner which is a temporary arrangement.

31.The Applicant is paying all his monthly outgoings using an overdraft currently.

32.Income from a second rental property which the Applicant has covers the mortgage on that property only.

33.The Applicant is in financial hardship partly due to the large amount of rent arrears outstanding at the property and also his lack of income currently.

34.If the Applicant can move back into the property he will still be in some financial hardship but this will be alleviated to an extent as he will not require to pay “digs” to live with his ex-partner.

Reasons for Decision

35.The tribunal was satisfied that it was reasonable to grant an eviction order in terms of both grounds 4A and 12A.The rent arrears accrued at this property are substantial and ongoing. Although one of the Respondents indicated that a payment towards the arrears was being made at the time of the case management discussion on 18th July 2023 no evidence to confirm this was presented to the tribunal and this suggestion had previously been made and no payment had been forthcoming. In all of the circumstances it appeared reasonable to grant the order on the basis that substantial rent arrears are in existence. The tribunal accepted that the Applicant is in financial hardship due in part to the failure of the Respondents to pay rent at the property but also because he has no income at present. He is living in temporary accommodation which is not sustainable and his financial situation will improve to an extent if he can

move back into the property to live there himself. Whilst this will not wholly alleviate his financial hardship it will improve it as he would not be required to pay the cost of living at his ex-partner's accommodation. In these circumstances the tribunal considered it was reasonable to grant the order in relation to Ground 4A also.

36. The Tribunal noted that the Respondents did not oppose the eviction order on any of the grounds put forward and did not seek to suggest that it was not reasonable to grant an order. They are actively seeking alternative rental property in which to live.

Decision

The Tribunal determined that an eviction order be granted in terms of Grounds 4A and 12A of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 in that there are substantial rent arrears accrued in terms of the tenancy and the landlord intends to live in the let property to alleviate financial hardship and it is reasonable to grant an eviction order on account of these facts. No order was granted in terms of Grounds 4 and 12 of the Act as these were not insisted upon on behalf of the Applicant.

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.



18.7.23

Legal Member/Chair

Date