



**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/23/0866**

**Re: Property at Flat 23, 120 Lawrie Reilly Place, Edinburgh, EH7 5FG (“the Property”)**

**Parties:**

**Places For People Homes Limited, 1 Hay Avenue, Edinburgh, EH16 4RW (“the Applicants”)**

**Mr Emmanuel Mogbo, Flat 23, 120 Lawrie Reilly Place, Edinburgh, EH7 5FG (“the Respondent”)**

**Tribunal Members:**

**Lesley Ward (Legal Member) and Sandra Brydon (Ordinary Member)**

**1.Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for the eviction of the Respondent from the property at Flat 23, 120 Lawrie Reilly Place, Edinburgh, EH7 5FG (“the Property”) be made, on the basis of ground 12A (substantial rent arrears in excess of 6 months) being satisfied that it is reasonable in all of the circumstances that the eviction be granted.

**Background**

2. This was a case management discussion (‘CMD’) in connection with an Application for eviction in terms of rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Procedure Regulations 2016, (‘the rules’) on ground 12 (rent arrears) of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016’ the Act’. The Applicant was represented by Mr Kenneth Caldwell of Patten

and Prentice Solicitors. The Respondent attended. There was a second application before the tribunal to recover rent arrears.

**3.** The tribunal had before it the following copy documents:

- Application dated 17 March 2023.
- Land certificate.
- Landlord registration details.
- Private Residential Tenancy Agreement.
- Notice to leave dated 20 January 2023.
- Email serving notice to leave dated 20 January 2023.
- Rent statement.
- Pre-action requirements letter dated 15 March 2023.
- S11 notice and proof of service.
- Execution of service by sheriff officers dated 17 April 2023.
- Email from Applicant's solicitor with increased rent arrears dated 14 April 2023.

#### **4. Preliminary matters**

- (1) The tribunal noted that the notice to leave was served on 20 January 2023 and the date given for proceedings to be raised was 19 February 2023. This appeared to the tribunal to be 30 days rather than 31 days required in terms of s62 of the Act. Mr Caldwell made a detailed submission to the tribunal making specific reference to the example given on the government website to the effect that he had given the correct 31 days' notice. The tribunal noted that this example differed from the time line set out by Adrian Stalker at page 324 of his book where an additional day was given
- (2) The tribunal noted that the PRT lodged with the application had joint tenants. Mr Caldwell submitted that the second tenant had contacted the Applicants in November 2022 and it had been agreed that he would leave the tenancy. Mr Mogbo continued as sole tenant. There was the possibility of a new second tenant being introduced and a new PRT being drawn up. (A new tenant in fact moved in to the property and paid rent for two months but he left and no new PRT was drawn up). The Respondent confirmed that it was agreed by all parties that the second tenant would leave the property.
- (3) Mr Caldwell submitted that the rent arrears as at 1 May 2023 had increased to £8157.12 which means that there are now arrears in excess of 6 months. He sought to amend the application to include ground 12A.

#### **5. Discussion**

The Respondent stated that he was not opposed to the eviction application. He stated that he had been in employment when the PRT was first constituted and he had stopped work as a restaurant manager in July 2022. He was in receipt of Universal Credit but he was unsure if the housing element was included. He stated that his mental health has been poor and he has been unable to work. He has sought legal advice in connection with the eviction application and he has spoke to the council about rehousing. He lives alone in the property. The Respondent accepted that he had not made any rental payments since August 2022.

## **6. Findings in fact**

- Applicants are the owners of the property.
- The Applicants entered into a PRT with the Respondent and a second tenant Mr Tim Aydin for let of the property from 18 March 2022.
- The agreed monthly rent was £1300.
- Rent arrears began to accrue in August 2022.
- In November 2022 the parties agreed that Mr Aydin would leave the tenancy and the Respondent would continue to occupy the tenancy on the same terms.
- The Respondent has paid no rent since August 2022.
- The arrears of rent on 1 May 2023 were £8157.12.

## **7. Reasons**

This was an undefended eviction Application. The tribunal accepted Mr Caldwell's submission that the notice to leave had given the correct notice period in accordance with government guidance. The tribunal also accepted that on the balance of probability the parties had varied the terms of the contractual agreement between the parties in November 2022 to the effect that Mr Aydin would leave the tenancy and the Respondent would remain as the sole tenant. It appears that another person resided in the property for a short time but Mr Mogbo was the sole tenant after November 2022 and when the notice to leave was served.

The tribunal allowed the application to be amended in terms of s52 of the Act and rule 14 of the rule. The tribunal decided it was reasonable in all of the circumstances to allow the amendment. The Respondent made no objection and indeed the Respondent has made no payments of rent since August 2022. It was not clear to the tribunal whether the Respondent is in receipt of the housing element of Universal Credit or not. What was clear was that the rent arrears are not due to a delay or failure of a payment of a relevant benefit. The Respondent is in receipt of Universal Credit and he was not sure whether the housing element was included.

The Respondent stated that an eviction order would be likely to assist with his rehousing application.

The Applicants have complied with the pre-action requirements. The rent arrears are substantial and in excess of the 6 months required in terms of ground 12 A of schedule 3 of the Act. The tribunal was satisfied that it is reasonable in all of the circumstances to grant the eviction.

### **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.**

L. Ward

**18 May 2023**

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**Legal Member**

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**Date**