



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/23/0919

**Re: 35/1 Dean Path, Edinburgh, EH4 3AY
 (“the Property”)**

Parties:

**Miss Natasha Guise, 9 Clerwood Loan, Edinburgh, EH12 8PY
 (“the Applicant”)**

**Mr Ryan Christopher Gavan, 35/1 Dean Path, Edinburgh, EH4 3AY
 (“the Respondent”)**

Tribunal Members:

Pamela Woodman (Legal Member) and Mike Scott (Ordinary Member)

Present:

The case management discussion in relation to case reference FTS/HPC/EV/23/0919 took place at 10am on Thursday 17 August 2023 by teleconference call (“**the CMD**”). Both the Applicant and the Respondent were present at the CMD. The clerk to the Tribunal was Elliott Green.

DECISION

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

BACKGROUND

1. An application was made 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 20 March 2023 and was accompanied by various documents, including:
 - a. Private residential tenancy agreement between the Applicant and the Respondent dated 26 June 2019 [sic] and 25 June 2020 ("**Tenancy Agreement**");
 - b. Notice to leave addressed to the Respondent at the Property issued by the Applicant dated 15 February 2023 ("**Notice to Leave**") stating that:
 - i. the eviction ground being used was "You have substantial rent arrears (equivalent to 6 months' worth of rent)", which related to ground 12A set out in schedule 3 to the 2016 Act;
 - ii. the explanation given was that "Notice to leave is being issued due to substantial rent arrears of £4750 as of 15th February 2023. Monthly rent is £750, so rental arrears is over equivalent of 6 months worth of rent."
 - iii. an application would not be submitted to the Tribunal for an eviction order before 18 March 2023.
 - c. Covering e-mail from the Applicant to the Respondent (using the e-mail address for notices to the Respondent as stated in the Tenancy Agreement) dated 15 February 2023 which showed two attachments described as being notice to leave and rental log.
 - d. Rental log up to (and including) 14 March 2023 which noted arrears of £5,500 ("**Original Rental Log**").
 - e. Correspondence from the Applicant to the Respondent dated 16, 19 and 26 January 2023 and 9 and 10 February 2023 which referred to pre-action requirements.
 - f. Correspondence from September and October 2021 and April 2022 with regard to seeking to agree repayment plans of the arrears at those times.
 - g. Notice under section 11(3) of the Homelessness etc. (Scotland) Act 2003 from the Applicant sent to the local authority by e-mail on 20 March 2023.
4. A notice of acceptance of the application was issued dated 11 April 2023 under rule 9 of the HPC Rules, which confirmed that the application paperwork had been received by the Tribunal on 21 March 2023.
5. The Tribunal had received a copy of the certificate of intimation issued by Christopher Andrew (sheriff officer) of Walker Love which confirmed that the letters

(in respect of the cases with reference FTS/HPC/EV/23/0919 and FTS/HPC/CV/23/0920) with enclosures from the Tribunal had been served personally on the Respondent on 12 May 2023.

6. The original case management discussion which had been scheduled for 14 June 2023 had been postponed, resulting in the CMD.
7. By e-mail on 25 July 2023, the Applicant made a request to amend the application under rule 14A of the HPC Rules to update the amount of rent arrears and provided an updated rental log up to (and including) 14 July 2023 which noted arrears of £7,000 (“**the Updated Rental Log**”), together with a copy of an e-mail sending it to the Respondent, which also made reference to the date of the CMD.
8. The Tribunal consented to the amendment and accepted the Updated Rental Log under rule 14A of the HPC Rules.
9. The Tribunal noted that the Applicant was the registered landlord and recorded proprietor of the Property.
10. This decision arises out of the CMD.

PROCEEDINGS, NAMELY THE CMD

11. The Respondent confirmed that he objected to the application for an eviction order.
12. The Respondent confirmed that he had received the Notice to Leave and that there had been rent arrears of £4,750 when it was served. He also agreed that there were rent arrears of £7,000 as at 14 July 2023.
13. The Respondent stated that he wanted to “make things right” and find a resolution which was “agreeable to all parties”, that he had suffered mental health difficulties over a number of months and that he has attention deficit hyperactivity disorder (ADHD) which had made it more difficult for him to understand the process.
14. The Respondent also stated that he had had financial difficulties, that he had had his own business before the pandemic but some clients had failed to pay him, that he had had a very large energy bill which he had to pay and had made a bad decision to take a loan from a “nefarious” source, which he had “had to pay” and had now paid off.
15. The answers from the Respondent were vague when he was asked about the steps he had taken to seek alternative accommodation after receiving the Notice to Leave in February 2023.
16. The Respondent noted that there was a housing shortage in Edinburgh, particularly during the summer months when the Edinburgh festival was on and before the students were back. He explained that he started looking for alternative accommodation in June 2023 but that he had not found anywhere that he could afford. He confirmed that he was still actively looking.

17. The Respondent acknowledged that he had received an e-mail from the Applicant in January 2023 which gave him links to the websites of Citizens Advice Scotland and Shelter Scotland and that he had looked on a website and tried to contact them when he received the Notice to Leave as he didn't know what it meant. He explained that he was advised that he did not need to leave within 28 days at that time. It was not clear to the Tribunal whether or not he had sought any advice from anyone thereafter, particularly after receiving the correspondence from the Tribunal's administration team in May 2023 informing him about the case management discussion.
18. The Respondent confirmed that he was not in receipt of benefits and that, since June 2022, he had had permanent employment, which had followed non-permanent employment from September 2021.
19. The Respondent noted that he had suggested agreeing a plan to repay the arrears in a discussion with the Applicant outside the Property. The date of this conversation was unclear to the Tribunal but was understood to be in or around February/March 2023. The Applicant agreed that such a conversation had taken place but that she had asked the Respondent to put a proposal in writing but he did not do so. The Applicant also noted that there had been a previous agreement to pay the arrears in around April 2022 which was not adhered to by the Respondent and so "telling her verbally was not enough" and she wanted any arrangement in writing.
20. The Applicant noted that she had been told by the Respondent of his mental health difficulties and that he had ADHD. She stated that she had tried to assist and be sympathetic and had reached out to the Respondent multiple times but that he did not reply and changed his mobile number.
21. The Applicant explained that this situation had caused her significant anxiety and stress, that she was not a permanent employee and needed to work out her own finances.
22. The Applicant confirmed that there was no mortgage on the Property itself but that she had taken out a second mortgage on her own property in order to pay off the mortgage on the Property and so had to pay that. She confirmed that she could not afford not to receive the rent on the Property as she used that income to go towards paying off the two mortgages on her own property.
23. The Applicant wanted the case decided at the CMD because he was not paying her rent and had substantial arrears. She stated that the relationship with the Respondent and trust had broken down.

FINDING IN FACT

24. The Tenancy Agreement stated that the rent was £750 per calendar month and was payable on or before the 1st of each month.

25. Following a request from the Respondent by e-mail dated 30 April 2021, the parties varied the Tenancy Agreement with regard to the date of payment of rent each month, such that rent became due and payable on the 14th of each month.
26. An amount equivalent to six months' rent was £4,500.
27. As at the date of service of the Notice to Leave, there were arrears of £4,750. This was accepted by the Respondent.
28. As at the 14 July 2023, there were arrears of £7,000. This was accepted by the Respondent.
29. The Tribunal was satisfied, based on the information provided by the Respondent during the CMD, that there were arrears of rent of at least £4,500 (being six times £4,500), as at the date of service of the Notice to Leave (and, also, as at the date of the CMD, albeit that was not a requirement of ground 12A of Schedule 3 to the 2016 Act).

REASON FOR DECISION

30. 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. there was more than one period of arrears;
 - d. the cumulative amount of the rent arrears exceeded the equivalent of six months' rent under the Tenancy Agreement when the Notice to Leave was given to the Respondent;
 - e. the delay in payment of the rent was not as a result of a delay or failure in the payment of a relevant benefit; and
 - f. it was reasonable to grant an eviction order in the circumstances of this case. This was on the basis that:
 - i. The Respondent had been in permanent employment since June 2022 and was not in receipt of benefits.
 - ii. There had continuously been arrears (of some amount) since 14 March 2022, a period of over 17 months prior to the CMD.
 - iii. Even if there was no agreed payment plan, it was not necessary to have such a plan in order for the Respondent to make payments of rent when due and/or to make payments in respect of arrears to reduce the level of them. However, other than one payment of £1,500 on 31 March 2023, there had been no payment made since 1 December 2022.

- iv. Whilst the Respondent stated that he had had mental health difficulties and had ADHD, the Respondent confirmed that he had paid others during the relevant period and so had made a decision to prioritise paying others over paying the Applicant. He had described his approach as “having to get through the next emergency” and there was no information provided to the Tribunal to suggest that payment of rent and arrears of rent would be prioritised in the future either if there was another “emergency”.
- v. The Applicant stated that she was suffering significant anxiety as a result of the situation and loss of income.
- vi. The Applicant had given the Respondent a number of months in order to clear the rent arrears and to start paying rent on time (which he did not do) before taking any action to evict him. She could have taken action earlier but did not.
- vii. Whilst the Respondent had stated that he had no support network and so would have nowhere to go if evicted, he was unable to describe any meaningful steps taken to find alternative accommodation after he had received the Notice to Leave (in February 2023), more than 6 months previously.
- viii. It would not be in the interests of either party for the rent arrears to continue to increase.
- ix. There were no dependents living with the Respondent.

31. Accordingly, the Tribunal found that ground 12A (substantial rent arrears) of Schedule 3 to the 2016 Act applied.

DECISION

32. The Tribunal granted the application under section 51(1) of the 2016 Act for an eviction order on the basis of ground 12A.

33. The Respondent was informed of his right of appeal and that he would find links to where he might obtain advice (should he wish it) at <https://housingandpropertychamber.scot/useful-links>.

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

17 August 2023

Chair

Date