



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/21/2963

Re: Property at 5/1 Burnhead Loan, Edinburgh, EH16 6EU (“the Property”)

Parties:

Ms Karen Flockhart, 94 Gilmerton Dykes Road, Edinburgh, EH17 8PE (“the Applicant”)

Marcin Frankowski, 5/1 Burnhead Loan, Edinburgh, EH16 6EU (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatrige (Legal Member) and Ahsan Khan (Ordinary Member)

Decision in absence of the Respondent

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted. The decision was unanimous.

A: Background

1. The application for an order for eviction under S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act) was made by the Applicant's representatives Gilson Gray on 30 November 2021
2. The following documents were lodged to support the application prior to the Case Management Discussion:
 - a. Copy Private Residential Tenancy (PRT) commencing 13 April 2018 for the property
 - b. Notice Leave dated 3 May 2021 with email sending same
 - c. S 11 Notice to Local Authority with confirmation of sending to Local Authority by email on 30 November 2021
 - d. Rent Statement 1 November 2020 to 1 November 2021
 - e. Rent Statement 1 November 2020 to 1 February 2022

- f. Pre Action Requirement letters and rent arrears correspondence dated 8 April 2021, 5 March 2021, 18 February 2021, 10 February 2021 from Applicant to Respondent
 - g. Respondent's email 17 February 2021
3. The Case Management Discussion (CMD) was scheduled for 18 February 2022. Case papers and notification of the CMD were served on the Respondent by Sheriff Officers on 12 January 2022. The related case for a payment order for rent arrears for the same property CV/21/2964 involving the same parties called on the same date at the same time for a CMD and papers and notification for this was also served on the Respondent on 12 January 2022. An explanation of the discrepancy of the initial rent amount of £675 stated in Clause 8 of the PRT and the amount of £710 stated in the rent statement was provided by the rent increase documentation from 2019 and 2020 lodged with the civil case. The Tribunal was satisfied that the Respondent had the required notice of the CMD as set out in Rules 17 (2) and 24 (2) of the Procedural Rules.
 4. No representations from the Respondent were received by the Tribunal.
 5. By correspondence of 3 February 2022 the Applicant's representatives submitted the up to date rent statement and invoice for legal fees, both of which had been copied to the Respondent. The rent statement updated the arrears amount to £10,340. The Tribunal allowed the amendment of the rent amount.
 6. The case documents are referred to for their terms and held to be incorporated herein.

B: The Case Management Discussion:

1. The CMD took place on 18 February 2022 by telephone conference call.
2. The Applicant's solicitor Mr Glass participated. The Applicant and the Respondent did not participate.
3. Mr Glass confirmed that the last contact with the Respondent was the email of 17 February 2021. There had been numerous attempts to engage the Respondent in addressing the issue of rent arrears in the form of the formal Pre Action Requirement documentation and informal emails but the Respondent had not engaged in any attempts to resolve the matter. .
4. The arrears had been accruing continuously since the last payment on 16 December 2020 and the Respondent was now 16 months in arrears. The rent had been increased in terms of Clause 10 of the PRT to £695 from 1 May 2019 and to £710 from 1 June 2020. Mr Glass moved for an eviction order under Ground 12 (2) of schedule 3 of the 2016 Act. The arrears at the CMD are £10,340. All pre action requirements had been complied with. He argued it was reasonable to grant an eviction order in these circumstances. .

C: Findings in Fact

1. The property was let on a Private Residential Tenancy Agreement commencing on 13 April 2018.
2. The parties are the landlord and tenant of said Tenancy Agreement.
3. The tenancy is ongoing and the Respondent still occupies the property.
4. The monthly rent of now £710 is payable on the 1st day of the month in advance.
5. Rent arrears accrued as per the Rent Statement up to 1 February 2022, there has been no change since.

6. On 3 May 2021 the Applicant served a Notice to Leave on the basis of ground 12 of schedule 3 of the 2016 Act on the Respondent by email to the email address provided by the Respondent in the PRT
7. The Notice to Leave states as the date when proceedings can be raised the date of 6 November 2021 and gives information about arrears accrued and states the Respondent was in rent arrears over three consecutive months.
8. As at the date of service of the Notice to Leave the Respondent had been in arrears of rent for a consecutive period of more than 3 months.
9. The arrears of rent due as at the CMD were £10,340.
10. The Respondent has been in arrears of rent continuously since at least November 2020 and thus for three or more consecutive months at the time the Notice to Leave was issued, at the time the application was made and at the time of the CMD, when the merits of the case were considered.
11. The arrears of rent are not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
12. The notice required under S 56 of the Act was issued to the local authority on 30 November 2021
13. The Respondent has refused to engage in resolving the issue of rent arrears consistently and has not engaged with the numerous attempts of the Applicant to address the issue.
14. The Applicant has complied with the Pre Action Requirements.

D: Reasons for decision

1. Relevant legislation:

In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

- (a) in any place where a hearing may be held;
- (b) by videoconference; or
- (c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

- (a) identifying the issues to be resolved;
- (b) identifying what facts are agreed between the parties;
- (c) raising with parties any issues it requires to be addressed;
- (d) discussing what witnesses, documents and other evidence will be required;
- (e) discussing whether or not a hearing is required; and
- (f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

Power to determine the proceedings without a hearing

However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

- (a) may make a decision without a hearing if the First-tier Tribunal considers that—
 - (i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and
 - (ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties

2016 Act

51 First-tier Tribunal's power to issue an eviction order

(1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may or must find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

Grounds under Schedule 3 of the 2016 Act

Rent arrears

12(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

...

(3) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) for three or more consecutive months the tenant has been in arrears of rent, and

(b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.

(3A) Sub-paragraph (3B) applies where the First-tier Tribunal is satisfied—

(a) that the eviction ground named by sub-paragraph (1) applies, and

(b) that all or part of the rent in respect of which the tenant is in arrears as mentioned in that eviction ground relates to the period during which paragraph 5 of schedule 1 of the Coronavirus (Scotland) (No.2) Act 2020 is in force.

(3B) Where this sub-paragraph applies, in considering for the purposes of sub-paragraph (3)(b) whether it is reasonable to issue an eviction order against the tenant, the First-tier Tribunal is to consider the extent to which the landlord has complied with pre-action requirements before applying for the eviction order.

(4) In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

(5) For the purposes of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971),

(ii) a payment on account awarded under regulation 91 of those Regulations,

(iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,

(iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,

(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.

(6) In sub-paragraph (3B), “pre-action requirements” means such requirements as the Scottish Ministers may specify in regulations.

- (7) Regulations under sub-paragraph (6) may in particular make provision about—
- (a) information to be provided by a landlord to a tenant including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy,
 - (b) steps to be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,
 - (c) such other matters as the Scottish Ministers consider appropriate.

2. The Respondent has not made any representations and did not attend the CMD. The Respondent had fair notice of the representations of the Applicant forming the reasons for the application and has not challenged these. As no representations were received from the Respondent by the Tribunal, the facts of the case are not in dispute. This includes the rental statement up to 1 February 2022. There was no opposition to the order being granted. The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case. The Respondent was made aware that the Tribunal could consider the case on its merits and make a decision at the CMD. No defence was lodged to the application.

3. As the Notice to Leave was served after 7 April 2020 the case is subject to the provisions of the Coronavirus (Scotland) Act 2020. The documents lodged and the Direction are referred to for their terms and held to be incorporated herein. The Tribunal makes the decision on the basis of the documents lodged by the Applicant and her solicitor and the information given at the CMD.

4. In terms of S 54 of the Act a 6 months notice period applied. The Applicant had served the notice required in terms of S 56 of the Act on the local authority on 30 November 2021 and had complied with all formal requirements under the 2016 Act.

5. The Tribunal found that Ground 12 (2) of Schedule 3 and 3A of the 2016 Act applies in this case. This is a discretionary ground of eviction. There is clear evidence of the rent arrears accruing from November 2020 onwards to the date of the CMD. The Tribunal was satisfied that in terms of Ground 12 3(B) the Applicant has complied with all pre action requirements by sending numerous emails to the Respondent referring to the matters stated in the relevant Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. No payments apart from the payments listed in the rent statement submitted have been received and the Respondent has not engaged with the numerous attempts of the Applicant to resolve the matter. He has not provided any updates regarding his situation since 17 February 2021 and has not made any payments since 16 December 2020. The Respondent has not engaged in the process before the First-tier Tribunal and has not raised any issues as to why it would not be reasonable to grant an eviction order.

6. The landlord in this case has been both patient and pro-active in trying to manage the situation and in light of the complete failure of the Respondent to engage in any such attempts and in light of the prolonged and persistent failure to pay rent by the Respondent the Tribunal on balance considered that it is reasonable in all the circumstances to grant the eviction order.

7. In terms of S 51(1) of the 2016 Act the Tribunal thus grants the application for an eviction order as it is satisfied that one of the eviction grounds in schedule 3 of the Act applies. The Tribunal, having regard to the appeal period, determines that in terms of S 51(4) of the Act the tenancy ends on 6 August 2021.

Decision

The Tribunal grants an order for eviction in terms of S 51 of the Act on Ground 12 of Schedule 3 of the 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.



**Petra Hennig McFatridge
Legal Member/Chair**

**18 February 2022
Date**