



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Sections 51 and 71 of the Private Housing (Tenancies) (Scotland) Act 2016

**Chamber Ref: FTS/HPC/EV/19/2140
and
FTS/HPC/CV/19/2141**

Re: Property at 57/5 Waterfront Park, Edinburgh, EH5 1BA (“the Property”)

Parties:

Mr Mahin Rouf, 20 Manbey Park Road, London, E15 1EY (“the Applicant”)

Ms Louise Solway, 57/5 Waterfront Park, Edinburgh, EH5 1BA (“the Respondent”)

Tribunal Members:

Lynsey MacDonald (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for eviction and the order for payment of rent arrears should be granted.

1. Background

- 1.1. The Applicant sought an order for eviction and an order for payment in respect of rent arrears in relation to the property. An application in terms of Rule 109 (Private Residential Tenancy Eviction Order) was received by the Tribunal on 8th July 2019 (reference EV/19/2140). An application in terms of Rule 111 (Civil Proceedings in relation to a Private Residential Tenancy) was received by the Tribunal on the same date (reference CV/19/2141).
- 1.2. The Applicant lodged a copy of the tenancy agreement, a copy of the notice to leave together with proof of service, a copy of the section 11 notice together with proof of service, correspondence from the

Applicant to the Respondent, a rent statement, and copies of bank statements.

- 1.3. The two applications were conjoined, and the Tribunal fixed a Case Management Discussion in respect of both cases for 19th September 2019.
- 1.4. This Decision and Statement of reasons relates to both applications.
- 1.5. The Respondent was served with the letters informing her of the date of the Case Management Discussion, together with the aforementioned documents, by Sheriff Officer on 6th August 2019. The Respondent was advised that written representations were to be lodged by 27th August 2019. No responses have been received. The Respondent was also informed that she required to attend the Case Management Discussion, and that the Tribunal could at the Case Management Discussion make any decision on the application that could be made at the full Hearing, if the Tribunal had sufficient information and considered that the procedure had been fair.
- 1.6. On 10th September 2019 the Applicant intimated his intention to amend the sum sued for to £6,650, to reflect unpaid rent to the date of the Case Management Discussion. In support of the motion the Applicant lodged supplementary bank statements. The Applicant did not intimate the motion to amend to the Respondent, however the Tribunal sent a copy of the motion to the Respondent.

2. The Case Management Discussion

- 2.1. The Applicant did not attend the Case Management Discussion, but was represented by Mr Neil Mathieson, Solicitor.
- 2.2. The Respondent failed to attend at the Case Management Discussion and did not contact the Tribunal to explain her absence.
- 2.3. The Applicant invited the Tribunal to proceed in the absence of the Respondent, and to grant both orders.
- 2.4. The Tribunal was satisfied that the Respondent had wilfully failed to attend the Case Management discussion, and that it was fair to proceed in her absence.
- 2.5. The Applicant confirmed that there had been no further rent payments since the application had been lodged. He invited the Tribunal to grant the motion to amend the sum sued for, which reflected the sum outstanding at the date of the Case Management Discussion.

2.6. The Tribunal proceeded on the basis of the written documents which had previously been lodged, together with oral submissions from the Applicant in respect of those documents.

3. Findings in Fact

3.1. The Applicant and the Respondent entered into a tenancy agreement commencing on 9th March 2019. The tenancy agreement purported to end on 6th January 2020, with allowance for monthly continuation thereafter.

3.2. The tenancy agreement is a Private Residential Tenancy.

3.3. The rent payable under the tenancy agreement was £950 per calendar month.

3.4. The Respondent paid a deposit of £950 prior to moving into the property.

3.5. The Respondent made no rent payments in respect of the property.

3.6. On 5th June 2019 a Notice to Leave was served on the Respondent, indicating that proceedings would not be commenced before 4th July 2018.

3.7. The Respondent did not vacate the property.

3.8. On 8th June 2019 the amount of the rent arrears was £3,800. On 8th September 2019 the amount of the rent arrears was £6,650.

4. Reasons for Decision

4.1. There was nothing before the Tribunal challenging or disputing any of the evidence before it.

4.2. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act") provides that, *"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."*

4.3. Schedule 3, paragraph 12(1) and (2) of the 2016 Act provides that:
(1) *It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.*

(2) *The First-tier Tribunal must find that the ground named by subparagraph (1) applies if-*

- (a) *At the beginning of the day in which the Tribunal first considers the application for an eviction order on its merits, the tenant-*
- (i) *Is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day, and*
 - (ii) *Has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months;*
- (b) *The Tribunal is satisfied that the tenant's being in arrears or rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.*

- 4.4. The Tribunal accepts that the tenancy agreement provides that the Respondent is liable to pay rent to the Applicant at the rate of £950. She has failed to do so. Accordingly the Tribunal accepts that the sum of £6,650 is due to the Applicant.
- 4.5. The Tribunal accepts that the Respondent is in rent arrears of more than £950, which represents one month's rent.
- 4.6. The Tribunal accepts that the Respondent has been in rent arrears for a continuous period of more than three consecutive months.
- 4.7. There was no evidence that the rent arrears was wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
- 4.8. Accordingly the tribunal was satisfied that the grounds for eviction were met and that the Tribunal was required to grant the order for eviction.

5. Decision

- 5.1. The Tribunal grants the order for eviction.
- 5.2. The Tribunal grants the Applicant's motion to amend the sum sued for to £6,650.
- 5.3. The Tribunal grants the order for payment in the amended sum of £6,650.

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.M

Legal Member

19/09/19.

Date