



**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 (“the Act”)**

**Chamber Ref: FTS/HPC/EV/23/2165**

**Re: Property at 23 Springfield, Edinburgh, EH6 5SF (“the Property”)**

**Parties:**

**Mr Gareth Tao, 24 Kekewich Avenue, Edinburgh, EH7 6TZ (“the Applicant”)**

**Mr Ethan Hornibrook and Mr Matthew Hornibrook, 23 Springfield, Edinburgh, EH6 5SF (“the Respondents”)**

**Tribunal Members:**

**Jim Bauld (Legal Member) and Helen Barclay (Ordinary Member)**

**Decision (in absence of the Respondents)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for the order for possession should be granted**

**Background**

1. By application dated 29 June 2023, the applicant sought an order under section 51 of (“the Act”) and in terms of rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the procedure rules”). On 21 August 2023 the application was accepted by the tribunal and referred for determination by the tribunal.
2. A Case Management Discussion (CMD) was set to take place on 20 October 2023 and appropriate intimation of that hearing was given to all parties
3. The application was heard together with a conjoined application involving the same parties for a payment eviction order under tribunal reference FTS/HPC/CV/23/2166

## The Case Management Discussion

4. The Case Management Discussion (CMD) took place on 20 October 2023 via telephone case conference. The applicant did not take part personally in the telephone case conference but was represented by his solicitor, Ms Lynn Harrison from Beveridge and Kellas, solicitors, Edinburgh.
5. The tribunal then explained the purpose of the CMD and the powers available to the tribunal to determine matters and noted that Ms Harrison was aware of the purpose and powers.
6. The Respondents did not take part. By email dated 18 October 2023, the first name respondent, Matthew Hornibrook had requested that the case management discussion should be postponed and adjourned.
7. He indicated that he was currently temporarily overseas and unable to attend the meeting as he was unable to call the tribunal telephone number from overseas.
8. He sent a further email to the tribunal on the morning of 20 October, indicating that he had not received a response to his request. The tribunal chair requested that an email to be sent to Mr Hornibrook indicating that the tribunal was not willing to postpone based on the information he had so far provided and request him to provide further information confirming where he was, when did he book to go abroad, the reason for his trip, the reason why he was unable to telephone from abroad, and any reason why the request to postpone had only been made less than 48 hours before the tribunal. He was also asked to provide any proposals he had to resolve the matter. No further email was received from Mr Matthew Hornibrook.
9. The tribunal asked Miss Harrison to set out her position with regard to the request for the adjournment. She indicated that she wished the tribunal to proceed with the matter and to make a decision. She indicated that the respondent was making no proposal to deal with the arrears, nor had he provided any reason relating to his inability to take part in the telephone conference call. She also noted that the second respondent Ethan Hornibrook was still living in the property in Edinburgh and he had also not provided any written representation to the tribunal, nor had he attended the telephone case conference.
10. The tribunal was not willing to grant the adjournment requested by the second named respondent. The tribunal notes that rule 28 of the procedure rules gives the tribunal discretion to adjourn or postpone a hearing. That rule states that a party seeking adjournment must show good reason why such an adjournment is necessary and that the tribunal may adjourn on "cause shown"

11. The adjournment request by the respondent contained no reason at all which would justify the granting of the request. The date of the hearing had been intimated to both respondents on 13 September by sheriff officers. Neither of them had provided any written representations nor had they contacted tribunal to advise of any difficulties with attending.
12. The first contact from either of them was the email from Matthew Hornibrook which was sent less than 48 hours before the hearing. That email provided no explanation or reason which demonstrated that either or both respondents were unable to take part in the hearing.
13. The tribunal notes that in terms of its overriding objective, it requires to deal with the proceedings justly and to avoid delay. In light of the failure of the respondents to provide any written representations, or any proper reason for the adjournment request, the tribunal decided to refuse the request.
14. The tribunal therefore decided to continue to hear the application in the absence of the respondents in terms of rule 29 of the procedure rules
15. The tribunal asked various questions of the applicant's solicitor with regard to the application and the grounds for eviction contained within it
16. Ms Harrison set out the background to the application which related to extensive rent arrears which had accrued.
17. Arrears had started to accrue in January 2022 and at the date of service of the Notice to Leave amounted to £6,600.00.
18. At the date of the lodging of the application arrears amounted to £8,850.00
19. The tenant had been continuously in arrears from January 2022 until the date of the CMD.
20. The amount of arrears at the date of the CMD was £10,880
21. She advised the tribunal that the respondents had made some payments in September 2023 towards rent and arrears, which were the first payments they had made since June 2023. She advised the tribunal that the landlord's mother, who manages the property on his behalf, had received some recent emails from Matthew Hornibrook. An email of 23 September had indicated that he had made certain payments and that he would shortly be undertaking a business trip to Uganda and Dubai. He indicated that he hoped that trip would allow him to obtain funds to deal with the rent arrears and that the landlord could now be satisfied that ongoing payments will be made.
22. Miss Harrison advised the tribunal that a further email has been sent by Mr Hornibrook on 6 October indicating that he expected to travel to Dubai from Uganda on 8 October and that again he was looking to pay the rental arrears.

However no payments had been made in the last three weeks and arrears were continuing to accrue.

23. No formal proposal to deal with ongoing rent arrears had been made nor had any explanation been tendered to explain the accrual of the extensive rent arrears which existed.
24. Miss Harrison advised the tribunal that it was her position that it was reasonable to evict. The arrears were excessively high and now amounted to almost a full year's rent. She wished the order to be granted only on ground 12A in order that the landlord could recover position without being affected by the current eviction moratorium. She believed the joint tenants were brothers who were originally from Australia. She was unaware of any reason which was preventing them paying rent. She believed Ethan to be a student at university. Neither were in receipt of any state benefits. She was unaware of any health issues which affected them or would make them vulnerable if an eviction order was granted.
25. The solicitor confirmed that she wished the order for eviction to be granted based on ground 12A as set out within schedule 3 of the Act.

## **Findings in Fact**

26. The Applicant is the registered owner of the property
27. The Applicant and the Respondents as respectively the landlord and tenants entered into a tenancy of the property which commenced on 18 September 2021
28. The tenancy was a private residential tenancy in terms of the Act
29. The agreed weekly rental was £250
30. On 20 April 2023, the applicant served upon the tenants a notice to leave as required by the act. Service was effected by sheriff officers. The Notice became effective on 22 May 2023.
31. The notice informed the tenants that the landlord wished to seek recovery of possession using the provisions of the Act.
32. The notice was correctly drafted and gave appropriate periods of notice as required by law.
33. The notice set out various grounds contained within schedule 3 of the Act, including grounds 12 (that the tenant had been in arrears of rent for three or more consecutive months) and ground 12A (that the tenant has substantial rent arrears and the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent due under the tenancy on the date that the notice to leave is served on the tenants).

34. Arrears had started to accrue in January 2022 and at the date of service of the Notice to Leave amounted to £6,600.00.
35. At the date of the lodging of the application arrears amounted to £8,850.00
36. The tenant had been continuously in arrears from January 2022 until the date of the CMD.
37. The amount of arrears at the date of the CMD was £10,880
38. The basis for the order for possession on both grounds 12 and 12A was thus established.

### **Reasons for Decision**

39. The order for possession sought by the landlord was based on two grounds specified in the Act and properly narrated in the notice served upon the tenant. The tribunal was satisfied that the notice had been served in accordance with the terms of the Act and that the landlord was entitled to seek recovery of possession based upon those grounds.
40. The tribunal accepted the unchallenged evidence presented on behalf of the landlord with regard to the rent arrears. A rent statement was produced which set out the history of the arrears. Since January 2022, the respondents had regularly failed to pay the rent as it fell due and significant arrears have accrued.
41. The tribunal was satisfied that the tenant had been in arrears for a period far in excess of three consecutive months and the arrears owed at the date of the service of the notice to leave exceeded six month's rent. The grounds for eviction based on rent arrears were both accordingly established.
42. The applicant's solicitor indicated that she sought eviction solely on the basis of ground 12A. This would allow any eviction order granted to be enforced without it being affected by the provisions of the Cost of Living (Tenant Protection) (Scotland) Act 2022 which has introduced a moratorium on certain eviction orders.
43. An eviction order on this ground can only be granted if the Tribunal is also satisfied that it is reasonable to issue an eviction order on account of that fact.
44. In determining whether it is reasonable to grant the order, the tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties.
45. The Tribunal has a duty, in such cases, to consider the whole of the circumstances in which the application is made. It follows that anything that

might dispose the tribunal to grant the order or decline to grant the order will be relevant. This is confirmed by one of the leading English cases, *Cumming v Danson*, ([1942] 2 All ER 653 at 655) in which Lord Greene MR said, in an oft-quoted passage:

***“[I]n considering reasonableness ... it is, in my opinion, perfectly clear that the duty of the Judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad commonsense way as a man of the world, and come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or no weight, others may be decisive, but it is quite wrong for him to exclude from his consideration matters which he ought to take into account”.***

46. In this case the tribunal finds that it is reasonable to grant the order.

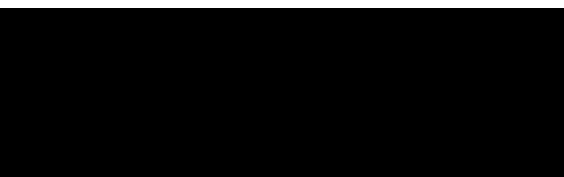
47. The level of arrears is extremely high and it is unlikely that the arrears will ever be repaid. There is no suggestion that the tenant is making any attempt to meet the rent. They have made no proposal to deal with the arrears. They have provided no explanation for their failure to fully meet their rental obligations for a period which now exceeds twenty months. They have lodged no written representations with the tribunal despite being offered the opportunity to do so.

48. In this case the tribunal has no hesitation in finding that it is reasonable to grant the order. The tribunal decided, in balancing the various rights of both parties, that the balance fell in favour of the landlord

49. The tribunal decided to exercise the power within rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that a final order should be made at the CMD

## **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.**



**Legal Member/Chair**

\_\_\_\_\_  
**Date**

