



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/23/1862

Re: Property at Flat 2, 19 Seacole Square, Edinburgh, EH16 4ZG (“the Property”)

Parties:

PFPC MMR 1 LP, 1 Hay Avenue, Edinburgh, EH16 4RW (“the Applicant”)

Mr Ross Paterson, Flat 2, 19 Seacole Square, Edinburgh, EH16 4ZG (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and issued an Eviction Order against the Respondent.

Background

1. By application, dated 5 June 2023, the Applicants sought an Order for Possession of the Property under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”). The Ground relied on was Ground 12 of Schedule 3 to the Act, namely that the Respondent was in arrears of rent over three consecutive months.
2. The application was accompanied by a copy of a Private Rented Tenancy Agreement between the Parties commencing on 8 October 2021 at a monthly rent of £775, and a Notice to Leave, dated 7 March 2023, advising the Respondent that the Applicants were seeking an Eviction Order under Ground 12 of Schedule 3 to the Act and that an application to the Tribunal would not be made before 6 April 2023. The Notice to Leave stated that the arrears stood at £4,000.49. No payments had been received since November 2022. The application also included a Rent Statement showing arrears at the date of application of £5,634.19 and the current rent as £816.85 per month.

3. On 27 September 2023, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 18 October 2023. The Respondent did not make any written representations to the Tribunal.
4. On 2 October 2023, the Applicants' solicitors sought leave to amend the application to include Ground 12A of Schedule 3 to the Act and provided an updated Rent Statement showing arrears of £8,814.14 at 1 October 2023. The email seeking leave to amend was copied to the Respondent by the Applicants' solicitors, who also provided a copy of a new Notice to Leave emailed to the Respondent at 08.40 on 26 May 2023, which advised the Respondent that Ground 12A would be relied upon as an Eviction Ground and attached a Rent Statement showing arrears of £5634.19.

Case Management Discussion

5. A Case Management Discussion was held by means of a telephone conference call on the afternoon of 1 November 2023. The Applicants were represented by Mr Kenneth Caldwell of Patten & Prentice LLP, solicitors Greenock. The Respondent was not present or represented.
6. The Applicants' representative told the Tribunal that the arrears remain at £8,814.14, although the next payment was due today. Only one payment had been made in the last year. He advised the Tribunal that he understood that, when the Respondent received the Notice to Leave, he had indicated that he would pay £3,000 by 28 April 2023 and would make double rent payments thereafter until the arrears were cleared, but that he had only made the one payment of £1,000 since that date. Mr Caldwell told the Tribunal that he was seeking an Eviction Order under Ground 12A alone and no longer wished to proceed under Ground 12.

Reasons for Decision

7. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.
8. Section 51 of the 2016 Act states that the 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.
9. Ground 12A of Schedule 3 to the Act states that it is an Eviction Ground that the tenant is in substantial rent arrears and that the Tribunal may find that Ground 12A applies if the tenant has accrued rent arrears under the tenancy in respect of one or more periods, the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent under

the tenancy when Notice to Leave is given to the tenant on this ground in accordance with section 52(3) of the Act and the Tribunal is satisfied that it is reasonable to issue an Eviction Order. In deciding 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 or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

10. In their email of 2 October 2023, the Applicants had sought permission to amend the application to include Ground 12A and this request was copied to the Respondent. The Tribunal was content to consent to the amendment and allow Ground 12A to be included in the application.
11. The Tribunal was satisfied that, at the date and time of sending of the revised Notice to Leave, the rent arrears exceeded the equivalent of 6 months' rent and that no evidence had been produced to indicate that the Respondent's being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
12. The Tribunal noted that the Respondent had not made any written representations and had chosen not to be present or represented at the Case Management Discussion. The arrears were very substantial and only one payment had been made since November 2022. Accordingly, having considered all the information before it, the Tribunal decided that it would be reasonable to issue an Eviction Order under Ground 12A of Schedule 3 to the Act.
13. The Tribunal's Decision was unanimous.

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 1 November 2023