



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/CV/23/1621

Re: Property at 7/4 Sandilands Close, Edinburgh, EH16 4HS (“the Property”)

Parties:

**Manor Estates Associates Limited, 11 Washington Lane, Edinburgh, EH11 2HA
 (“the Applicant”)**

**Mr Enrique Gimenez Golfe, 7/4 Sandilands Close, Edinburgh, EH16 4HS (“the
 Respondent”)**

Tribunal Members:

Richard Mill (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
 Tribunal”) granted an order against the Respondent for payment to the
 Applicant the sum of Six Thousand One Hundred and Fourteen Pounds and
 Fifteen Pence (£6,114.15), plus interest at the rate of 4% per annum**

Introduction

1. These are linked applications relating to the same property and are between the same parties. The first application is under rule 65 and section 18 of the Housing (Scotland) Act 1988. The application seeks an eviction order. The second application is under rule 70 and section 16 of the Housing (Scotland) Act 2014. The application seeks recovery of rent arrears.
2. Intimation of the applications and of the Case Management Discussions (‘CMDs’) were effected upon the respondent by Sheriff officers on 16 October 2023.

3. The applicant was represented by Miss Kirstie Donnelly of TC Young Solicitors. The respondent failed to participate in the hearing. There was no known barrier to him doing so.

Findings and Reasons

4. The tribunal attached weight to the entirety of the documentary evidence which is not the subject of challenge. This was found to be both credible and reliable.
5. The property is 7/4 Sandilands Close, Edinburgh EH16 4HS. The applicant is Manor Estates Associates Limited who is the heritable proprietor and registered landlord of the property. The respondent is Mr Enrique Gimenez Golfe who is the tenant.
6. The parties entered into an assured tenancy which commenced on 11 July 2017. The agreed rent was initially £583 per month, which has been the subject of subsequent rent increases.
7. During the subsistence of the tenancy, the respondent has fallen into significant rent arrears. In earlier proceedings under reference FTS/HPC/CV/21/2881 an order for payment was awarded in favour of the applicant in the sum of £1,084 on 25 May 2022.
8. The respondent was in arrears to the extent of £5,317.15 as at the date of application. A rule 14 A amendment application was timeously submitted to the tribunal on 30 October 2023 increasing the sum sought, reflective of ongoing rent arrears less the sum awarded previously, to £6,114.15. That is the sum sought in the recovery application.
9. The applicant seeks to recover the arrears of rent lawfully due under and in terms of the lease. The applicant is entitled to do so. The applicant also seeks interest. 4% per annum is an appropriate rate of interest to be imposed by the tribunal.
10. In terms of section 19 of the Housing (Scotland) Act 1988 the applicant served a Form AT6 under Ground 8A providing notice of its intention to raise proceedings for possession of the property. Said notice of intention to raise proceedings was dated 8 February 2023. In terms of the said notice, the eviction proceedings were not to be raised on or before 12 April 2023. The said notice was served on the respondent by Sheriff Officers on 9 February 2023.
11. Section 18(6) of the Housing (Scotland) Act 1988 states that the tribunal shall not make an order for possession of a house not being a statutory assured tenancy unless the terms of the tenancy make provision for it to be brought to

an end on the ground in question. As adequate provision was not provided therein, the Form AT6 was served alongside a notice to quit in order to convert the tenancy to a statutory assured tenancy. In terms of the said notice to quit the applicant gave notice to the respondent that he was required to remove from the property on or before 12 April 2023.

12. The terms of clause 4 of the tenancy agreement entered into between the parties the respondent undertook to pay rent at the initial agreed rate of £634 per month (once subject to rent increases). The arrears outstanding as at the date of the notice of proceedings were £4,051.31. The arrears outstanding as at the date of raising the eviction application, were £5,317.15, and they have now risen to £7,851.15 as at today's hearing.
13. Substantial rent arrears for the purposes of ground 8A is defined as being where the cumulative amount of rent arrears which equates to, or exceeds, an amount equivalent to 6 months' rent under the lease agreement where notice is given to the tenant on this new ground. This is established. This means that any eviction is not affected by the additional time protections of the Cost of Living (Tenant Protection) (Scotland) Act 2022.
14. Prior to raising the current proceedings, the applicant has evidenced compliance with the rent arrears pre-action requirements. There is a long history of the respondent being in rent arrears and has continuously been in arrears since December 2019. Throughout the tenancy the applicant is evidenced to have made reasonable attempts to agree a suitable payment arrangement and to advise the respondent with regards to his rights and where he can source advice.
15. The tribunal considered whether granting the eviction would be reasonable. It is unreasonable that the applicant should continue to make the property available for the respondent in the absence of rent being paid.
16. The respondent is in his 40s. He is a single man with no known disabilities and no dependants. He is believed to be employed given enquiries made as at September 2023. He is aware of the application to evict and has chosen not to defend it and had lodged no written submissions.
17. A section 11 notice under the Homelessness etc (Scotland) Act 2003 has been issued to the local authority. In the event of an eviction order being made it is under a statutory duty to make suitable alternative accommodation available for the respondent.
18. The tribunal concluded in all of the circumstances that it was reasonable to grant the eviction order.

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.

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17 November 2023

Legal Member/Chair

Date