



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016.

Chamber Ref: FTS/HPC/EV/23/3063

Re: Property at 102 Morvenside, Edinburgh, EH14 2SQ (“the Property”)

Parties:

Anita Khadka, Mr Saurav Sthapit, 21 Eastwood Grove, Rugby, CV21 4DP (“the Applicant”)

Myra Hunter, Mr Robert Hunter, 102 Morvenside, Edinburgh, EH14 2SQ; 102 Morvenside, Edinburgh, EH14 2SQ (“the Respondent”)

Tribunal Members:

Karen Kirk (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Eviction Order against the Respondents.

This Hearing was a Case Management Discussion fixed in terms of Rule 17 of the Procedure Rules and concerned an Application under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (hereinafter referred to as “the 2016 Act”) for an Eviction Order. The purpose of the Hearing being to explore how the parties dispute may be efficiently resolved. The purpose of the hearing was explained and it was understood a final decision on the Application could also be made.

1. Attendance and Representation

The Applicants were not present and were represented by David Gray, Gilson Gray LLP, 29 Rutland Square, Edinburgh, EH1 2BW.

The Respondents were not present. They were served personally by Sheriff Officer on 18th October 2023. They have not provided any written representations to the Tribunal.

2. Preliminary Matters

The Applicant's representative said there had been no recent contact with the Respondent. Southside Property Management are the managing agents who had some contact before April 2023 about working with the Respondents on condition issues with the property. A Payment Order was recently granted against the Respondents for rent arrears but the Respondents did not engage with the process.

The Applicant's representative was satisfied that the Respondents remained in the property.

The Applicant's representative confirmed he had lodged an up to date rent statement dated 1st October 2023 showing rent arrears due of £5200.

There were no other preliminary matters raised.

3. Case Management Discussion.

For the Applicant

The Applicant's representative submitted he sought an order for Eviction based on rent arrears, Ground 12. The Respondents have been in arrears for almost 6 months. The last payment to rent was in August. The Applicant's representative submitted there are been no payments to the arrears or a plan to repay rent arrears. The Applicant's representative said the Applicants are not in a position to sustain no payment of rent. The Applicants live in England and the property is their previous home. The failure to pay rent for the property has had a significant effect on the Applicants as there is a mortgage on the property.

The Applicant's representative said the Respondents have not engaged. The managing agents just prior to the service of Notice to Leave had contact re the condition of the property. They had asked for a plan re the condition of the property and no proposals or engagement followed. The Applicant's representative said that Mr Hunter is employed and Mrs Hunter not employed but he believes she receives a disability benefit payment. There are no dependents.

4. Findings in Fact

- 1. The Tribunal was satisfied that a decision could be made at the Case Management Discussion and that to do so would not be contrary to the interests of the parties having regard to the Overriding objective. The**

Respondents had received notification of the proceedings personally by Sheriff Officer on 18th October 2023 and had not challenged same by written representations or attendance.

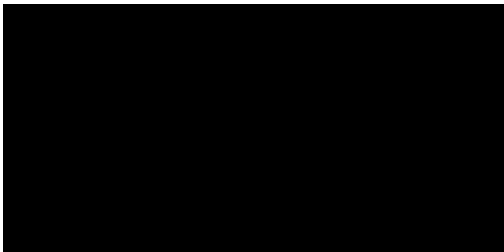
2. The Applicants sought an Order for Eviction on the grounds of rent arrears.
3. The Tribunal was satisfied that the Applicant was the heritable proprietor of the Property as a copy title was lodged with the Application.
4. There was a PRT in place between parties dated 25th March 2019. A Notice to Leave was sent to the Respondent on 3rd August 2023 .
5. The Tribunal was satisfied on balance that the Respondents were in terms of Schedule 3, Part 3 Ground 12 of the 2016 Act at the beginning of the day the Tribunal first considered the application for an Eviction Order on its merits in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rents under the tenancy on that day and has been in arrears of any amount for a continuous period of up to 3 or more consecutive months.
6. At the date of the application on 4th September 2023 the Respondent was in rent arrears to the amount of £4,410. As at 1st October 2023 the rent arrears due by the Respondents are £5200.
7. Further the Tribunal was satisfied on a balance of probabilities that the said arrears are not wholly or partly due to delay or failure of payment of the relevant benefit.
8. The Tribunal found that the requirements of Ground 12 of Schedule 3 to the Act had been met.
9. Further the Tribunal was satisfied that in terms of Section 52 of the 2016 Act a valid Notice to Leave had been given to the Respondent by valid means and the Application had been raised after the correct notice period.
10. The Tribunal noted the Local Authority under the 2011 Act had been notified.
11. On the information given to the Tribunal by the Applicants had previously resided in the property as their home before moving to England. They have no other properties which they rent out. The Applicants have a mortgage on the property and are not able to manage without rental payments. The Respondents have no dependents and at least one of the Respondents is in employment. The Tribunal found an Order was reasonable in terms of the Coronavirus (Scotland) Act 2020.
12. Accordingly, in terms of Section 51 of the 2016 Act the Tribunal granted an Eviction order against the Respondent.
13. The Application will be affected by the Cost of Living (Tenant Protection)(Scotland) Act 2022 and the order cannot be enforced except in accordance with same.

5. Reasons for Decision

The Tribunal heard credible evidence of the Applicant's representative that the Respondents have been in rent arrears for almost 6 months. Ground 12 was met and established by the rent statements lodged. The Tribunal weighed up the circumstances and determined on balance that an order for Eviction was reasonable but would be subject to Cost of Living (Tenant Protection)(Scotland) Act 2022.

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

Date: 20/11/2023