



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/24/3379

Property : 44 Rosslyn Crescent, Edinburgh EH6 5AX (“Property”)

Parties:

Martin Mellor and Ewan Halley, Mid Danna, Tayvallich, Lochgilphead, Argyll PA31 8PQ (“Applicant”)

Mattac Ltd, 93 George Street, Edinburgh EH2 3ES (“Applicant’s Representative”)

Steven Sibbald, 44 Rosslyn Crescent, Edinburgh EH6 5AX (“Respondent”)

Tribunal Members:

Joan Devine (Legal Member)

Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined to grant an order for possession of the Property.

Background

1. The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: a Tenancy Agreement which commenced on 1 July 2023 (“Tenancy Agreement”); Notice to Leave addressed to the Respondent under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”) dated 15 May 2024 (“Notice to Leave”) with covering email addressed to the Respondent dated 22 May 2024; sheriff officer certificate of service of the Notice to Leave on 16 May 2024; statement of rent arrears; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering letter dated 24 July 2024.
2. A Case Management Discussion (“CMD”) took place on 9 January 2025. Reference is made to the note of the CMD. The outcome of the CMD was that the Tribunal refused the motion to include Ground 11 in the application as a

ground for eviction, a Direction was issued and a continued CMD was fixed for 11 June 2025.

3. The Applicant's Representative lodged a response to the Direction on 30 January 2025. On 6 February 2025 the Respondent sought an extension of time to lodge a response to the Direction. On 18 March 2025 the Respondent lodged two written representations, one timed at 13.27 and one at 17.57. On 11 June 2025 at 08.24 the Respondent lodged a further written representation.

Continued CMD

4. A continued CMD took place before the Tribunal on 11 June 2025 by teleconference. Martin Mellor of the Applicant was in attendance as was the Respondent. The Applicant was represented by Paul McIntosh of the Applicant's Representative. Reference is made to the note of the continued CMD. The outcome was that the Tribunal fixed an evidential hearing to take place on 14 October 2025 and issued a Direction.
5. The Respondent lodged a response to the Direction on 25 July 2025. The Applicant's Representative lodged a response to the Direction on 22 August 2025.

Hearing on 14 October 2025

6. A Hearing took place at George House, George Street, Edinburgh on 14 October 2025. The case was conjoined with FTS/HPC/CV/24/3377. Reference is made to the Decision in that case dated 20 October 2025.
7. Mr McIntosh firstly addressed the issue of the validity of the notice to leave. He said that in order for the notice to be valid, sufficient notice required to have been given to the Respondent. He said that there was no suggestion that insufficient notice had been given. Mr McIntosh then addressed the question of whether or not the Respondent was sufficiently in arrears at the date of service of the notice to leave and submitted that the Respondent was sufficiently in arrears of rent at the relevant date. He referred to the submission for the Respondent lodged on 29th July 2025 at paragraph 11 where the Respondent referred to there being enforceable arrears of £8,850. Mr McIntosh said that the Parties agreed that the rent was £1350 per month. He said that the notice to leave was served by Sheriff Officer on 16th May 2024 and by e-mail on 22nd May 2024. He said that the last rental payment had been received on 15th August 2023 and therefore it was irrefutable that more than three months' rent was in arrears at the date of service of the notice to leave.

8. As regards the date at the bottom of page one of the notice to leave which was stated to be 27th April 2022, Mr McIntosh submitted that at the date of service of the notice to leave the Applicant considered that date to be correct but on reflection they considered that the date should be 13th August 2022. Mr McIntosh submitted that in any event the date did not materially affect the effect of the notice to leave. He referred to section 73(1) of the 2016 Act. Mr McIntosh noted that the notice to leave referred to rent arrears of £16,800. He said that the arrears statement lodged shows that the arrears at that time should actually have been £15,450. He said the difference between the two figures was the difference between the updated date of 13th August 2022 from 27th April 2022 which he said reduced the arrears by £1350.
9. The Tribunal asked how it was that the tenancy came into existence. Mr Mellor told the Tribunal that the Property was let on Air BnB as a short stay let. He said that initially the Respondent occupied another property managed by the Applicant on Rodney Street. Thereafter he occupied the Property from October 2020. He said that the Applicant had moved to Argyll but were in Edinburgh on occasion and stayed in the Property for short periods during those visits. He said that informal agreements were made with the Respondent in terms of which his short stays in the Property were extended. He said that the Applicant always retained part of the Property for their exclusive use. He said that one bedroom, an office and a room at the back of the Property were locked and not available for the Respondent to use.
10. Mr Mellor told the Tribunal that the usual practice with Air BnB lettings was that utilities were included in the rental figure but in this case the Parties agreed that utilities would be charged on top of the rental. He said he would send a screenshot of the utility costs to the Respondent who would pay a proportion of the utility costs based on his period of occupation. Mr Mellor said he thought that the last time the Applicant had stayed in the Property was April 2022 but on reflection it was August 2022. He said that there were no written agreements between the Parties regarding these short term lets. He said that the Applicant were of the view that a private residential tenancy ("PRT") began in August 2022 although it was not until June 2023 that the formal document was signed by the Parties.
11. Mr Mellor told the Tribunal that the rent was initially £1250 per month and was increased to £1350. He said the figure in the PRT was £2000. He said that this figure was agreed as the Respondent had fallen behind with payment of utilities. He said that the Respondent challenged the rent of £2000 due to the rent freeze that had been in place. He said that the Applicant accepted that and the rent was reduced to £1350. He referred to copy emails lodged dated 19 and 26 February 2024. He said that at the date of service of the notice to leave he was working on the basis of the rent being £1350 per month.

12. Mr Mellor told the Tribunal that at the time the PRT was signed, there were no rent arrears but utilities were in arrears. He said that the Respondent took on responsibility for the utilities from 1 July 2023. He said that the situation was unusual but communications between the Parties were good.
13. The Tribunal noted the Respondent's submissions referring to a payment of £6000 having been made by the Respondent. Mr McIntosh said that two payments of £3000 each had been made on 7 April 2022. He referred to copy bank statements lodged. He said that this payment cleared the arrears as at April 2022.
14. Mr Sibbald submitted that the notice to leave was invalid. He said he had lived in the Property since January 2021. He said he paid rent and kept his belongings in the Property. He confirmed that the Property was to let on Air BnB. He said he initially stayed in a property at Rodney Street and then moved into the Property. He said that he did move out for days at a time but he still paid rent and kept belongings in the Property. He confirmed that certain rooms were not available for his use.
15. Mr Sibbald submitted that the notice to leave was invalid. He said that the wrong date on page 1 of the notice to leave went to the core of materiality. He said that it did affect the effect of the document. He said that it forms the foundation of the document. The Tribunal asked what the arrears of rent were at the date of service of the notice to leave. Mr Sibbald said that in May 2024 he did not have a calculation of the arrears but he knew the figure stated was wrong. He said he estimated the arrears were in the region of £8500 at that time. Mr Sibbald submitted that the arrears figure of £16,800 in the notice to leave was wrong. He said that the document which he had lodged showed that payments had been made of £2000 in February, March, April and June 2023. He said that the payments made during that period were rent only and did not contain any element of utilities.
16. Mr Sibbald told the Tribunal that the £6000 paid in April 2022 was for rent arrears and the payment reduced what was then owed to zero. He said he did not know what was outstanding for utilities in April 2022. Mr Sibbald said that the last rental payment made was on 15 September 2023.
17. Mr Sibbald submitted that for the notice to leave to be valid the difference between £2000 per month and £1350 per month should be deducted for the period he paid rent of £2000 which was February, March, April and June 2023. That totalled £2600. The Tribunal asked Mr Sibbald why he paid £2000 per month at that time. He said that he had accepted the rent increase from February 2023. He said that between October 2022 and January 2023 he

paid £1750 per month. In addition to the £2600, Mr Sibbald submitted that £4200 should be deducted from any arrears in respect of rent charged by the Applicant during the period that they were not registered as a landlord.

18. The Tribunal noted that in submissions the Respondent referred to s.93 of the Civic Government (Scotland) Act 1982 in support of the Respondent's argument that the Applicant were not entitled to payment of rent during a period that they were not registered landlords for the Property. The Tribunal noted that the section referred to did not relate to landlord registration but to fire precautions in common stairs. The Tribunal noted that landlord registration was referred to in S.93 of the Antisocial Behaviour etc (Scotland) Act 2004 which stated that it was an offence to operate as a landlord without registration. The Tribunal noted that s94 of the 2004 Act sets out the circumstances under which no rent is payable. The Tribunal noted that the section provides that when a landlord is not registered, the local authority can serve notice on the landlord as owner of a property and the effect of the notice is that no rent is payable under any lease or occupancy arrangement in respect of that property. The Tribunal asked Mr Sibbald if such a notice had been served. He said that it had not.
19. The Tribunal noted that in written submissions the Respondent had referred to section 16 of the 2016 Act as giving the Tribunal some relevant discretionary power. The Tribunal noted that section 16 relates to applications made by a tenant for a landlord to perform the duties set out in sections 10 or 11 to provide written terms of a tenancy and to provide specified information. The Tribunal noted that section 16 is only engaged if an application is made. Mr Sibbald confirmed that he had not made an application under section 16. The Tribunal asked what was the relevance of the reference to section 16. Mr Sibbald said that it limited the period of registration.
20. The Tribunal asked the Respondent to comment on whether or not it was reasonable for an eviction order to be granted. Mr Sibbald said that it was not reasonable for an order to be granted as he had paid £50,000 for the period he had occupied the Property. He said that since the arrears began to accumulate he had been harassed by the Applicant who had also offered various settlements and alternative accommodation. He said that the Applicant had "door stepped" his father. He said that these things all happened in January and February 2024. Mr Sibbald referred to forced entry by the police.
21. The Tribunal asked the Respondent about his personal circumstances in response to which he told the Tribunal that he lives in the Property with his 14 year old son. He said that the Property is now his son's permanent home. He said that he is in the process of having child benefit paid to him. He said that

he had applied for universal credit and housing benefit. He said that his application to the Department of Work and Pensions had been made in the last week or so. He said that he is not in employment. He said he has been a self employed management consultant for some time but his last contract ended a few months ago. He said that he is not receiving income from any source. He said that he had not set aside any money in respect of the arrears of rent. He said he had had an exchange of emails with the local authority about housing but they did not consider him to be homeless. He said he had not looked at the social rented sector but had looked at possible alternatives in the private rented sector. Mr Sibbald was asked whether he had any health issues of which the Tribunal should be aware. He said that he is autistic and has no physical disabilities.

22. Mr McIntosh was invited to comment on reasonableness. He referred to chapter 4 of the written submission lodged on 22 August 2025. He referred to point 8 and said the Applicant have not been able to access the Property since 13 August 2022. He said they have requested access for inspections but requests have been denied. He said that a gas safety check had now been carried out but the EICR is overdue. He submitted that the accusations of harassment were denied and were in any event irrelevant. He said that the Applicant became genuinely concerned about the Respondent's welfare when communication from the Respondent stopped. They therefore asked the police to carry out a welfare check. He submitted that the high level of arrears indicated it was reasonable to grant an order for eviction. He said the arrears are £38,400 as at 30 September 2025.
23. The Tribunal noted that the Respondent had referred to a number of previous decisions of the Tribunal in his written submissions none of which the Tribunal had been able to locate which was why Tribunal administration had asked Parties to lodge copies of any authorities on which they intended to rely at the hearing. Mr Sibbald said that he had submitted copies of 4 decisions the previous day. Mr McIntosh confirmed he had received a copy but none of the copy decisions produced were in respect of the cases referred to in the Respondent's written submissions. He noted that all 4 of the decisions related to cases where the issue was whether the ground for eviction existed at the date of service of the notice to leave which was not the point at issue in the current case. Mr Sibbald submitted that the cases lodged supported his argument that accuracy in the notice to leave is a requirement. He submitted that s.73 of the 2016 Act forgives minor errors and does not rescue material errors which change the fabric of the document.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent entered into a Private Residential Tenancy Agreement which commenced on 1 July 2023.
2. The Respondent had occupied the Property for a period before 1 July 2023 firstly under a series of short term lets and then under an unwritten private residential tenancy.
3. The monthly rent payable by the Respondent to the Applicant was £1,250 and was increased to £1,350 on or about June 2022.
4. The monthly rent stated in the Private Residential Tenancy Agreement which commenced on 1 July 2023 was £2000 per month.
5. By emails dated 19 and 26 February 2024 the Parties agreed that the rent that should be payable in terms of the Private Residential Tenancy Agreement which commenced on 1 July 2023 was £1350 per month.
6. The Respondent did not pay rent to the Applicant between 28 September 2023 and 28 September 2025.
7. The Notice to Leave was served by sheriff officer on 16 May 2024.
8. At the date of service of the Notice to Leave and the date of making the Application, the Respondent had been in rent arrears for three or more consecutive months.
9. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 24 July 2024.

Findings in Fact and Law

1. The incorrect date stated at the bottom of page 1 of the Notice to Leave did not affect the effect of the Notice to Leave dated 15 May 2024.
2. The Notice to Leave dated 15 May 2024 is valid.
3. In the circumstances of the case it is reasonable to grant an order for possession of the Property.

Reasons for the Decision

24. In terms of section 51 of the 2016 Act, the First-tier Tribunal may 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. In the Notice to Leave the Applicant stated that they sought recovery of possession of the Property on the basis set out in ground 12 which is that the tenant has been in rent arrears for three or more consecutive months.
25. The Respondent's position was that the Notice to Leave was invalid for two reasons. Firstly because the date at the bottom of page one of the notice was wrong and secondly because the figure stated to be the rent arrears at part 3 of the notice was wrong.
26. What is stated at the bottom of page 1 of the notice is "*The tenant(s) has lived in the property since : 27 April 2022.*" Section 62 of the 2016 Act sets out the meaning of "notice to leave". Section 62 says that the notice must be in writing, specify the day the landlord expects to become entitled to make an application for an eviction order, states the eviction ground founded upon and fulfils any other requirements prescribed by the Scottish Ministers in regulations. The form of a notice to leave is set out in schedule 5 of the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017. The Notice to Leave in this case was in the prescribed form.
27. Schedule 1 to the 2106 Act sets out the tenancies which cannot be a PRT. They include holiday lets and tenancies where the tenant shares accommodation with the landlord. The Respondent first occupied the Property under a series of short terms lets. There came a point when both parties were of the view that a PRT had come into existence. The Applicant considered that date to be 27 April 2022 at the date of service of the Notice to Leave but on reflection revised that date to 13 August 2022. The Respondent did not specify a date from which, in his view, a PRT came into existence but in his written submissions he said that the execution of the PRT which commenced on 1 July 2023 was a formalisation of an existing lease.
28. In terms of section 73 of the 2016 Act an error in the completion of a document to which section 73 applies (which includes a notice to leave) does not make the document invalid unless the error materially affects the effect of the document. The Tribunal did not consider that an error in the date stated at the bottom of page 1 of the Notice to Leave materially affected the effect of the Notice to Leave.

29. Section 73 of the 2016 was considered in some detail by the Upper Tribunal in *Halcrow and Halcrow v Davies and Hunter* 2025 UT68. At paragraph 26 Sheriff Collins KC said : “*Materiality is a matter of degree, requiring consideration and determination of all relevant facts and circumstances. This is not to be avoided by labelling certain aspects of the notice as ‘fundamental’. In principle I can see no good reason why consideration of materiality must be confined with the four corners of the notice itself, and why it should not be relevant, in assessing it, to consider any evidence indicating prejudice to the party receiving the notice – or its absence.*” The evidence before the Tribunal did not indicate that the Respondent suffered any prejudice as a result of an error in the date at the bottom of page 1 of the Notice to Leave.
30. At part 2 of the Notice to Leave the Applicant had indicated that ground 12 – you are in rent arrears over three consecutive months – was the ground for eviction relied upon. At part 3 of the notice the Applicant stated that the arrears were £16,800 as at 3 May 2024. A statement of rent arrears was attached. The Respondent’s position was that the figure of £16,800 was wrong. His evidence was that he estimated the arrears in May 2024 were in the region of £8,500 which the Tribunal notes equates to more than 6 months rent. It was also the Respondent’s evidence that no rent had been paid since 15 September 2023. On that basis, in May 2024 at least 9 months rent was unpaid which totals £12,150.
31. The Respondent’s submission was that for the Notice to Leave to be valid, two sums required to be deducted from the arrears figure. Firstly, £2,600 in respect of rent overpaid in February, March, April and June 2023 and secondly £4,200 in respect of rent paid during a period when the Applicant was not registered as a landlord in respect of the Property. The Tribunal notes that if those figures were deducted from the stated arrears of £16,800, the balance remaining would be £10,000 which is more than 7 months of rent arrears.
32. It seemed to the Tribunal that all of the calculations put forward by the Parties as to what the rent arrears were at the date of service of the Notice to Leave each established that the rent had been in arrears over three consecutive months, and therefore the ground for eviction was established, at the date of service on 16 May 2024. The Tribunal noted that at page 331 of “Evictions in Scotland” by Adrian Stalker it is suggested that in any event, the completion of details at part 3 of a notice to leave is not a requirement although is desirable.
33. In the written submission lodged by the Respondent he sought dismissal of the application as the notice to leave was defective for the reasons outlined above. He also sought dismissal on the basis of “*The Applicant’s conduct throughout the tenancy and Tribunal process demonstrates legal non-compliance,*

procedural abuse and dishonesty” and as “*the Tribunal’s statutory discretion is fully engaged*”. None of the evidence before the Tribunal indicated conduct on the part of the Applicant which should result in dismissal of the application. The statutory discretion referred to was in terms of section 16 of the 2016 Act which is of no relevance to an application for a possession order.

34. The Tribunal notes that in the written submissions lodged the Respondent made reference to a number of what appeared to be previous decisions of the Tribunal. Aside from the case of *Majid v Gaffney and Britton*, the Tribunal was unable to locate any of the decisions cited.

35. Having determined that the ground for eviction had been established, the Tribunal went on to consider the question of reasonableness. The Tribunal considered the oral evidence of the Parties at the Hearing and the written submissions lodged. In all of the circumstances the Tribunal determined that it was reasonable to issue an order for possession. The Tribunal attached particular weight to the high level of arrears and to the Respondent’s admitted failure to pay anything towards the rent since 15 September 2023. The Respondent’s evidence was that he has not set aside money to meet the arrears. It was also his evidence that he is not in employment, is not in receipt of benefits and has no current source of income. It would therefore seem that there is little prospect of the Respondent being in a position to meet the monthly rent of £1,350 if the tenancy were to continue.

Decision

36. The Tribunal grants an order for possession of the Property.

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.

J Devine

Legal Member:

Date : 20 October 2025