



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/22/0956

Re: Property at Flat 6, 5 Fisher Place, Edinburgh, EH17 8UY (“the Property”)

Parties:

Castle Rock Edinvar In Association with Places for People Scotland Ltd, 1 Hay Avenue, Edinburgh, EH16 4RW (“the Applicant”)

Mr Folajuwon Oladapo, Flat 6, 5 Fisher Place, Edinburgh, EH17 8UY (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that order in favour of the Applicant against the Respondents for recovery of possession of the private residential tenancy under ground 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

Background

1. An application had been received under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession under a private residential tenancy by the Applicant against the Respondent for the Property.
2. The application contained:-

- a copy of the tenancy agreement,
 - a copy of the notice to leave with evidence of service
 - a copy section 11 Notice with evidence of service
 - a copy of the rent statement
 - letter to tenant regarding pre-action requirements
3. The Applicants' representative, Kenneth Caldwell from Patten and Prentice LLP, appeared on behalf of the Applicant. There was no appearance by the Respondent.
 4. Notice of the Hearing and the application had been served on the Respondent by sheriff officers on 30 June 2022. As we were satisfied that the Respondent had been served with notice of today's hearing we were therefore prepared to proceed with today's hearing in his absence.

Discussion

5. The tribunal considered papers which had been lodged in support of the application, including the tenancy agreement, the notice to leave, and rent account statement. We noted that the notice to leave had been served by sheriff officers on 25 June 2021.
6. The applicant's representative advised that the notice to leave sought eviction under ground 12, rent arrears for a period of more than 3 months. He advised that the current level of arrears were £23,976.16. He advised that there had been arrears on the rent account for a period exceeding three consecutive months. He advised that the respondent had paid his deposit, one full months rent and one further £500. This was all that had been paid. There was now a significant level of rent arrears due. The Applicant had been very careful and cautious in relation to not pursuing tenants for non-payment of rent over the covid pandemic, they had however tried to engage with non-paying tenants during that period.
7. The respondent is 47 years old. The property is a 2 bedroom property. He was understood to be residing there without any other family members. At various times he had made various excuses to the landlord about his rent and this application, including that he did not have passport, he referred to having a child on one occasion, that the dog had eaten his notice to leave. The charity Crisis had previously approached the landlord about the tenant, but they then had withdrawn from acting for him as it

appeared he had not been honest with Crisis about his position. The tenant had not made any offer to pay the arrears. He had not provided any reason for his failure to pay rent. He had approached the landlord last Thursday and had advised that he would surrender his key. Since then the landlord has been contacted by a charity who advised that “persons” residing at the property wanted to stay in the property. He advised that it appeared therefore that the tenant had been sub-letting the property to a third party.

8. The applicant’s agent advised that there was no evidence that he was entitled to benefits. He advised that the current arrears were now £23,976.16.
9. The Applicant’s representative advised therefore that the Respondent was in rent arrears for a period of more than three consecutive months, and those rent arrears totalled more than one months’ rent, and he was not aware of any outstanding benefits issues causing the arrears. The Applicant was seeking an order for recovery of the possession of the property under the rent arrears ground.

Findings in Fact

10. The Tribunal found the following facts established:-
11. There existed a private residential tenancy between the Applicant and the Respondent. It had commenced on 22 July 2019.
12. The tenancy was for the property Flat 6, Fisher Place, Edinburgh.
13. The tenant is Folajuwon Oladapo.
14. The landlord is Castle Rock Edinvar.
15. Clause 8 of the Tenancy Agreement provides that the rent for the property is £650 per calendar month thereafter. It is payable in advance and due on the 1st of each month.
16. Clause 10 provided for the method of rent increases.
17. There was a notice to leave addressed to the Respondent. It contained information from the Respondents as to why an eviction order was sought. It was dated 25 June

2021. It confirmed that proceedings would not be brought until 26 December 2021. It had been served on the Respondents by sheriff officers on 25 June 2021.

18. The ground in the notice to leave was ground 12 “you are in rent arrears over three consecutive months”.
19. That rent arrears had been outstanding since September 2019.
20. There were rent arrears outstanding at the date of the service of the notice to leave of £14,232.60 which totalled at least one month’s rental due under the tenancy.
21. Rent arrears had been outstanding for at least three months when the notice to leave was served.
22. There were rent arrears outstanding at the date of the application, namely £21,134.60 which totalled at least one month’s rental due under the tenancy.
23. There appeared to be rent arrears outstanding at today’s date totalling £23,976.16, at least one month’s rental due under the tenancy.
24. That the arrears did not appear to have been caused by any delay or failure in the payment of a relevant benefit.
25. There was correspondence dated 4 April 2022 providing information about homelessness during the covid pandemic.
26. The section 11 notice had been sent to the local authority providing them with notice of the intention to raise recovery proceedings.

Reasons for Decision

27. Section 51 of the 2016 Act provides the Tribunal with a power to grant an order for eviction for a private residential tenancy, if it finds that one of the grounds in schedule 3 of the Act applies.

28. The ground which the Applicant seeks eviction under is ground 12 rent arrears. Sub paragraph 1 states that it is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. Sub paragraph 2 provides that the Tribunal must find that the ground named in sub-paragraph 1 applies if (a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant-(i) is in arrears of rent by an amount equal to or greater than the amount which would be payment as one month's rent under the tenancy on that day; and (ii) has been in arrears of rent ... for a continuous period, up to and including that day, of three or more consecutive months; and (b) the Tribunal is satisfied that the tenant's being in arrears is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
29. The tribunal finds that there are arrears rent arrears on the account which were in existence for more than three months when the notice to leave was served. There are still rent arrears due. We do not believe that there has been a delay or failure of the payment of relevant benefits which has caused the arrears. We find the ground established.
30. We must now consider whether it would be reasonable to grant the order. The arrears are a significant level. There is no evidence of any explanation by the tenant to explain why the arrears had arisen. There appears to have been no offer to repay any of the arrears. Of concern, it appears that the tenant may in fact have been subletting the property and taking rent from a third party. We are aware of no mitigation for the tenant. We consider that it is reasonable to grant the order for eviction.
31. Accordingly, having regard to the papers before us and the oral submission of the Applicant's agent we consider that the terms of ground 12 met, and that it would be reasonable to grant an order for possession under Schedule 3 Ground 12 - rent arrears.

Decision

32. The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

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.


Melanie Barbour

8 August 2022

Legal Member/Chair

Date