



**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/22/2773**

**Re: Property at 4 Cocklerow Grove, Edinburgh, EH22 1FA (“the Property”)**

**Parties:**

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

**Mr Ian Mcmanus, 4 Cocklerow Grove, Edinburgh, EH22 1FA (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Sandra Brydon (Ordinary Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order**

**Background**

- 1 By application to the Tribunal the Applicant sought an eviction order against the Respondent in respect of the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). In support of the application the Applicant provided the following documentation:-
  - (i) Private Residential Tenancy Agreement between the parties dated 3 December 2020.
  - (ii) Notice to Leave dated 5 May 2022 stating that proceedings for possession will commence no earlier than 4 June 2022 and citing ground 12, together with proof of service on the Respondent by Sheriff Officers;

- (iii) Copy cover letter to the Respondent accompanying the Notice to Leave with rent statement and Private Rented Sector Tenant Support document
  - (iv) Copy letter to the Respondent dated 5 August 2022;
  - (v) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Edinburgh City Council with proof of service by email;
  - (vi) Rent Statement.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for the 7 December 2022 to take place by teleconference. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondent by Sheriff Officers.
- 3 On 2 November 2022 the Applicant's agent submitted an updated rent statement showing arrears of £8241.27 as at that date.

### **Case Management Discussions**

- 4 The Case Management Discussion took place by teleconference on 7 December 2022. The Applicant was represented by Mr Kenneth Caldwell. The Respondent was not in attendance. The Tribunal allowed a short delay of five minutes to allow him time to join. The Tribunal thereafter noted that he had been served with the application paperwork together with notification of the date and time of the Case Management Discussion and therefore determined to proceed in his absence.
- 5 Mr Caldwell addressed the Tribunal. He advised that the private residential tenancy between the parties had commenced on 4 December 2020. The initial rent was £650 per calendar month however this was increased annually. The current rent was £689.21 per calendar month. The Respondent had fallen into arrears after a short period of time. This had prompted various pre-action letters and culminated in the service of a Notice to Leave based on ground 12. At that stage the arrears were £3416.80. A covering letter had been served on the Respondent at the same time which included government guidance in relation to assistance with paying rent. A further pre-action letter had been sent on 5 August 2022. At that stage arrears had increased to £6173.64. There had been no engagement by Mr McManus.
- 6 Mr Caldwell advised that the last payment to the rent account was received on 22 November 2022 in the sum of £100. Prior to that the last payment had been made on 16 March 2022. The current balance of arrears was £8830.48. Mr Caldwell invited the Tribunal to accept that ground 12 had been met and moved

on to the question of reasonableness. He advised that the Respondent was 36 years old and believed to reside alone with no dependents. He had been self employed as the director of a roofing company when he accepted the tenancy, with a salary of £33000 per annum. However he had approached the Applicant at the beginning of 2022 to request they serve him with a notice to leave. Mr Caldwell opined that this was likely because he wished to present as homelessness to obtain social accommodation. The Respondent advised that he had experienced difficulties with his business due to illness and was unable to work. There had been no further contact from him. The Applicant suspected however that he was continuing to reside at the property. The Respondent may be entitled to benefits, as he was off work, but there was no suggestion of any payments being made to the Applicant in this regard and no ability to confirm this due to the lack of engagement.

## **Relevant Legislation**

- 7 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Private Housing Tenancies (Scotland) Act 2016, as amended by the Coronavirus (Scotland) Act 2020, the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020 and the Coronavirus (Extension and Expiry) (Scotland) Act 2021:-

### **1 - Meaning of private residential tenancy**

1) A tenancy is a private residential tenancy where—

(a) the tenancy is one under which a property is let to an individual (“the tenant”) as a separate dwelling,

(b) the tenant occupies the property (or any part of it) as the tenant’s only or principal home, and

(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

(2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

### **51 First-tier Tribunal’s power to issue an eviction order**

(1) The First-tier 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.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

## **52 Applications for eviction orders and consideration of them**

(1) *In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.*

(2) *The Tribunal is not to entertain an application for an eviction order if it is made in breach of—*

(a) *subsection (3), or*

(b) *any of sections 54 to 56 (but see subsection (4)).*

(3) *An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.*

(4) *Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.*

(5) *The Tribunal may not consider whether an eviction ground applies unless it is a ground which—*

(a) *is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or*

(b) *has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.*

## **54 Restriction on applying during the notice period**

(1) *A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.*

(2) *The relevant period in relation to a notice to leave—*

(a) *begins on the day the tenant receives the notice to leave from the landlord, and*

(b) *in the case of a notice served before 3 October 2020 expires on the day falling—*

(i) *28 days after it begins if subsection (3) applies,*

(ii) *three months after it begins if subsection (3A) applies,*

(iii) *six months after it begins if neither subsection (3) nor (3A) applies.*

(c) *in the case of a notice served on or after 3 October 2020, expires on the day falling—*

(i) *28 days after it begins if subsection (3B) applies,*

(ii) *three months after it begins if subsection (3C) applies,*

(iii) *six months after it begins if neither subsection (3B) nor (3C) applies*

(3) *This subsection applies if the only eviction ground stated in the notice to leave is that the tenant is not occupying the let property as the tenant's home. [ground 10]*

(3A) *This subsection applies if—*

(a) *the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—*

- (i) that the landlord intends to live in the let property, [ground 4]*
  - (ii) that a member of the landlord's family intends to live in the let property, [ground 5]*
  - (iii) that the tenant has a relevant conviction, [ground 13]*
  - (iv) that the tenant has engaged in relevant anti-social behaviour, [ground 14]*
  - (v) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour, [ground 15]*
  - (vi) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]*
  - (vii) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, [ground 17] or*
- (b) the only eviction grounds stated in the notice to leave are—*
- (i) the eviction ground mentioned in subsection (3), and*
  - (ii) an eviction ground, or grounds, mentioned in paragraph (a)*
- (3B) This subsection applies if the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—*
- (a) that the tenant is not occupying the let property as the tenant's home, [ground 10]*
  - (b) that the tenant has a relevant conviction, [ground 13]*
  - (c) that the tenant has engaged in relevant anti-social behaviour, or [ground 14]*
  - (d) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour. [ground 15]*
- (3C) This subsection applies if—*
- (a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—*
- (i) that the landlord intends to live in the let property, [ground 4]*
  - (ii) that a member of the landlord's family intends to live in the let property, [ground 5]*
  - (iii) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]*
  - (iv) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or [ground 17]*
- (b) the only eviction grounds stated in the notice to leave are—*
- (i) an eviction ground, or grounds, mentioned in subsection (3B), and*
  - (ii) an eviction ground, or grounds, mentioned in paragraph (a).*

## **62 Meaning of notice to leave and stated eviction ground**

(1) References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,

(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.

(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.

## **Schedule 3, Part 12**

(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. ...

(3) The First-tier Tribunal may find that the ground named by subparagraph (1) applies if— (a) for three or more consecutive months the tenant has been in arrears of rent, and (b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order. (4) In deciding under sub-paragraph (3) 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 in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

8 The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 are also relevant to this application.

## **Findings in Fact and Law**

9 The parties entered into a Private Residential Tenancy Agreement dated 3 December 2020.

- 10 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
- 11 On 5 May 2022 the Applicants delivered a Notice to Leave to the Respondent by email. The Notice to Leave cited ground 12 of Schedule 3 of the 2016 Act and confirmed that proceedings would not be raised any earlier than 4 June 2022. The Notice to Leave was served by Sheriff Officers.
- 12 The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 13 In terms of Clause 8 of the said Tenancy Agreement the Respondent undertook to make payment of rent at the rate of £650 per calendar month. The rent is increased annually. The current rent is £689.21 per calendar month.
- 14 As at the date of service of the Notice to Leave arrears in the sum of £3416.80 were outstanding.
- 15 As at the date of the Case Management Discussion arrears in the sum of £8830.48 were outstanding.
- 16 The Respondent resides alone in the property.
- 17 The last payment to the rent account was a payment of £100 on 22 November 2022. Prior to that no payments had been received since 16 March 2022.
- 18 The Applicant has complied with the pre-action requirements by advising the Respondent of his rental obligations and arrears outstanding and offering support.
- 19 The Respondent has failed to engage with the Applicant or his representative.
- 20 The Respondent was previously believed to be self employed but is now unable to work due to ill health.
- 21 It can be reasonably assumed that the Respondent intends on presenting as homeless to obtain alternative accommodation based on a conversation with the Applicant.
- 22 It is reasonable to make the order sought by the Applicant.
- 23 The provisions of ground 12 of Schedule 3 of the 2016 Act have been met.

## **Reasons for Decision**

- 24 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. There were no substantive facts in dispute therefore the Tribunal did not consider there to be any requirement to fix a hearing in the matter as there were no issues to be resolved that required the hearing of evidence. The Respondent had been given the opportunity to participate in the proceedings but had chosen not to do so.
- 25 The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicant's intention to rely upon ground 12 of Schedule 3 of the 2016 Act. The Tribunal was satisfied that the required notice had been given to the Respondent and therefore that application could be entertained.
- 26 The Tribunal accepted that there were rent arrears outstanding in the sum of £8830.48, against a rent of £689.21 per month. The lack of sufficient payments to the rent account had resulted in a significant balance of arrears. On that basis the Tribunal was satisfied that ground 12 had been met, in that rent had went unpaid for three or more months and there was at least one months rent arrears outstanding as at the date of the Case Management Discussion.
- 27 The Tribunal then considered the question of reasonableness. The Tribunal accepted the submissions from Mr Caldwell at the Case Management Discussion. It was clear that the decision to lodge the application had not been taken lightly by the Applicant and that efforts had been made to engage with the Respondent and offer support. There was no recent explanation as to why the rent had not been paid due to the lack of engagement from the Respondent, particularly as it was likely he would be entitled to a form of benefits. Without the making of an eviction order it was likely that arrears would continue to accrue. The Tribunal noted the nature of the conversation the Respondent had had with the Applicant at the beginning of 2022, during which he had requested to be served with a notice to leave, and accordingly the Tribunal could reasonably conclude that he no longer wished to sustain the tenancy.
- 28 Accordingly, having regard to the significant level of arrears, the efforts by the Applicant to assist the Respondent, and balancing that with the Respondent's personal circumstances, the Tribunal ultimately concluded that it would be reasonable in all the circumstances of the case to make an eviction order.
- 29 The Tribunal therefore determined to make an order for eviction against the Respondents. The decision of the Tribunal 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.**

**7<sup>th</sup> December 2022**

**Legal Member: Ruth O'Hare** \_\_\_\_\_

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**Date**