



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 52 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/22/3918

Re: Property at Flat 9 5A Royston Mains Avenue, Edinburgh, EH5 1NN (“the Property”)

Parties:

Edinburgh Living LLP, Waverly Court 4 East Market Street, Edinburgh, EH8 8BG (“the Applicant”)

Thorntons Law LLP, Solicitors, Whitehall House, 33 Yeaman Shore, Dundee, DD1 4BJ (the Applicant’s Representative”)

Mr John Dewar, Flat 9 5A Royston Mains Avenue, Edinburgh, EH5 1NN (“the Respondent”)

Tribunal Members:

Martin McAllister (Legal Member) and Elizabeth Williams (Ordinary Member) (“the tribunal”)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) determined that the application be granted.

Background

- 1. This is an application for eviction in terms of Section 51 of the 2016 Act.**
- 2. It was accepted for determination on 16th November 2022.**

Case Management Discussion 23rd February 2023

- 1. A case management discussion was held by teleconference on 23rd February 2023.**
- 2. There was no appearance by either party and the application was dismissed.**
- 3. The Applicant was successful in having the decision to dismiss recalled.**

Case Management Discussion 7th June 2023

- 4. A case management discussion was held by teleconference on 7th June 2023. Mr Calvin Gordon, solicitor, appeared on behalf of the Applicant.**
- 5. There was no appearance by the Respondent and the tribunal was satisfied that intimation of the case management discussion and the associated documentation had been served on him on 16th May 2023.**
- 6. The purpose of a case management discussion was explained by the Legal Member.**
- 7. Prior to the case management discussion, the Applicant's Representative had submitted documentation seeking to amend the application to reflect that the arrears of rent amounted to £9139. An updated rent statement was submitted in support of the request for amendment.**
- 8. The tribunal noted that the Applicant's Representative had sent a copy of the request for amendment to the Respondent by email.**
- 9. Prior to the case management discussion, the Applicant's Representative had submitted representations with regard to the relevant notice to leave not being signed and to the reasonableness of granting the order of eviction.**

The Law

The Private Housing (Tenancies) (Scotland) Act 2016

Section 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.

Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016

Ground 12

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 sub-paragraph (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, and

(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations.

(5) For the purposes of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971),

(ii) a payment on account awarded under regulation 91 of those Regulations,

(iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,

(iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,

(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.

6) Regulations under sub-paragraph (4) (b) may make provision about—

(a) information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),

(b) steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,

(c) such other matters as the Scottish Ministers consider appropriate.

Preliminary matters

10. Mr Gordon addressed the tribunal in support of the written representations which he had submitted in connection with the notice to leave.

11. Mr Gordon said that the relevant private residential tenancy agreement allowed for any notice to be sent to the Respondent by his email address. The Applicant had sent the notice to leave as an attachment to an email which it had sent the Respondent on 27th July 2022. He said that the Applicant conceded that the notice to leave had not been signed or dated.

12. Mr Gordon said that the terms of the notice to leave were in order other than the absence of a signature and a date. He submitted that the notice to leave gave notice to the Respondent that the Applicant was seeking recovery of the Property, the relevant ground under the 2016 Act and the date of the end of the notice period. Mr Gordon said that no prejudice was caused to the Respondent as a consequence of the absence of the signature or date and that the notice to leave was not invalid. Mr Gordon said that it would have been different if the date in part 4 of the notice had been incorrect and the wrong date had been inserted for the expiry of the notice period.

13. Mr Gordon submitted that Rule 109 (b) of the Tribunal Rules states that a copy of the notice to leave requires to be submitted but that it does not state that this requires to be a copy of a signed notice to leave. He referred to Section 52 (3) of the 2016 Act which requires that an application for an eviction order has to be accompanied by a copy of the notice to leave. He submitted that the application was accompanied by a copy of the notice to leave. He said that he was relying on Section 73 (1) of the 2016 Act

which states: *“An error in the completion of a document to which this section applies does not make the document invalid unless the error materially affects the effect of the document.”* Mr Gordon said that the absence of signature and date did not affect the effect of the document: the Respondent was given notice of the Applicant’s desire to recover the Property, knew the ground under which recovery was sought and the expiry of the notice period.

14. Mr Gordon submitted that the tribunal had all the necessary information to grant the order of eviction and that an evidentiary hearing would not be necessary.

15. Findings in Fact

15.1 The parties entered into a private residential tenancy for the Property on 14th December 2021.

15.2 The Respondent continues to occupy the Property.

15.3 In terms of the private residential tenancy, the Respondent was and is obliged to pay rent of £557 per month.

15.4 As at 16th May 2023, there are arrears of rent amounting to £9,139.

15.5 The Applicant sent pre- action letters to the Respondent advising him of sources of advice and assistance in respect of issues surrounding his tenancy and rent arrears.

15.6 The Applicant sent to the local authority the required intimation in terms of the Homelessness Etc. (Scotland) Act 2003.

15.7 The Applicant served a notice to leave on the Respondent requiring him to vacate the Property.

16. Findings in Fact and Law

16.1 The Respondent is in arrears of rent for three or more consecutive months.

16.2 The Respondent has complied with the pre-action protocol prescribed by Scottish Ministers in relation to applications seeking orders of eviction.

Reasons

17. In arriving at its determination, the tribunal had regard to the relevant private residential tenancy agreement, the notice to leave, the rent statement and the pre-action protocol letters sent to the Respondent.

18. The tribunal considered that it had sufficient information to determine the application and that it was reasonable to grant the Applicant’s motion to amend the application to reflect the rent arrears showing in the statement which had been submitted.

19. The tribunal had a copy of the private residential tenancy showing that monthly rent of £557 is due.
20. The tribunal had regard to a rent statement submitted by the Applicant showing that, as at 16th May 2023, the sum of £9139 was due to the Applicant in respect of arrears of rent.
21. The tribunal accepted that the notice to leave served on the Respondent was in proper form other than the omission of a signature and date. It determined that no prejudice was caused to the Respondent and that the defects in the notice to leave did not affect the effect of it. The tribunal did not consider that any prejudice was caused to the Respondent.
22. The tribunal accepted that the Respondent had not complied with his contractual obligations in terms of the private residential tenancy agreement and that he was in arrears of rent amounting to £9,139. The rent statement disclosed that the Respondent has been in rent arrears for a period well in excess of three consecutive months.

Reasonableness of granting the order of eviction

23. The tribunal, having determined that the ground for eviction was met, required to consider whether it was reasonable to grant the order of eviction.
24. Mr Gordon submitted that payment of rent was a primary obligation under the tenancy. He said that the Applicant lets the property on a mid-market rent basis and that there was considerable demand for such properties in Edinburgh. He said that the Respondent should be allowed to recover the Property so that it could be occupied by another person.
25. Mr Gordon said that the Respondent had last paid rent in August 2022. He said that the Applicant had complied with the pre-action protocol and that the Respondent had not engaged with it. He said that the Respondent had also not engaged with the Tribunal process. He said that the Respondent had not opposed the application for eviction.
26. Mr Gordon said that he knew nothing about the personal circumstances of the Respondent.

Discussion and Determination

27. The tribunal considered that, with a level of rent arrears of £9132, it was reasonable for the Applicant to recover the Property to enable it to be allocated to someone else.

28. The Respondent had not engaged with the Tribunal process and it was therefore not possible for his particular circumstances to be weighed against the needs of the Applicant.

Decision

29. The tribunal decided that the application should be granted and made an order for eviction

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.

Martin McAllister

**Legal Member
7th June 2023**