



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/23/1216

Re: Property at Flat 16, 22 Lochend Way, Edinburgh, EH7 5BF (“the Property”)

Parties:

Cityscape Edinburgh LLP, 1 Hay Avenue, Edinburgh, EH16 4RW (“the Applicant”)

Mr Christopher Lennie, Flat 16, 22 Lochend Butterfly Way, Edinburgh, EH7 5BF (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and Eileen Shand (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 12A 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: -

- (1) the tenancy agreement,
- (2) the notice to leave with evidence of service
- (3) section 11 Notice with evidence of service
- (4) tenancy agreement
- (5) evidence of pre-action protocol
- (6) rent statement

3. The applicant's agent Mr Caldwell from Patten and Prentice appeared on behalf of the applicant at the case management discussion on 15 August 2023. The respondent did not appear. There was evidence of service of the papers and notice of the case management discussion on the respondents on 30 June 2023. The tribunal agreed to proceed with the case management discussion in the absence of the respondent.

4. The applicant's agent had written to the tribunal on 3 July and 10 August 2023 attaching further information, namely updated rent statements. He submitted that the current rent arrears had risen to £16,259.43.

Discussion

5. The applicant's agent advised that the applicant was seeking an order for recovery of the possession of the property under the ground 12A (substantial rent arrears). There had been 6 months' rent arrears when the notice to leave was served on the respondent, and there were now nearly two years of rent arrears outstanding. The rent arrears due now totalled £16,259.43. The rent due was £672.08 per calendar month.

6. The agent advised that address for the property was Flat 16, 22 Lochend Butterfly Way, Edinburgh.

7. He advised that the respondent's history in the tenancy was not perfect but it was acceptable, however around November 2021 rent payments ceased. There have been no rent payments since that date. He understood that the respondent had spent some time in prison and he had been advised by the Scottish Prison Service that the respondent had been released from prison on or before November 2022. He advised that he was aware that the respondent was 70 years of age. He had lived in the property by himself. After that he had little information. He advised that the applicant's had written and emailed the respondent, however there had been no contact at all from the respondent. He advised that the applicants are not even sure if the respondent is still residing in the property anymore. The arrears were now very substantial. Given all of the above he asked the tribunal to grant an order for eviction under ground 12a.
8. The landlord advised that the respondent had not paid any rent since 17 November 2021.
9. His agent advised that he had sent pre-action protocol letters to the respondents in but there had been no response to those letters.

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 15 February 2018.
12. The tenant was Christopher Lennie.
13. The landlord was Cityscape Edinburgh LLP.
14. The property was Flat 16, 22 Lochend Butterfly Way, Edinburgh.

15. Clause 8 of the tenancy stated that rent was £672.08 a calendar month payable in advance. Monthly rent as at 15 August 2023 was £730.84.
16. There was submitted a notice to leave dated 8 February 2023, stating that an application would not be made until 10 March 2023. It sought eviction under ground 12a you are in substantial rent arrears (equivalent to 6 months worth of rent. It set out that there had been arrears since November 2019 and no rent had been paid since November 2021 and when the notice was served the arrears totalled £11,852.47.
17. The notice to leave had been emailed to the tenant on 8 February 2023. There was evidence of service.
18. A section 11 notice had been sent to the local authority advising that the landlord was seeking possession of the property. There was evidence of service.
19. At the date of the application, 14 April 2023, the rent arrears were £13,314.15.
20. At 15 August 2023 arrears were £16,259.43.
21. There was evidence that the pre-action protocol requirements had been followed.
22. There was no evidence of failure or delay in any benefit payment to the respondent.
23. The respondent had failed to pay any rent at all since November 2021.

Reasons for Decision

24. 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 found that one of the grounds in schedule 3 of the Act applies.

25. The ground which the Applicant seeks eviction under is ground 12A. It is in the following terms :-

“Substantial rent arrears

12A(1) It is an eviction ground that the tenant has substantial rent arrears.

(2) The First-tier Tribunal may find that the ground named by [sub-paragraph \(1\)](#) applies if—

(a) the tenant has accrued rent arrears under the tenancy in respect of one or more periods,

(b) the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months’ rent under the tenancy when notice to leave is given to the tenant on this ground in accordance with section 52(3), and

(c) the Tribunal is satisfied that it is reasonable to issue an eviction order.

(3) In deciding under [sub-paragraph \(2\)](#) whether it is reasonable to issue an eviction order, the Tribunal is to consider—

(a) whether the tenant being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit,

(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers under paragraph 12(4)(b) (and continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022). ...

26. The applicant’s agent appeared. The respondent did not appear. The applicant’s agent confirmed that his client sought an order for eviction based on the fact that when the notice to leave had been served there had been at least 6 months rent arrears due to him. Turning to whether Ground 12A was met. It appeared that the first part of the ground 12A was clearly met, there were more

than 6 months rent outstanding at the date when the notice to leave had been served.

27. The tribunal therefore required to proceed to consider if it would be reasonable to grant the order. We took into account and placed weight on the significantly high level of arrears and the fact that the applicant had been attempting to contact the respondent, however there had been no contact from the respondent about his tenancy or the arrears. We also note that he resided in the property alone. Against that we note that the respondent spent some time in prison, however he had been released on or before, November 2022 and he had not contacted the applicants to give them any advice about the tenancy or the rent arrears since that date. There have been no rent payments since November 2021. We note that he is 70 years old and think that there may be benefit issues arising from his time in prison an/or after his release, however against those matters, the applicant's agent advised that it is not even clear if he is still in the property, the arrears are very high and the respondent has not contacted his landlord, their agents, or taken part in this tribunal. Balancing the matters set out we consider it would be reasonable to grant an order for eviction.

28. Accordingly, considering the papers before us and the oral submission by the applicant's agent, the tribunal was prepared to grant the order for recovery of possession, given that the first part of ground 12 A was met and in all the circumstances it appeared to us to be reasonable to grant the order.

Decision

29. The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 12A 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

15th August 2023

Legal Member/Chair

Date