



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/23/1968

Re: Property at 3 Cramond Brig Cottages, Edinburgh, Midlothian, EH4 6DU (“the Property”)

Parties:

The Earls Partnership, Rosebery Estates Office, Dalmeny House, South Queensferry, EH30 9TQ (“the Applicants”)

Gerald Monkhouse, 3 Cramond Brig Cottages, Edinburgh, Midlothian, EH4 6DU (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member) and Elaine Munroe (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

1. This is an application by the Applicants for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”). The PRT in question was by the Applicants to the Respondent commencing on 1 August 2022. The Title Sheet for the Property was obtained and showed that the title was held by partners on behalf of the Applicants, a partnership known as The Earls Partnership.
2. The application was dated 14 June 2023 and lodged with the Tribunal on that date. This makes the application subject to the *Cost of Living (Tenant Protection) (Scotland) Act 2022*, though as eviction is sought under Ground 12A there are no additional requirements under that Act.

3. The application relied upon a Notice to Leave dated 3 May 2023 in terms of section 50 of the Private Housing (Tenancies) (Scotland) Act 2016, intimated upon the Respondent by email to the email address within the Tenancy Agreement on the same date. The Notice relied upon Ground 12A of Schedule 3 Part 1 of the 2016 Act, being that “the tenant has substantial rent arrears”. A paper apart to the Notice to Leave stated that arrears at the date of the Notice were £10,000. The rent stated in the Tenancy Agreement lodged was £1,000 a month, meaning the arrears as at the date of the Notice to Leave were ten months of arrears (though we came to note that the figure in the Notice was not accurate). The Notice intimated that an application to the Tribunal would not be made before 7 June 2023.
4. Evidence of a section 11 notice in terms of the Homelessness Etc. (Scotland) Act 2003 served upon City of Edinburgh Council on 16 June 2023 was provided with the application. There was further evidence of the Applicants (via their solicitors, Turcan Connell) providing pre-action protocol information in standard form to the Respondent by recorded delivery and email on 23 May 2023.

The Hearing

5. The matter called for a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 10 October 2023 at 10:00. We were addressed by Alexandra Graham, solicitor, Turcan Connell, for the Applicants. There was no appearance from the Respondent.
6. We were informed by the clerk that no contact had been received from the Respondent (or on his behalf) with the Tribunal. The Applicants’ agent stated that there had been no contact from the Respondent since before the application was lodged. Further, despite some payments having now been applied to the rent account (as discussed below), there had been no engagement by the Respondent, nor anyone on his behalf, nor from the City of Edinburgh Council that had made the payments, in regard to the payments. The Applicants’ agent stated that it was believed that the Respondent remained in occupation of the Property.
7. We considered that the Respondent had received clear intimation of the CMD from Sheriff Officers. Having not commenced the CMD until around 10:05, we were satisfied to consider the application in the Respondent’s absence. In any case, no attempt was made by the Respondent to dial in late to the CMD.
8. At the CMD, the Applicants’ agent confirmed that the application for eviction was still insisted upon and referred to an updated statement of arrears sent to the Tribunal on 2 October 2023 and correct to that date. No further payments of rent had been received since this updated statement, but it showed seven monthly payments allocated against the rent due from 1 March 2023 to 1 September 2023. There were three payments of £602.30 (applied against the rent from March to May 2023), one payment of £602.32 (applied against June 2023), and three payments of £627.53 (applied against the rent from July to September 2023). The Applicants’ agent confirmed that these were payments

from City of Edinburgh Council which generally arrived near the end of the month against which they had been allocated in the rent arrears statement. We permitted a brief adjournment for the agent to confirm her instructions and on recommencing she confirmed that no communication had been received from the Council regarding the payments. It was assumed by the Applicants that the payments were a payment of some form of benefit, but the payments had started without warning in March 2023 and appeared to have stopped in September 2023 (though a payment later this month may yet still arrive). Further, as the payments were less than the passing rent, even if they continued, the arrears would continue to rise each month.

9. The Applicants' agent stated that she had no information to suggest that the Property was adapted for the Respondent's use or that it was especially suitable for his needs. He was believed to live alone, but had previously resided there with his late partner whom had held the tenancy of the Property. After the partner's passing, the Respondent was granted the Tenancy of the Property.
10. No motion was made for expenses.

Findings in Fact

11. On or about 17 and 18 October 2022 the Applicants let the Property as a Private Residential Tenancy to the Respondent under a lease with back-dated commencement date of 1 August 2022 ("the Tenancy").
12. In terms of clause 2.1 of the Tenancy Agreement, the Respondent required to pay rent of £1,000 a month in advance on the 1st day of each month.
13. On 3 May 2023, the Applicants' agent drafted a Notice to Leave in correct form addressed to the Respondent, providing the Respondent with notice, amongst other matters, that he was in rent arrears for a period of ten consecutive months and detailing arrears said to be due at that date of £10,000 and that eviction was sought in terms of Ground 12A of Schedule 3 Part 1 of the 2016 Act.
14. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior to 7 June 2023.
15. The Applicants' agent served a copy of the Notice to Leave on the Respondent on 3 May 2023 by email, in accordance with clause 13.1 of the Tenancy Agreement.
16. The Applicants raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 12A of Schedule 3 Part 1 of the 2016 Act.
17. As at the date of the Notice to Leave, rent arrears were in excess of eight months' of rent arrears. As at 3 May 2023, notwithstanding the terms of the Notice to Leave, the Respondent was in arrears of £8,795.40, being unpaid rent of £1,000 due on 1 August 2022 and the consecutive nine payment dates (to 1

May 2023) but less payments received from City of Edinburgh Council of £602.30 received in late March 2023 and a further £602.30 received in late April 2023.

18. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon City of Edinburgh Council by the Applicants' agent on 16 June 2023.
19. The Applicants' agent provided the Respondent with pre-action protocol information by way of a letter sent by recorded delivery and email on 23 May 2023.
20. As of 10 October 2023, the Respondent remained in arrears of rent in the amount of £10,708.19 which is equivalent of over ten months of rent.
21. The Respondent does not claim to have paid any amount of the arrears of £10,708.19 remaining as at 10 October 2023.
22. The sum of arrears remaining as of 10 October 2023 is neither wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, other than any referable to an act or omission of the Respondent.
23. On 31 August 2023, the Tribunal intimated to the Respondent the date and time of the CMD of 10 October 2023 by Sheriff Officer.
24. The Respondent has no dependents.
25. The Property is not specially adapted with the use of the Respondent.

Reasons for Decision

26. The application was in terms of rule 109, being an order for eviction from a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been correctly drafted and served upon the Respondent.
27. Ground 12A of the said Schedule applies if:
 - (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 subparagraph (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).*

(4) *For the purpose of this paragraph—*

(a) *references to a relevant benefit are to—*

(i) *a rent allowance or rent rebate under the Housing Benefit Regulations 2006 (S.I. 2006/213),*

(ii) *a payment on account awarded under regulation 93 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.*

28. The arrears information provided at the CMD clearly showed that Ground 12A was satisfied in regard to the length of arrears and amount outstanding. It was regrettable that the Notice to Leave failed to take account of any of the payments from City of Edinburgh Council that had already been received, and which the subsequent rent arrears statement acknowledged. Nonetheless, as at the date of the Notice to Leave the arrears were still substantial, were not addressed by the Respondent, and no communication was made as to a dispute as to the arrears amount.

29. Further, we were satisfied that it was fair to draw an inference from the facts presented to us that there is nothing to suggest that Respondent's failure to pay is related to an issue with benefits. The payments from City of Edinburgh Council are clearly a ground of public support, and almost certainly a form of benefit payment. The payments have been received since March 2023, and any back-dated payment would have been received by now. None has been received, and the historic arrears of well over six months' of arrears remain unaddressed. Further, the arrears are still rising (just slower) due to the payments from the Council being substantially less than the monthly rent. We were thus satisfied that Ground 12A was made out.

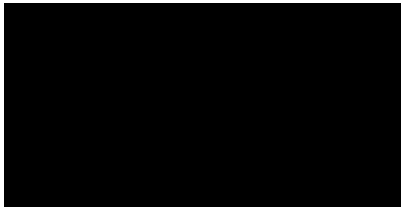
30. We require, in terms of the Act as amended, to consider the reasonableness of the application even in regard to such substantial arrears. We were satisfied that it was reasonable for the Applicants to seek eviction given the amount, the duration of the arrears, and the lack of communication. The arrears are substantial and there is the absence of any engagement by the Respondent on payment of the arrears. We were not minded to grant any additional suspension of the order to evict given the lack of information from the Respondent.
31. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time under Ground 12A.

Decision

32. In all the circumstances, we grant an order against the Respondent for eviction from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 further to ground 12A of Schedule 3 of that Act.

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.



10 October 2023

Legal Member/Chair

Date