



**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/22/1464**

**Re: Property at Flat 16, 21 Macgill Drive, Edinburgh, EH4 4FD (“the Property”)**

**Parties:**

**Muirhouse Homes Limited, 11 Muirhouse Medway, Edinburgh, EH4 4RW (“the Applicant”)**

**Mr James Guthrie, Flat 16, 21 Macgill Drive, Edinburgh, EH4 4FD (“the Respondent”)**

**Tribunal Members:**

**Petra Hennig-McFatridge (Legal Member) and Leslie Forrest (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted. The decision was unanimous.**

**A: Background**

1. The application for an order for eviction under S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act) was made by the Applicant on 8 May 2022 under Ground 12 of schedule 3 of the Act.
2. The following documents were lodged to support the application:
  - a. Copy tenancy agreement between the parties over the property commencing on 3 March 2020.
  - b. Tenancy rent statement from 3 March 2020 to 1 May 2022
  - c. rent increase letters dated 16 December 2020 and 8 December 2021
  - d. Notice to leave dated 12 April 2022
  - e. S11 Notice with email of service on 17 May 2022
  - f. PARS letters dated 25 October 2021, 10 December 2021, 8 February 2022 and 18 May 2022
  - g. List of contacts with tenant from 18 April 2020 to 18 May 2022

- h. Lease between Muirhouse Housing Association Ltd and Muirhouse Homes Ltd commencing 1 July 2020
3. On 7 July 2022 the application and notification of the Case Management Discussion (CMD) was served by Sheriff Officers on the Respondent. The Tribunal was satisfied that the Respondent had the required notice of the CMD as set out in Rules 17 (2) and 24 (2) of the Procedural Rules.
4. No representations from the Respondent were received by the Tribunal.
5. On 2 August 2022 the Applicant lodged an amendment application under rule 14A of the Rules of Procedure with the Tribunal, which was also copied to the Respondent, to increase the sum claimed to £9,135.50. This was accompanied by an updated rent statement from 1 July 2021 to 1 August 2022. The Tribunal allowed the amendment of the application in those terms.
6. No representations from the Respondent were received by the Tribunal.
7. The case documents are referred to for their terms and held to be incorporated herein.

### **Case Management Discussion**

1. The Applicant was represented at the CMD by Ms Sedstrem. The Respondent did not participate in the teleconference.
2. The legal member explained the purpose of the CMD. Ms Sedstrem confirmed that the arrears continued at the level of £9,135.50 as set out in the latest rent statement. No further payments had been received. The rule 14A amendment application had been copied to the Respondent by email and a paper copy had been put through his letterbox at the flat on 2 August 2022. The Applicant had also reminded the Respondent on 9 August 2022 by email of the CMD today and a colleague of Ms Sedstrem had visited the Respondent last Friday. A room had been made available to him today in the Applicant's offices should he have difficulties to participate from his own telephone. The Respondent had been referred to the Applicant's own Financial Inclusion Officer and to the external CHAI service for debt management but had not engaged with either referral. The arrears were not being addressed. The Applicant is now asking for a payment order as all efforts to engage the Respondent in trying to address the arrears have not been successful. Ms Sedstrem explained that the Applicant is a subsidiary of a Housing Association and the tenant had been advised that there is ample assistance available if there are financial difficulties. He just would not engage in any attempts to provide assistance. He is in and out of employment and had been provided with assistance to access Universal Credit and the Tenant Grant Fund but did not provide the necessary information and had missed appointments leading to sanctions of his benefit claims. The Applicant has no information whether the Respondent is currently in receipt of benefits.

### **Findings in Fact:**

Based on the evidence lodged and the representations of the participants at the CMD the Tribunal makes the following findings in fact:

1. The property was let on a Private Residential Tenancy Agreement commencing on 3 March 2020.
2. The parties were the landlord and tenant of said Tenancy Agreement.
3. The tenancy continues.
4. The Applicant has title and interest to pursue the application as the Applicant has leased the property from a Housing Association and is authorised to rent this to individuals and ingather rent for the property.
5. The monthly rent, payable in advance, was £593.78 as per clause 8 of the tenancy agreement.
6. This was increased to £603.35 from 1 April 2021 and to £612.10 from 1 April 2022 by rent increase letters of 16 December 2020 and 8 December 2021 respectively.
7. Rent arrears accrued as per the Rent Statement up to 1 August 2022.
8. As at 16 August 2022 arrears of £9,135.50 have accrued and payment of that amount is due from the Respondent to the Applicant.
9. The Respondent has been in arrears of rent since 1 May 2020 and thus for a period vastly exceeding 3 months both at the time the notice to leave was served and at the date of the CMD.
10. The Applicant had provided repeated and extensive offers of assistance to the Respondent which he did not engage with.
11. He is a single man residing in the property with no dependent children or family members and is in and out of work.
12. The Applicant had written to the Respondent and contacted the Respondent repeatedly regarding the rent arrears situation as set out in the correspondence and the tenant contact list.
13. The notice to leave was served personally on the Respondent by the Applicant's representative at a meeting on 12 April 2022 narrating the ground for the notice being ground 12 and providing the appropriate 28 day notice period.
14. The rent arrears are not a consequence of delay or failure of payment of relevant benefits.
15. The Applicant provided the required S 11 notice and proof of service of same on the local authority.

## **D: Reasons for decision**

### **1. Relevant legislation:**

In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

- (a) in any place where a hearing may be held;
- (b) by videoconference; or
- (c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

- (a) identifying the issues to be resolved;
- (b) identifying what facts are agreed between the parties;
- (c) raising with parties any issues it requires to be addressed;

- (d) discussing what witnesses, documents and other evidence will be required;
  - (e) discussing whether or not a hearing is required; and
  - (f) discussing an application to recall a decision.
- (4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.
- Power to determine the proceedings without a hearing

However, in terms of Rule 18 of the Rules of Procedure:

- 18.—(1) Subject to paragraph (2), the First-tier Tribunal—
- (a) may make a decision without a hearing if the First-tier Tribunal considers that—
    - (i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and
    - (ii) to do so will not be contrary to the interests of the parties; and
  - (b) must make a decision without a hearing where the decision relates to—
    - (i) correcting; or
    - (ii) reviewing on a point of law,
 a decision made by the First-tier Tribunal.
- (2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties

2016 Act

### **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 or must 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.

*Grounds under Schedule 3 of the 2016 Act*

Ground 12 Rent arrears

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 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.
- (3A) Sub-paragraph (3B) applies where the First-tier Tribunal is satisfied—
  - (a) that the eviction ground named by sub-paragraph (1) applies, and
  - (b) that all or part of the rent in respect of which the tenant is in arrears as mentioned in that eviction ground relates to the period during which paragraph 5 of schedule 1 of the Coronavirus (Scotland) (No.2) Act 2020 is in force.
- (3B) Where this sub-paragraph applies, in considering for the purposes of sub-paragraph (3)(b) whether it is reasonable to issue an eviction order against the tenant, the First-tier Tribunal is to consider the extent to which the landlord has complied with pre-action requirements before applying for the 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.

(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) In sub-paragraph (3B), “pre-action requirements” means such requirements as the Scottish Ministers may specify in regulations.

(7) Regulations under sub-paragraph (6) may in particular make provision about—

(a) information to 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 to 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.

2. The Respondent has not made any representations and did not attend the CMD. The Respondent had fair notice of the representations of the Applicant forming the reasons for the application and has not challenged these. As no representations were received from the Respondent by the Tribunal, the facts of the case are not in dispute. This includes the matter of the accruing rent arrears as these were explicitly referred to in the notice to leave. The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case. The Respondent was made aware that the Tribunal could consider the case on its merits and make a decision at the CMD. No defence was lodged to the application.

3. The documents lodged and the Direction are referred to for their terms and held to be incorporated herein. The Tribunal makes the decision on the basis of the documents lodged by the Applicant and the representations made by Ms Sedstrem.

4. In terms of S 54 of the Act a 28 day notice period applied and was given. The Applicant had served the notice required in terms of S 56 of the Act on the local authority and had complied with all formal requirements under the 2016 Act.

5. The Tribunal found that Ground 12 (2) of Schedule 3 and 3A of the 2016 Act applies in this case. This is a discretionary ground of eviction. There is clear evidence of the rent arrears accruing and some arrears having been in place since May 2020 and thus for more than 2 years as set out in the rent statements and the arrears now stand at £9,135.50. The Tribunal was satisfied that in terms of Ground 12 3(B) the Applicant has complied with all pre action requirements by sending numerous letters to the Respondent referring to the matters stated in the relevant Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. No payments apart from

the payments listed in the rent statement submitted have been received and the Respondent has not engaged with the numerous attempts of the Applicant to resolve the matter.

6 The Respondent has not provided any updates regarding his situation and had ignored all correspondence sent to him regarding rent arrears. The Respondent has not engaged in the process before the First-tier Tribunal and has not raised any issues as to why it would not be reasonable to grant an eviction order. No specific issues regarding reasonableness arise from the information available. The Respondent is a single male occupant with no underage dependent children. No specific needs of the Respondent to live at the specific address have been raised. He has not provided any information advising of problems accessing suitable alternative accommodation. The length of time of occupancy of the property has been considered by the Tribunal but is in and of itself not a reason to make an eviction order unreasonable.

7. The Respondent has not provided any information indicating that the rent arrears may have arisen from a late or incorrect benefit payment. There has been a prolonged and persistent failure by the Respondent to address the arrears despite the Applicant's repeated and pro-active steps to try and engage the Respondent.

8. The landlord in this case has been both patient and pro-active in trying to manage the situation, had persistently tried to involve the Respondent and has given the Respondent ample notice to find alternative accommodation.

9. In the case of *City of Glasgow District Council v Erhaiganoma* 1993 SCLR 592, The Inner House of the Court of Session stated at page 594 that "Where prima facie reasonableness has been made out, we think that it is then for the tenant to put circumstances before the court to show otherwise.". In the present case the Applicant had provided evidence of significant and persistent rent arrears and extensive attempts of the landlord to engage the tenant in efforts to find assistance and address the arrears. The Respondent had put forward no circumstances to show that it would not be reasonable for the Tribunal to issue an eviction order. In all the circumstances the Tribunal thus finds that it is reasonable to grant the eviction order on ground 12 of schedule 3 of the Act.

14. In terms of S 51(1) of the 2016 Act the Tribunal thus grants the application for an eviction order as it is satisfied that one of the eviction grounds in schedule 3 of the Act applies.

15. The Tribunal, having regard to the appeal period, determines that in terms of S 51(4) of the Act the tenancy ends on 16 September 2022.

## **Decision**

**The Tribunal grants an order for eviction in terms of S 51 of the Act on Ground 12 of Schedule 3 of the 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.**



**Petra Hennig McFatridge  
Legal Member/Chair**

**16 August 2022  
Date**