



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/23/0903

Re: Property at Flat B/1, 24 Dixon Avenue, Glasgow, G42 8EE (“the Property”)

Parties:

Mr Desmond Reid, 12 Stamford Street, London, SE1 9NB (“the Applicant”)

Mr Zeeshan Muhammad, Mrs Ana Muhammad, Flat B/1, 24 Dixon Avenue, Glasgow, G42 8EE (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member) and Frances Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 12A of schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

1. An application was submitted to the Tribunal under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). Said application sought a repossession order against the Respondents on the basis of substantial rent arrears accrued by the Respondents under a private residential tenancy, being Ground 12A under Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”).
 - Case Management Discussion
2. A Case Management Discussion (“CMD”) took place on 5 June 2023 by conference call. The Applicant was represented by Mr Hassan of G4 Properties Ltd. The Respondents were represented by Ms Sloey of Govanhill Law Centre.

3. The Applicant's representative moved for the Order to be granted as sought. The parties had entered into a Private Residential Tenancy Agreement ("the Agreement"), which commenced 8 November 2019. The Respondents had fallen into arrears of rent in September 2020 and had been in a continuous arrear since then. The current level of arrears stood at £5950, with a monthly rent of £550. Nothing had been paid since March 2023.
4. A Notice to Leave had been served on the Respondents on the basis of Ground 12A of Schedule 3 to the 2016 Act, on 25 January 2023. The Respondents had been in arrears of rent in an amount equivalent to at least 6 months' rent at the date of service of the Notice to Leave.
5. It was submitted that attempts had been made to discuss matters with the Respondents but they had failed to engage. However in the last few weeks there has been more engagement with the Respondents, albeit no proposals for repayment of the arrears have been agreed. The Landlord has given the Respondents a number of opportunities to enter into a payment plan for the arrears, but they have failed to do so. The Landlord has not increased the rent since the start of the tenancy, to assist the Respondents.
6. The Respondents' representative opposed the Order being granted on the basis that it would not be reasonable to do so. It was submitted that there were a number of outstanding repairs to the Property, including water damage caused by water ingress from the flat above, damage to carpets and personal belongings as result of the water ingress, general dampness, issues with radiators electrics, a broken washing machine and a rat infestation. It was submitted that the Respondents had discussed a rent reduction with the landlord and that this had been agreed in writing but not followed through. It was submitted that the Respondents were withholding rent due to the repairing issues outstanding at the Property. No confirmation could be given as to when and how this had been communicated to the landlord or his agent, nor whether the Respondents were holding said rent in a separate bank account. No application had been made to the Tribunal for a determination that the Property does not meet the Repairing Standard under the Housing (Scotland) Act 2016.
7. It was submitted by the Applicant's representative that there were no outstanding repairing issues with the Property, other than the issue with intermittent water ingress to the Property, which was ongoing and involved the insurers loss adjusters, building factor and other homeowners. It was submitted that this did not render the Property uninhabitable. The washing machine had been repaired. The dishwasher could not be repaired when the technician attended due to it being too dirty to work on. It remained dirty when the technician attended a second time, despite the Respondents being asked to clean it. It was submitted that the Landlord had carried out significant and substantial repairs and refurbishments to the Property and larger building, since the start of the tenancy. It was submitted that the Respondents had indicated around three weeks ago that they were withholding rent. It was disputed that the Respondents had any legal basis to do so.

8. The following documents were lodged alongside the application:

- (i) Copy Private Residential Tenancy Agreement
- (ii) Copy Notice to Leave
- (iii) Proof of service of the Notice to Leave by email
- (iv) Section 11 notification to the local authority under the Homelessness etc. (Scotland) Act 2003
- (v) Rent statement
- (vi) Correspondence to the Respondent by letter regarding payment agreements and signposting to advice agencies.

9. The CMD was adjourned to a hearing to determine the following matters:

- (i) Are there outstanding repairing issues to the Property which affect the habitability of the Property to such an extent that full rent should not fall due?
- (ii) Have the Respondents been withholding their rent?
- (iii) Is it reasonable to evict the Respondents?

10. The case called again on 2 October 2023 by conference call. The Applicant was represented by Mr Hassan of G4 Properties Ltd, accompanied by Mr Haq. The Respondents were represented by Ms McBride of Govanhill Law Centre.

11. It had been noted by the Tribunal that the notification letters issued to the parties had indicated that the case would call again as a CMD on 2 October 2023, and not as a Hearing as had been directed by the Tribunal previously. Mr Hassan submitted that he was not aware that today's calling would take place as a Hearing and he had not prepared for same. He had understood that today would be calling as a further CMD, as per the notification letter issued. On that basis, Mr Hassan submitted that he had not lodged further documentation that he intended to rely upon at any Hearing. Ms McBride submitted that she was ready to proceed to a Hearing today (and had lodged productions), despite the terms of the notification letter having referred to a CMD.

12. Mr Hassan submitted that there had been further issues with the Property and that since 16 June the Respondents had been residing in alternative temporary accommodation.

13. Ms McBride submitted that she had written to the Applicant on 1 August 2023 seeking further information from them, which had not been provided. Mr Muhammed submitted that no bank statements been lodged (as per the Direction previously issued) as the rent had not been withheld in a separate bank account, but that he had incurred expenses in replacing items within the Property due to damage caused by the dampness and water ingress.

14. The Tribunal determined that in the interests of fairness, the Hearing could not proceed and would require to be rescheduled to another date in order that the Applicant could adequately prepare.

15. The CMD was adjourned to a Hearing which is to take place in-person, to determine the following matters:

- (i) Are there outstanding repairing issues to the Property which affect the habitability of the Property to such an extent that full rent should not fall due?
- (iv) Have the Respondents been withholding their rent?
- (v) Is it reasonable to evict the Respondents?

- Hearing

16. A Hearing took place on 22 January 2024. Mr Hassan appeared on behalf of the Applicant. Mr Muhammed appeared personally on behalf of the Respondents. The Hearing had been fixed to take place in-person at Glasgow Tribunals Centre. Due to the severe weather warning in place and all train services being cancelled, neither member of the Tribunal was able to travel to Glasgow Tribunals Centre. The Tribunal members took part by telephone, with the parties personally present in Glasgow Tribunals Centre with the Tribunal Clerk.

17. The Tribunal had been notified by email of 18 January 2024 from Lyndsey McBride of Govanhill Law Centre that they had withdrawn from acting on behalf of the Respondents. Mr Muhammed advised that Govanhill Law Centre had withdrawn from acting because the Respondents had failed to provide them with evidence of the rent having been withheld in a separate bank account.

18. The Applicant's representative submitted that the Respondents were still residing in the alternative accommodation provided by the Applicant in the Merchant City, since the flash flooding which had affected the Property in June 2023. It was submitted that a loss adjuster had been at the Property and further information had been provided to the insurer last week, but there was still no clear timescale of when approval would be given by the insurer for the works required.

19. The Applicant's representative submitted that the current rent arrears amounted to £9,250. Nothing has been paid since 10 July 2023. The Applicant's insurer has still not approved any payment of the rent for the alternative accommodation and the Applicant is continuing to pay the costs of the alternative accommodation, which is an AirBnB property costing between £80 and £120 per night.

20. The Respondent submitted that his wife had been putting some rent aside and at one point there was around £3,000 in a bank account which was in his wife's name only. However, some of this had been spent on hospital costs due to recently taking their daughters to Romania to visit Mrs Muhammad's father and while there, one of their daughters had need for a medical operation on her knee. It was submitted that Mrs Muhammad had herself had a fall in the Romanian hospital and broken her arm so also required surgery. They were both still in Romania and had incurred costs. The Respondent submitted that there were about four months' worth of rent left in the account, however confirmed that no evidence had been produced of this. The Respondent

submitted that his current position is that there are no ongoing repairing issues with the Property and that they were content to pay rent going forward. The Respondent submitted that the rent should have been paid. The Respondent put forward an offer to pay rent plus £450 per month towards the arrears.

21. The Respondent submitted that he had been working as a taxi driver earning approximately £300 per week. The approximate household income was £2,300 per month.
22. The Applicant's representative submitted that the Respondents had made previous offers which had not come to fruition. It was submitted that an offer to pay £2,000 had been made previously when a central heating issue had been resolved, but nothing was paid. It was submitted that there had been continuous false commitments put forward by the Respondents. It was submitted that the Applicant was incurring loss of rental whilst meeting ongoing factoring fees, insurance, building works of approximately £10,000 per owner and paying for the cost of the alternative accommodation. It was submitted that the Applicant has been very reasonable throughout, but his financial position is being severely impacted. The rent has remained the same since the start of the tenancy agreement and has never been increased.
23. The Hearing was adjourned for a short period to allow the Tribunal members to consider the submissions made. Upon reconvening, the parties were advised that the Tribunal had considered the fact that the Respondent had confirmed that: (i) the full rent was not being withheld and kept in a separate bank account as had been the previous position put to the Tribunal; and (ii) the Respondent had confirmed that they should have paid the rent, and (iii) that the Respondent had confirmed that the current position was that there were no ongoing repairing issues in the Property (the flash flooding issue aside) and (iv) that the Respondent had confirmed that they were content to pay rent going forward. Accordingly, the Tribunal was satisfied that they did not require to hear evidence in relation to the extent of the arrears which were now admitted, nor as regards repairing issues, as the Respondent had now submitted that this was not an issue and that rent should have been paid. The Tribunal therefore required to hear evidence in relation to the reasonableness of granting the order as required under ground 12A(2)(c).
24. The Tribunal was satisfied that the Respondent could provide the personal information required by the Tribunal to determine the question of reasonableness, without the necessity of fixing another Hearing for the Respondent to seek alternative representation. The Tribunal also considered that to continue the matter to another date on that basis would cause prejudice to the Applicant, given the extent of the arrears which continue to increase, along with his other associated costs.
25. The Applicant's representative submitted that the Applicant has been very reasonable throughout the course of the tenancy agreement, and the rent has never been increased since the start of the agreement. The Applicant purchased the Property and refurbished it and it was handed over to the Respondents in very good condition. Maintenance has been carried out during

the course of the tenancy and there have been large costs incurred by the Applicant in relation to building works as well as installing a new heating system.

26. It was submitted that the Respondents have failed to meet payments on time since the start of the tenancy. There have been continual delays in making payment and the Applicant's agents have required to chase the Respondents for payment throughout the course of the tenancy. The Applicant has a mortgage over the property and pays £320 per month to his lender, whilst receiving no rental income to cover that. The Applicant has property factor fees of around £35 per month and, on average, additional quarterly factoring costs of £300 per quarter. The factor does not have a common block insurance policy and the applicant has a policy with Direct Line costing £314.50 per year.
27. The Applicant's representative submitted that since the flash flooding which occurred on 16 June 2023, the Applicant has incurred all costs associated with the provision of the alternative accommodation. The Applicant owns a couple of rental properties, with the Applicant's representatives only managing this particular property. The Applicant had been pushed to sell another property he owned in order to generate funds to assist with this situation.
28. The Respondent submitted that they have two daughters aged 14 and 10 who attend local schools. The Respondent submitted that he was not disputing that rent should have been paid. It was submitted that Mrs Muhammad takes medication for mental health issues but no further information or specifics could be provided. It was submitted that their 10-year-old daughter had been taken to Romania at Christmas time to visit Mrs Muhammad's father, where he resides, and whilst there required to undergo surgery in relation to her knee. Mr Muhammad stated that the hospital treatment cost more than £1,500 but he did not know the exact cost. It was submitted that this had not been discussed with him. No explanation was given as to why these costs had to be incurred and why such medical help could not be obtained within Scotland under the provision of the NHS.
29. The Respondent submitted that he is awaiting 3 months' wages from his previous employment in a warehouse. These were approximately £3,300 and he was told he will receive these in the next few months but does not have a specific date. The Respondent submitted that Mrs Muhammad receives approximately £1,200 per month from Universal Credit. It was submitted that the household has approximately £2,000 of expenses each month but the Respondent could not give specifics of what those expenses were. The Respondent confirmed that he has no health issues himself. He drives a taxi in the Paisley area. The Respondent submitted that his wife's entitlement to Universal Credit would not be affected by his recent taxi driving income.

- Findings in Fact

30. The Tribunal made the following findings in fact:

- (i) The parties entered into a Private Residential Tenancy Agreement (“the Agreement”) which commenced on 8 November 2019;
- (ii) In terms of the Agreement between the parties, the Respondents were due to pay rent to the Applicant in the sum of £550 per calendar month;
- (iii) The Applicant has served a Notice to Leave on the Respondents on the basis of Ground 12A of Schedule 3 to the 2016 Act, and which was served on 25 January 2023;
- (iv) The Respondents have been in continuous arrears of rent since September 2020;
- (v) The Respondents are in arrears of rent amounting to £9,250 at the date of the CMD;
- (vi) There are arrears of rent amounting to the equivalent of at least six months’ rent.
- (vii) It is reasonable to grant the Order sought.

- Reasons for Decision

31. Section 51 of the 2016 Act states as follows:

51 (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.

32. Ground 12A of Schedule 3 to the 2016 Act states as follows:

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).

(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.

33. The Tribunal was satisfied that a Notice to Leave had been served on the Respondents and which specified that ground, in accordance with the requirements of section 52 of the 2016 Act. The Tribunal was satisfied that the terms of Ground 12A of Schedule 3 to the 2016 Act had been met, namely that the Respondents have accrued arrears of rent which amounted to at least the equivalent of six months' rent at the time the Notice to Leave was served. The Tribunal was satisfied that there was no information before it to suggest that the tenant's being in arrears of rent over that period was either wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

34. The Tribunal was satisfied that it was reasonable to grant the Order sought. The Respondents had been in arrears of rent since at least September 2020. The arrears were significant. The Respondents had, at the outset, sought to defend the application on the basis that they were withholding rent due to repairing issues within the Property. Despite over 7 months passing since the application first called before the Tribunal and when the Respondents were

directed to lodge evidence to support their position that rent was being withheld in a separate bank account, they had failed to do so. It was clear from the Respondent's submissions that their agents had withdrawn from acting due to their failure to provide such evidence. It was also clear that the Respondents had not been withholding rent in a separate bank account at all and by the Respondent's own admission, the Respondents should have been paying the rent and there were no ongoing repairing issues in the Property (the flash flooding aside).

35. It appeared to the Tribunal that the Respondents had been acting entirely unreasonably in failing to pay the rent. The flash flooding which occurred in June 2023 and which affected the Property (as well as neighbouring properties) was most unfortunate and was compounding the financial situation for the Applicant. It appeared to the Tribunal that the Respondents had acted entirely unreasonably in failing to pay rent for such a long time and in allowing those arrears to continue to accrue whilst presenting a position to the Tribunal as regards the withholding of rent which they knew was not true and for which no evidence could be produced. The Respondent was often vague and lacked detail in answers given to the Tribunal. The Tribunal was satisfied that there was no reasonable prospect of the rent arrears being repaid to the Applicant within a reasonable timescale, nor of the repayment proposal being adhered to. Whilst the Tribunal noted that there are two school-aged children in the household, the Tribunal weighed the behaviour of the Respondents against the the financial difficulties being caused to the Applicant as a result of the Respondents' failure to pay rent. The Tribunal was satisfied in all the circumstances that it was reasonable to grant the Order.

- Decision

36. The Tribunal granted an order against the Respondents for eviction of the Respondents from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 12A under schedule 3 to 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.



Legal Member/Chair

Date: 22 January 2024