



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (Act)

Chamber Ref: FTS/HPC/EV/23/0464

Re: Property at 188 Mill Street, Glasgow, G73 2NE (“the Property”)

Parties:

Mr Sukhdev Pal, 22 Quarry Avenue, Glasgow, G72 8UF (“the Applicant”)

Mr Darshan Singh Rosie, 188 Mill Street, Glasgow, G73 2NE (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Parties)

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

Background

This is an application under Rule 109 and section 51(1) of the Act for eviction and recovery of possession on Ground 12 of Schedule 3 to the Act.

The Tribunal had regard to the following documents:

1. Application received 13 February 2023;
2. Private Residential Tenancy Agreement (**PRTA**) commencing 18 January 2021;
3. Notice to Leave dated and served by Sheriff Officers on 24 October 2022;
4. Section 11 Notice to Local Authority and covering email;
5. Rent Arrears Statement;
6. Decision dated 1 August 2023;
7. Recall Decision dated 11 September 2023;
8. CMD Note dated 20 December 2023;

9. Notification of the Hearing to the Respondent by email dated 27 February 2024;
10. Email Notification of the Hearing to Applicant Representative dated 27 February 2024;
11. Email from Respondent to Tribunal dated 27 February 2024.

Hearing

The case called for an in person Hearing on 4 April 2024. Neither the Applicant nor his representative participated. The Respondent did not participate and was not represented.

The Tribunal delayed the start of the CMD to see if the Parties would participate but they did not.

The Tribunal were satisfied that the Parties had received notification of the Hearing and that the Tribunal could determine the matter if it considered it had sufficient information to do so and the procedure was fair. The notification also advised the Parties that they should attend and the Tribunal could determine the matter in absence if they did not.

As the Parties did not participate in the Hearing the Tribunal considered the application on the Papers that had been received.

This case has a long history with an order having been granted, recalled and a further Hearing fixed. There had been no appearance at the last CMD which fixed the Hearing.

The Tribunal had regard to Ground 12 of Schedule 3 to the Act which provides:

Rent arrears

12(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—

(a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant—

(i) is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day, and

(ii) has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, and

(b) the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

(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.

(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.

The Tribunal then considered the documentary evidence it had received. In so far as material the Tribunal made the following findings in fact:

1. The Parties let the subjects under a PRTA commencing 18 January 2021;
2. The monthly rent was £650;
3. Notice to Leave had been served on the Respondent on 24 October 2022;
4. As at the date of service of the Notice to Leave the Respondent was in arrears of rent and had been in arrears for a continuous period of three or more consecutive months;
5. As at the date of the Hearing the Tribunal did not know what the amount of arrears were as no evidence had been provided of this;
6. The Tribunal had no evidence as to whether or not any rental arrears were due to any delay or failure in the payment of a relevant benefit;
7. Section 11 notification had been served on the local authority;
8. The Tribunal had no information regarding the personal circumstances of the Respondent other than the email of 27 February 2024 advising that the Respondent no longer lived in the Property.

The Tribunal could not be satisfied that Ground 12 had been established given there was no evidence about the current arrears (if any), whether or not the arrears were in any part due to a delay in payment of a relevant benefit or the circumstances of the Parties. The Tribunal had no information upon which to base a decision on whether it was reasonable to grant the application for eviction and recovery of possession other than the email from the Respondent advising that he no longer lived in the Property.

The Tribunal accordingly refuse the application.

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.

A Strain

4 April 2024

Legal Member/Chair

Date