



**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/22/2945**

**Re: Property at 90 Trinity Avenue, Cardonald, Glasgow, G52 3ER (“the Property”)**

**Parties:**

**Miss Catherine Sloan, Calle Rafael Alberti 4, San Miguel do Salinas, 03193 Alicante, Spain (“the Applicant”)**

**Ms Gillian Fay, 90 Trinity Avenue, Cardonald, Glasgow, G52 3ER (“the Respondent”)**

**Tribunal Members:**

**Shirley Evans (Legal Member) and Ahsan Khan (Ordinary Member)**

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

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at 90 Trinity Avenue, Cardonald, Glasgow, G52 3ER under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth and from the Property and to make the same void and redd that the Applicant or others in her name may enter thereon and peaceably possess and enjoy the same.

**Background**

1. This is an application dated 19 August 2022 for an order for eviction under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”). The Applicant relied on Ground 12 of schedule 3 (rent arrears) of the Private Housing (Tenancies)

(Scotland) Act 2016 (“the 2016 Act) as a basis for seeking the order for eviction.

2. A Case Management Discussion (“CMD”) proceeded on 16 January 2023. Both parties appeared on their own behalf. The case was heard together with a case for rent arrears under reference FTS/HPC/CV/22/2946. The Tribunal granted an Order for payment of £3792.94 with a time to pay direction for payment of £100 per month.
3. The Applicant explained she was unable to produce the tenancy agreement as it had been lost in a flood at her home in Spain. However, there was agreement between the parties that the tenancy commenced on 23 April 2019, that Ms Fay was dependent on benefits, that rent was £600 per month, that arrears had accrued immediately from the start of the tenancy and by August 2019 had reached £2650. Universal Credit housing payment was paid direct to the Applicant from August 2019. The Applicant explained that the Respondent promised to reduce the arrears and to set up standing orders, but that these promises were never sustained.
4. The Tribunal took Miss Sloan through the rent statement and the bank statements lodged and identified that Ms Fay had made personal payments of £150 on 23 November 2020, £100 on 3 and 23 February 2021, £75 on 7 March 2022 and £200 on 28 June 2022. She also explained that Ms Fay had made a further payment of £78 in August 2022. Universal Credit Housing Payment of £522.30 had been received in September 2022 and since October 2022 Universal Credit Housing Payment of £600.17 had been received.
5. Ms Fay accepted she was in arrears of £4392.94 under deduction of £600 deposit. She conceded the arrears were £3792.94. Ms Fay explained she had been working part time and had applied for Universal Credit Housing Payment at the start of the tenancy. She was not aware there were arrears after Universal Credit Housing Payment had started in August 2019 until the Applicant had raised it with her at that time. She stated she had got herself into a bit of a mess and that she never had the money to pay the rent. She candidly stated that it was her fault and that she should have paid more attention to the rent and arrears. She explained she had spoken to the Department of Work and Pensions and they said they would sort out her Universal Credit Housing Payment, but they never did. She had not taken specific advice to help her with this, but accepted on reflection she should have done so. She was not aware whether she was due a backdate to cover the first four months of the tenancy. Her Universal Credit Housing Payment changed depending on her earnings and she made some payments herself. She explained she was due to have a baby on 22 April, that she was due to go off on maternity leave in about 6 weeks’ time and would receive maternity pay and Universal Credit.
6. The case was continued for the Respondent to take advice on whether Universal Credit Housing Payment or other benefit should have been paid to

cover the first four months of the tenancy, if there was a possibility of a backdated benefit payment for the first four months of the tenancy, whether the Respondent was eligible to receive any other benefit or assistance to contribute towards the rent arrears to enable her to retain the tenancy, e.g. a Discretionary Housing Payment and that she is taking steps to secure any such payment to which she may be entitled. Reference is made to the Note on the CMD.

7. The Tribunal issued a Direction for the Applicant to produce an up to date rent statement. The Direction also required the Respondent to produce documents to show she was taking advice on whether Universal Credit Housing Payment or other benefit should have been paid to cover the first four months of the tenancy between 23 April - 23 August 2019, whether she was entitled to a backdate in benefit to cover those first four months and whether she was entitled to any other benefit such as Discretionary Housing Payment which may help her to sustain the tenancy.
8. The Applicant produced an up to date rent statement. The Respondent produced text messages regarding her entitlement to Universal Credit Housing Payment for the first four months of the tenancy. The Respondent did not produce any evidence that she had sought advice on a possible backdate or in relation to any other benefits or assistance which she may be entitled to.
9. The CMD was continued to 9 February 2023. The Applicant again appeared on her own behalf. There was no appearance by or on behalf of the Respondent who had sent an email to the Tribunal late on 8 February 2023 to advise that she could not be in attendance as she had an appointment with Universal Credit and would send the other documents into the Tribunal when she had them.
10. The Tribunal continued the case to a Hearing. Reference is made to the Note on the CMD. The Tribunal wanted to hear evidence as to whether the Respondent was entitled to any other benefit to any other help her sustain the tenancy and to be addressed on reasonableness from the perspective of both parties.
11. On 16 May 2023, the Applicant produced an up to date rent statement in accordance with a Notice of Direction issued by the Tribunal.

### **Hearing**

12. The Tribunal proceeded to a Hearing by way of teleconference on 26 May 2023. The Applicant again appeared on her own behalf. There was no appearance by or on behalf of the Respondent despite the teleconference starting 5 minutes late to allow the Respondent plenty of time to join. The Tribunal noted that the Respondent had been emailed on 27 April 2023 with notification of the time and date of the Hearing together with the details of how to connect to the teleconference. The Tribunal was satisfied the Respondent

had received notice under Rule 24 of the Regulations and accordingly proceeded with the Hearing in her absence.

13. The Tribunal had before it rent statements from 23 April 2019 to 26 April 2023, bank statements, the text messages regarding the Respondent's entitlement to Universal Credit Housing Payment for the first four months of the tenancy, a Notice to Leave dated 11 July 2022 with Recoded Delivery receipt dated 15 July 2022 and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Glasgow City Council dated 18 August 2022. The Tribunal considered these documents.
14. Ms Sloan explained the Respondent had contacted her a few days previously to say she had misplaced the Tribunal's invitation to attend the Hearing. Ms Sloan had advised her of the log in details.
15. Ms Fay also advised Ms Sloan she had been bidding for Council houses but had been unsuccessful.
16. With reference to the rent statement lodged to 26 April 2023, the Tribunal noted arrears stood at £3392.26. Ms Sloan advised that the Respondent had made another £100 payment on 23 May 2023 in terms of the Time to Pay Order and that she had received £600.17 from Universal Credit. She explained that the current arrears were £3292.09. The Tribunal noted the Respondent had also made payments of £100 on 23 January, 23 February, 23 March and 25 April 2023.
17. Ms Sloan confirmed she was still seeking an Order for eviction. She understood from the texts lodged by the Respondent that the Respondent had received the first four months rent from Universal Credit but had not paid it to her. She did not think it was reasonable that she was subsidising the Respondent who had kept the Universal Credit which should have been paid to her to cover the first four months rent. She had attempted to get the Respondent to clear the arrears, but there was always broken promises and intermittent payments. She felt the Respondent did not make enough effort to clear the arrears. COVID then struck. After restrictions were lifted she decided to take action. The Property had 3 bedrooms. The Respondent lived there with her adult daughter, her teenage son and her newborn baby. She was annoyed that the Respondent had felt she could afford to have another baby and not pay her arrears.
18. Ms Sloan explained her personal circumstances were changing. She had originally planned to move her daughter into the Property but she was now considering moving back to the Property herself if she could get her business sorted in Spain.

## **Findings in Fact**

19. The Applicant and the Respondent agreed by way of a Private Residential Tenancy Agreement commencing 23 April 2019 in relation to the Property that the Respondent would pay the Applicant a monthly rent for the Property of £600.
20. The Respondent did not pay the first four months rent to the Applicant. The Respondent fell into arrears of rent.
21. The Respondent received the housing element of Universal Credit from the commencement of the tenancy. This was paid direct to her for the first four months of the tenancy. The Respondent did not pass the housing element onto the Applicant to cover the rent for the first four months. By August 2019 arrears had accrued to £2650.
22. There are no outstanding benefits issues that will have any impact on the arrears. The Respondent was in receipt of Universal Credit at the commencement of the tenancy.
23. The Applicant attempted to get the Respondent to clear the arrears. Ms Fay had made personal payments of £150 on 23 November 2020, £100 on 3 and 23 February 2021, £75 on 7 March 2022, £200 on 28 June 2022, £78 in August 2022, and £100 on 23 January, 23 February, 23 March, 25 April and 23 May 2023.
24. The Applicant received Universal Credit Housing Payment of £522.30 had in September 2022 and since October 2022 Universal Credit Housing Payment of £600.17 has been received by the Applicant every month.
25. On 15 July 2022, the Applicant sent a Notice to Leave to the Respondent by Recorded Delivery post. The said Notice requested that the Respondent remove from the Property by 18 August 2022. The Notice to Leave proceeded on Ground 12 of Schedule 3 of the 2016 Act. At the time of serving the Notice to Leave the Respondent had been in arrears of rent for more than three consecutive months with the level of arrears greater than the one month's rent under the tenancy.
26. The Applicant served a Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 on Glasgow City Council on 18 August 2022.
27. Arrears as at 26 May 2023 are £3292.09.

28. The Respondent resides in the Property with her 20-21 year old daughter, teenage son and new-born baby. She has a live housing application and is bidding for Council housing.

### **Reasons for Decision**

29. The Tribunal considered the issues set out in the application together with the documents lodged in support. The Tribunal also considered the following legislation in its determination -

- Private Housing (Tenancies) (Scotland) Act 2016
- The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.

30. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on Ground 12 of Schedule 3, namely rent arrears. This is a discretionary ground of eviction. As well as being satisfied the facts have been established to support the ground, the Tribunal has to be satisfied that it is reasonable to evict.

31. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.

32. In terms of Section 54 of the 2016 Act a landlord may not make an application to the Tribunal for an eviction order against a tenant until the expiry of the relevant period in relation to that Notice. The relevant period begins on the day the tenant receives the Notice which in the case of Ground 12 of Schedule 3 is 28 days.

33. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states that the Respondent is in arrears at Part 2 of the Notice in terms of Ground 12 of schedule 3. The Notice to Leave specifies the date the Applicant as landlord expects to become entitled to make an application for an eviction order namely 18 August 2022.

34. In terms of Section 62(4) of the 2016 Act, the Notice to Leave must specify the day falling after the day on which the notice period defined in section 54(2) will expire. In this case the Notice to Leave was served on the Respondent on 15 July 2022 by Recorded Delivery post.

35. The Notice to Leave stated the earliest date the Applicant could apply to the Tribunal was 18 August 2022. In the circumstances the Tribunal is satisfied

the Respondent has been given sufficient notice of 28 days in terms of the 2016 Act. Accordingly, the Notice to Leave complies with Section 62.

36. The Tribunal is also satisfied the Notice to Leave complies with Section 52(5) of the 2016 Act and that the application proceeds on an eviction ground stated in the Notice to Leave, namely Ground 12 of Schedule 3.
37. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the submissions made by Ms Sloan and considered the positions of both parties in the previous two CMDs. The Tribunal noted the Respondent had accepted she was in arrears of £3792.94 at the CMD on 16 January 2023. The Tribunal also noted that the Respondent had accepted she should have taken more care to keep track of her rent payments and what was happening to her benefit payments. The Tribunal noted the Respondent had lodged text messages which stated she had received the correct payments to cover her rent for the first four months of the tenancy from Universal Credit. The Respondent had provided the Tribunal with no further information that she may be entitled to any other payment to assist her to reduce the arrears. The Tribunal was satisfied there were no outstanding benefits issues which could impact on the arrears. The Tribunal was conscious that the Applicant was increasingly anxious about her financial situation and frustrated that despite giving the Respondent plenty of opportunity, particularly over the pandemic to show that she was willing to reduce the arrears, the arrears had continued to increase and had only started to reduce at the rate of £100 per month after the Tribunal's payment Order. The Tribunal was satisfied the Respondent was in rent arrears of £3292.09. The Tribunal was satisfied on the basis of the documents lodged, together with submissions made by both parties that the factual basis of the application had been established.
38. In determining whether it is reasonable to grant the order, the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal was satisfied on the basis of the submissions of Ms Sloan that the Respondent attempted to get with Respondent to enter into a repayment plan, but payments had been intermittent and no formal plan to repay the arrears had been proposed by the Respondent. The Applicant had complied with the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. The Respondent has not engaged further with the Tribunal since she had lodged the text messages. The Respondent had a new-born baby. The Tribunal empathised with her. However, the Tribunal was aware that the Respondent had the support of her adult daughter who lived with her. Despite the Respondent having a baby, the Tribunal was mindful that she was sensibly bidding on Council houses and would in the fullness of time be assessed by

the Homeless Team at Glasgow City Council. However, the Applicant had been patient and given every opportunity to the Respondent to clear the arrears before taking action against her. The balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order.

39. A case under Ground 12 of Schedule 3 was met. In the circumstances the Tribunal considered that it was reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

### **Decision**

40. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

### **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.**

Shirley Evans

28 May 2023

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Legal Chair

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Date