



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/22/2211

Re: Property at 14 Westray St, Milton, Glasgow, G22 7SD (“the Property”)

Parties:

Mrs Tracey Carracher, 16 Heatherbank Av, Glasgow, G69 8EQ (“the Applicant”)

Ms Angela McGlaughlin, 14 Westray St, Milton, Glasgow, G22 7SD (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatrige (Legal Member) and Eileen Shand (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 5 July 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 29.3.19 in a Short Assured Tenancy style document, unsigned
 - b. Tenancy agreement in the form of a Private Residential Tenancy (PRT) model tenancy agreement signed only by the Applicant on 4.7.22
 - c. Notice to Leave dated 2.5.22 on grounds 11 and 12.
 - d. Email sending same on 2.5.22 to Respondent.
 - e. Bank Statements for the from 5 March 19 to 5 July 22 showing relevant payments from Respondent to Applicant.
 - f. Letter re rent arrears from Applicant to Respondent 13.1.21
 - g. S 11 notice to local authority

- h. Email sending same on 8.7.22
 - i. Email from Respondent stating she will not move out on 3.6.22
 - j. Tenancy rent statement for the period from 29.4.19 to August 22.
 - k. Authorisation letter by joint owner dated 10.8.22
3. The case documents are referred to for their terms and held to be incorporated herein.
 4. On 12/1.23 the application and notification of the Case Management Discussion (CMD) was served by Sheriff Officers on the Respondent. The Tribunal was satisfied that the Respondents had the required notice of the CMD as set out in Rules 17 (2) and 24 (2) of the Procedural Rules.
 5. No formal representations were received from the Respondent.

B: Case Management Discussion

1. The CMD took place by teleconference on 23.2.23. The Applicant attended the CMD. The Respondent did not take part in the teleconference call.
2. The legal member explained the purpose of the CMD.
3. The Applicant explained that during the process of serving notice to leave she had realised that the initial document issued as a tenancy document had been on the wrong type of lease form, the Short Assured Tenancy form rather than the PRT model tenancy agreement form. She realised that the tenancy had been a PRT as it had started in 2019 and did serve the Notice to Leave, which relates to a PRT. It became clear that the Respondent would not move out at the end of the notice period and before she lodged the application she then sent a copy of the PRT model agreement to the Respondent to put the lease documentation in order. This, however, was simply sending the correct paperwork for the existing PRT and not in any way a new or changed tenancy.
4. The Applicant is seeking an eviction order. She advised that the Respondent had not been in contact at all and that the arrears were now £11,600 because nothing further had been paid by the Respondent since the application had been made. The tenant had been in arrears continuously since August 2019.
5. The Applicant stated she had tried to contact the Respondent on many occasions. Since around Christmas 2021 the Respondent had stopped reacting to telephone calls and emails, with the exception of the email message lodged advising she would not be moving out.
6. At the time in 2021 the Respondent had told the Applicant her benefits had been stopped but since then the Respondent had not been provided with any further information. To the best of the knowledge of the Applicant the Respondent resides at the 3 bedroom cottage flat with her two children, a 21 year old son and a daughter who would be in her late teens. There are no current benefits issues, medical or other issues for the Respondent the Applicant is aware of and the property is not adapted in any way.
7. The Applicant stated she has not been able to gain access to the property because the Respondent is not replying to her requests to access the property and inspect it. The Applicant explained that she works but is paying a mortgage on the rental property and factoring fees and the £11,600 arrears have now brought her into financial difficulties and will have to sell the property. She does not even have a deposit from the Respondent. She is desperate to have this situation resolved and would never let out a property again given the problems she had.

C: 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 29 March 2019.
2. The parties were the landlord and tenants of said Tenancy Agreement.
3. The tenancy continues.
4. The monthly rent of £600 is payable on the 29th day of the month and monthly in advance.
5. Rent arrears of £8,000 accrued as shown in the Rent Statement submitted for the period of up to and including August 2022 and are still outstanding for that period.
6. As at 23 February 2023 the amount due for payment by the Respondent to the Applicant is £11,600.
7. The Respondent has been in arrears of rent since August 2019 and thus for a period exceeding 3 months at the time the notice to leave was served.
8. The rent arrears are equivalent to more than 19 months' rent.
9. The Applicant had provided the Respondent with the opportunity to resolve the matter.
10. The Respondent has not addressed the rent arrears and has not responded to contact from the Applicant by telephone and email apart from one reply stating she would not leave the property on 3.6.22.
11. The Respondent is a single female residing in the property with a 21 year old son and a daughter in her late teens.
12. The property is a 3 bedroom property with no special adaptations.
13. The notice to leave gave the correct notice period and was served on 2.5.22 by email.
14. The rent arrears are not a consequence of delay or failure of payment of relevant benefits.
15. No attempt to clear the arrears was made by the Respondent.
16. The Applicant provided the required S 11 notice and proof of service of same on the local authority.
17. The Applicant is now in financial difficulties and the regular expenses of mortgage and factoring payments for the property have not been covered by the rent.
18. The Applicant may have to sell the property due to the arrears which have developed.

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

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

F26(2).

(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—

[F27(a)] 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 **[F28]**, and

(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations.]

(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.

[F29(6)] Regulations under sub-paragraph (4)(b) may make provision about—

(a) information which should 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 which should 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 application, the notice to leave and rent statement. 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 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 the Applicant at the CMD.

4. The Tribunal considered that the tenancy had clearly been a PRT from the start as it was entered into after the commencement of the 2016 Act. The Tribunal further accepted the Applicant's explanation that the PRT document was only sent to reflect that at the time the Applicant was trying to lodge the documents with the Tribunal and thus wanted to ensure that a copy of the correct tenancy format had been provided to the Respondent. This was not a new tenancy proposal and did not change the terms of the existing PRT. The Tribunal thus accepted that the Notice to Leave issued related to that ongoing PRT, which had remained in place since March 2019. 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 for notices under the 2016 Act.

5. The Tribunal found that Ground 12 (3) of Schedule 3 of the 2016 Act applies in this case. This is a discretionary ground of eviction. There is clear evidence of the rent arrears accruing since August 2019 and thus since before the pandemic started and before the Coronavirus (Scotland) Act 2020 had been in force.

6. The Tribunal considered all relevant information with regard to the question of whether or not it would be reasonable to grant an eviction order in this case. This included the issues raised in Ground 12 (4). 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 which have been accruing over a period of over 3 1/2 years and attempts of the landlord to engage the tenant in efforts address the arrears. The arrears have reached a level that far exceeds even the definition of "substantial rent arrears" in the new Ground 12A introduced by recent legislation. The Tribunal considered that in light of the level of arrears, be they £8,000 as shown in the rent statement and thus explicitly not disputed by the Respondent or £11,600 as credibly stated by the Applicant at the CMD, the arrears themselves together with the absence of any attempt of the Respondent to address these arrears prima facie make out the reasonableness of an eviction order. The Respondent had put forward no circumstances to show that it would not be reasonable for the Tribunal to issue an eviction order.

7. Although the Applicant did not use the forms intended by the Scottish Government for landlords to comply with the Pre-Action requirements, the Applicant had attempted to advise the Respondent of the increasing arrears, had written to her regarding this and had attempted to contact her in other ways with no success. The Applicant did send a request for payment of the arrears in January 2021 and tried to stay in contact with the Respondent but the Respondent ceased to engage around December 2021. The Applicant is not aware whether the Respondent at present receives Housing Benefits but was aware that in the past the Respondent had received Housing Benefit. Thus the Respondent was familiar with the Housing Benefit provisions. There is no indication that the arrears resulted from non or late payment of relevant benefits. The Applicant had been patient and supportive of the Respondent and the Respondent simply did not engage in resolving the matter of rent arrears. Even after the Notice to Leave the Respondent did not propose a payment plan and she has not provided a proposal for payment since the application was made. There has been a prolonged

and persistent failure by the Respondent to address the arrears despite the Applicant's steps to try and engage the Respondent. The arrears are not at a level at which they have led to financial difficulties for the Applicant, who has ongoing mortgage payments and factoring payments, which have not been covered by rental payments for months.

8. 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. There is no suggestion of any medical conditions of the Respondent which would lead to vulnerability. There are no small children living with the Respondent. No specific needs of the Respondent to live at the specific address have been raised.

9. 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.

10. 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.

11. As the Notice to Leave was served on 2.5.22 and the application received by the Tribunal on 5.7.22, the application is not affected by the provisions of schedule 2 of the Cost of Living (Tenant Protection) (Scotland) 2022. The Tribunal, having regard to the appeal period, determines that in terms of S 51(4) of the Act the tenancy ends on 26.3.23.

E : 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. The decision was unanimous.

F: 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**

**24 February 2023
Date**