



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/19/3613

Re: Property at Flat 2/2, 45 Riverford Road, Glasgow, G43 1RX (“the Property”)

Parties:

Miss Alison White, c/o Aderein Considine, 5/9 Bon Accord Crescent, Aberdeen, AB11 6DN (“the Applicant”)

Mr Scott Carrigan, Flat 2/2, 45 Riverford Road, Glasgow, G43 1RX (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Elaine Munroe (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) refused the application for an Eviction Order against the Respondent.

Background

By application, received by the Tribunal on 7 November 2019, the Applicant sought an Eviction Order against the Respondent in terms of Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”). The Ground relied on was Ground 12 of Schedule 3 to the Act, namely that the Respondent had been in rent arrears for three or more consecutive months.

The application was accompanied by copies of a Private Residential Tenancy Agreement between the parties, commencing on 6 February 2019 at a rent of £550 per month, a Rent Statement showing arrears as at 16 September 2019 of £825, being a shortfall on the rent due 6 August 2019 and non-payment of the rent due on 6 September 2019, and a Notice to Leave dated 17 September 2019, advising the Respondent that the Applicant intended to apply to the Tribunal for an Eviction Order

under Ground 12 and that the application would not be made before 17 October 2019.

A Case Management Discussion was held on 4 February 2020 at which the Tribunal noted that an application had been made to a charity in respect of the provision of funds which would clear the rent arrears which existed as at 17 January 2020, namely £2,142. The Tribunal adjourned the Case Management Discussion to 10 March 2020, as it appeared that the application to the charity had been successful and that funds would be paid within a short period.

At the reconvened Case Management Discussion held on 10 March 2020, the Tribunal continued the case to a full Hearing to be held on 23 June 2020, to see whether a settlement could be reached. The Tribunal was told that it had been agreed that the Respondent would pay his monthly rent in full, together with a further sum of £100 per month until the arrears were cleared. The arrears at that date were agreed to be £431.92.

The Hearing scheduled for 23 June 2020 was postponed due to the COVID-19 lockdown restrictions.

On 22 July 2020, the Applicant provided the Tribunal with an updated Rent Statement showing arrears of £706.92. On 29 July 2020, the Respondent provided the Tribunal with a copy of an email from Aberdeen Considine, the Applicant's letting agents, acknowledging receipt of two payments, one of Universal Credit and the other directly from the Respondent and confirming that the balance on the rent account was now Nil.

The Hearing

A Hearing was held by way of a telephone conference call on the morning of 30 July 2020. Both parties participated in the conference call.

In various written representations, including those received by the Tribunal between 10 March 2020 and the date of the Hearing, both Parties had made statements about repairs to the Property, the Respondent complaining about the length of time it had taken to have repairs issues resolved and the Applicant refuting this claim and contending that the Respondent had been making access for repairs difficult and had himself caused damage to the Property. The Legal Chair told the Parties at the beginning of the Hearing that the Tribunal would not hear evidence that related to repairs issues. The Tribunal was concerned only to hear evidence that related to the matter of the rent.

The Applicant accepted that the rental account was now clear. Consequently, the Tribunal was unable to issue an Eviction Order based on Ground 12(2) of Schedule 3 to the Act, as that would have required at least one month's rent to be outstanding at the date of the Hearing. The Tribunal advised the Parties that this meant that the Tribunal had to consider the application under Ground 12(3) of Schedule 3, which allowed the Tribunal to issue an Eviction Order where, as in this case, the Respondent had been in arrears of rent for three or more consecutive months, but only if it was satisfied that it was reasonable on account of that fact to do so. The parties accepted that this was the position.

The Respondent told the Tribunal that at the time of the Case Management Discussion on 10 March 2020, everything had been going well in his job as a part-time UberEats driver, but that had all changed when lockdown was imposed and his income stopped completely and he had had to apply for Universal Credit. He had also received help in the form of a Discretionary Housing Payment and his work was slowly picking up again. The housing element of his Universal Credit and the Discretionary Housing Payment were now being paid directly to the Applicant's letting agents, Aberdeen Considine.

The Applicant pointed out that the rent had been in arrears from June 2019 until only a day or two ago and, as Universal Credit is paid in arrears, it would not be paid again until the end of August and the next rent of £550 was due on 6 August. The Respondent had only made payments when "court action" was about to take place and he had built up arrears of £2,500, which had only been cleared in February due to the intervention of a charity. There was, she contended, a pattern whereby the Respondent was continually in arrears and she had no confidence that the cycle would not begin again when the rent becomes due on 6 August. It was the Applicant who had had to arrange for the housing element of the Respondent's Universal Credit to be paid directly to her letting agents. The Respondent had been resistant to that.

The Respondent stated that he had been withholding rent due to the failure of the Applicant to carry out repairs. The repairs had now been carried out and he had, therefore, cleared the arrears. He was happy in his home, knew the area well and was able to have his daughter occasionally to stay overnight. Withholding rent had been the "only tool" he had to get the repairs done.

Questioned by the Tribunal, the Respondent said that he had told the letting agents he was withholding the rent. He told the Tribunal that he had kept it in a separate account. The Applicant stated that there had been no communication to her to say that the Respondent was withholding payment due to lack of repairs.

The Applicant then called as a witness Mr Murtaza Razul, Senior Property Factor with Aberdeen Considine, Glasgow. He confirmed that if his administration department had told the Respondent that the rental account was clear, that would be correct. His view was that the build-up of arrears to almost £2,500 had been an affordability issue for the Respondent. The Respondent had told him on occasions that he was withholding rent because of repairs issues, but Mr Razul had pointed out to him that if he had such issues, his recourse was to apply to the Tribunal for a Repairing Standard Enforcement Order and that he could not simply withhold the rent. His view, based on his experience with the Respondent, was that, whilst the account was presently clear, he would fall back into a pattern of arrears fairly quickly. Mr Razul added that he had to spend more time on this letting than on any rented property handled by his firm in Glasgow. He also thought that the Respondent had over-stated the repairs issues and that the Applicant had acted reasonably throughout and had dealt with repairs within reasonable timescales. He would not now recommend to any other client that they take on the Respondent as a tenant. He had found him difficult to manage as a tenant. Mr Razul then left the conference call.

In her concluding remarks, the Applicant stated that she had found the Respondent unreasonable and difficult. He had only paid up long-standing arrears a couple of days before the Hearing and she had no confidence that he would pay on time the rent due on 6 August. The Respondent said that he felt disappointed at the way he had been looked after and the way the tenancy had been managed.

The Parties then left the conference call and the Tribunal Members considered all the evidence, written and oral, that had been presented to them.

Findings in fact

The Tribunal found that there were, as at the start of the day of the Hearing, no arrears on the rent account.

Reasons for Decision

Section 51 of the Act provides that the 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 to the Act applies.

The application was based on Ground 12 of Schedule 3 to the Act which states that it is an Eviction Ground that the tenant has been in rent arrears for three or more consecutive months and that, in terms of Ground 12(1) the Tribunal **must** find that Ground 12 applies if, at the beginning of the day on which the Tribunal first considers the application for an Eviction Order on its merits, the tenant 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 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 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.

Ground 12(2) provides that the Tribunal **may** find that Ground 12 applies if for three or more consecutive months the tenant has been in arrears of rent, and the Tribunal is satisfied that it is reasonable on account of that fact to issue an Eviction Order. In deciding 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, including Universal Credit.

The Tribunal decided that the test of Ground 12(1) had not been met, as there were no arrears of rent as at the date of the Hearing. There had, however, been three or more consecutive months of arrears (from July 2019 until a few days prior to the Hearing), so the Tribunal had to decide whether it was reasonable on account of that fact to issue an Eviction Order.

Much of the evidence provided by the Applicant had focused on the Respondent's conduct, the Applicant contending that he had only cleared arrears with the assistance of a military charity and when she had herself arranged for the housing element of his Universal Credit entitlement to be paid directly to her letting agents. The Tribunal noted her concern that the arrears would start to accrue again on 6 August, as the Respondent would not be entitled to his next payment of Universal Credit until the end of the month. The Tribunal was, however, aware that Universal Credit is paid in arrears and that any payment to which the respondent was entitled would be for the period which included 6 August.

The Tribunal recognised that the relationship between the Parties had broken down and that the Applicant had no confidence that the rent would be paid when it next became due on 6 August, but the Tribunal could not speculate on what might happen in the future, irrespective of the history of the relationship. The situation as at the date of the Hearing was that there were no arrears of rent and the housing element of the Respondents' entitlement to Universal Credit is being paid directly to the Applicant's agents, leaving the Respondent with a relatively small shortfall (£55 at present) to make up each month.

The Tribunal made no finding as to whether the Respondent had been withholding rent, rather than simply not paying it. He had indicated at the Hearing that he had put it in a separate account, but had provided no evidence that he had at any point prior to the Hearing indicated to the Applicant or her letting agents that this was the case. The Tribunal recognised that the effect of the global pandemic, with lockdown happening so soon after the Case Management Discussion of 10 March 2020, was that restaurants and food chains had closed completely and that the income of the Respondent had stopped. This meant that he was not able to honour the agreement indicated on 10 March to pay the monthly rent and a further £100 per month until the arrears, then standing at £431.92 were cleared. Some rent had, however, been paid during lockdown, presumably from Universal Credit payments received directly by the Respondent, as the arrears were £706.92 on 22 July 2020, and £550 for each of April, May, June and July had fallen due by that date.

Having considered carefully all the evidence before it, the Tribunal was, on balance, unable to hold that it would be reasonable to issue an Eviction Order under Ground 12 of Schedule 3 to the Act, as the rent is now up to date and, whatever may have been the reason for non-payment in the past, the Respondent had stated in evidence that there were now no repairs issues with the property, so he could no longer use that as a reason for not paying the rent. The Tribunal would remind the Respondent that there are separate mechanisms for reporting repairs issues to the Tribunal, if a landlord does not maintain a property to the repairing standard and this is clearly set out in Clause 18 of his tenancy agreement.

The Tribunal recognised the Applicant's anxiety about the prospect that the rent may fall into arrears again, but her remedy in that event would be to make a further application to the Tribunal and the Tribunal in a future case would no doubt give weight to the fact that it had, only on balance, given the Respondent the benefit of the doubt in the present case.

Decision

The Tribunal refused the application for an Eviction Order against the Respondent.

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

30 July 2020

Date