

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision following a Case Management Discussion of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for eviction/ possession of a Rented Property in terms of Rule 109 of the Procedure Rules.

Chamber Ref: FTS/HPC/EV/18/2721

Re: 0/2, 32 Bankhall Street, Glasgow, G42 8JR ("the Property")

Parties:

Adrian Foulds, 33 Ormonde Avenue, Glasgow, G44 3QY ("the Applicant")

Ms Selina Paulson residing at 0/2, 32 Bankhall Street, Glasgow, G42 8JR ("the Respondents")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal")

Tribunal Member: Jacqui Taylor (Legal Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") dismissed the application for an order for possession of the Property.

Background

1. The Applicant applied to the Tribunal for eviction/ possession of the Rented Property under section 51(1) of the Private Housing Tenancies (Scotland) Act 2016, in terms of Rule 109 of the Procedure Rules. The application was dated 9th October 2018. The application states that advance rent due on 5th July 2018 had not been paid. Some rent had been paid from 6th July 2018 to 8th October 2018 the rent was £900 in arrears as at 9th October 2018.
2. Documents lodged with the Tribunal were:-
 - 2.1 The Tenancy Agreement.
 - 2.2 Notice to Leave dated 7th September 2018 advising the Tenant that an application will not be submitted to the Tribunal for an eviction before 7th October 2018.
 - 2.3 Section 11 Notice addressed to Glasgow City Council and emailed to GCCSection11Notification@sw.glasgow.gov.uk.

3. Case Management Discussion

This case called for a Case management Discussion (CMD) at 2pm at Glasgow Tribunals Centre, 20 York Street, Glasgow, G2 8GT on 3rd January 2019.

The Applicant was present.

The Respondent was also present and was accompanied by her representative Mo Daniels.

The Respondent was served notice by Sheriff Officers on 30th November 2018 of the case and details of the Case Management Discussion. No written responses were received from the Respondent.

4. The Tribunal identified with the parties the following agreed facts:

4.1 The Respondent is Tenant of the Property in terms of the lease between the parties. The start date of the Tenancy was 5th December 2017.

4.2 The rent due under the lease was £400 per month.

4.3 The lease is a Private Residential Tenancy in terms of the Private Housing Tenancies (Scotland) Act 2016 ('The 2016 Act').

4.4 The Applicant is Landlord of the Property. The Tribunal had a copy of the Applicant's title deeds being Land Certificate GLA53410.

5. Requirements of Section 109 of the Procedure Rules.

5.1 The Tribunal confirmed that the application correctly detailed the requirements of section 109(a) of the Procedure Rules namely:-

- (i) the name, address and registration number of the Landlord.
- (ii) the name and address of the Landlord's representative.
- (iii) the name and address of the Tenants.
- (iv) the ground of eviction. The ground stated that advance rent due on 5th July 2018 had not been paid. Some rent had been paid from 6th July 2018 to 8th October 2018. £900 in arrears as at 9th October 2018. The Tribunal accepted that this ground is Ground 12 of Schedule 3 of the 2016 Act, without determining if this ground was established.

5.2 Section 109(b) of the Procedure Rules requires that the applicant provides:

- (i) evidence showing that the eviction ground or grounds had been met and
- (ii) a copy of the notice to leave given to the Tenant as required by section 52(3) of the 2016 Act.

Ground 12 of Schedule 3 of the 2016 Act provides:

- (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 are satisfied that the Tenant's being in arrears of rent over that period is not wholly or partly as a consequence of a delay or a 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 Regulations.*
 - (ii) *A payment to account awarded under section 91 of those regulations.*
 - (iii) *Universal credit ...*
 - (iv) *Sums 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 Respondent advised that the Landlord had agreed to the rent payment provisions of the lease to be amended such that for the period from the beginning of July to 28th July 2018 the rent would be paid by equal weekly payments of £100. She had email correspondence with the Landlord which confirmed this but she had not provided copies to the Tribunal.

The Landlord accessed his emails on his phone and read the emails aloud to the Tribunal. After reading the emails he explained that the agreement that he had reached with the Respondent was that for the period 5th July to 20th July 2018 the rent was to be paid weekly at the rate of £100. The Respondent confirmed that this was the agreement that had been reached.

In light of this agreement the Landlord was invited to confirm the amendments that were required to the rent arrears statement that had been incorporated into the Notice to Leave.

He advised that the amended statement was as follows:

Date	Due	Payment Made	Arrears
6 th July 2018	£100	£100	0
13 th July 2018	£100	£100	0
19 th July 2018	£100	£100	0
26 th July 2018	£100	0	£100
5 th August 2018	£400	0	£500
22 nd August 2018		£400	£100
5 th September 2018	£400	0	£500

The Applicant accepted that this means that the rent arrears started at 26th July 2018 and at the date of the Notice to Leave (7th September 2018) and the date of the application to the Tribunal (9th October 2018) the rent had not been in arrears for three months or more.

Consequently the Tribunal determined that the Landlord had not met the requirements of Ground 12.

(iii) a copy of the notice given to the local authority as required by Section 56(1) of the 2016 Act.

The Tribunal confirmed that a copy of the required notice had been provided but no evidence had been provided that it had been sent to Glasgow City Council.

(c) The Tribunal confirmed that the application form had been correctly signed and dated by the Landlord as required by Section 109(c) of the Procedure Rules.

6. Decision

The Tribunal dismissed the application for the order for possession of the Property as the Respondent had not been in rent arrears for three or more consecutive months at the date of the Notice to Leave and the date of 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.

Jacqueline Taylor

3rd January 2019

Legal Member