



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/23/2657

Re: Property at 88 Drumcross Road, Glasgow, G53 5LN (“the Property”)

Parties:

Ms Georgina Gallacher, 23 Craigsheen Avenue, Carmunock, G76 9AG (“the Applicant”)

Mr Chris Shepherd, 88 Drumcross Road, Glasgow, G53 5LN (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Helen Barclay (Ordinary Member)

Decision

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 88 Drumcross Road, Glasgow, G53 5LN under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicants 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 furth 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. By application dated 7 August 2023, the Applicant’s solicitor applied to the First- tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for repossession under Rule 109 of the First-tier

Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).

2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the parties dated 17 March 2022, a Notice to Leave with email dated 4 July 2023, a rent statement, a letter dated 4 July 2023, and an email dated 7 August 2023 addressed to Glasgow City Council with a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003.
3. On 24 August 2023, the Tribunal accepted the application under Rule 9 of the Regulations 2017.
4. On 4 October 2023 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 25 October 2023. The Tribunal advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 8 November 2023. This paperwork was served on the Respondent by Stuart Sinclair, Sheriff Officer, Glasgow on 9 October 2023 and the Execution of Service was received by the Tribunal administration.

Case Management Discussion

5. The Tribunal proceeded with a CMD on 8 November 2023 by way of teleconference. Ms Brown from Complete Clarity Solicitors & Simplicity Legal appeared for the Applicant. Mr Shepherd the Respondent appeared on his own behalf. The action was heard together with an action for payment of rent arrears under reference FTS/HPC/CV/23/2659.
6. The Tribunal had before it the Private Residential Tenancy Agreement between the parties dated 17 March 2022, a Notice to Leave with email dated 4 July 2023, a rent statement, a letter dated 4 July 2023, and an email dated 7 August 2023 addressed to Glasgow City Council with a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003. The Tribunal considered these documents.
7. Ms Brown moved the Tribunal to grant an order of eviction and submitted the Respondent was in substantial rent arrears of over six months rent. She submitted that she understood the Respondent was not opposing the application. She submitted that her client was an older lady who had health difficulties and who had suffered stress by the Respondent’s failure to pay rent. She submitted this was causing the Applicant financial hardship as she was struggling to pay her mortgage and other outlays.
8. With regard to the level of arrears she stated that she did not have an up to date rent statement and was not able to advise the Tribunal of the arrears amount. Arrears as at the date of application were £6935.

9. Mr Shepherd confirmed that although he did not oppose the order for eviction being granted, he submitted there were discrepancies in the rent statements he had been provided with. He had paid £1000 per month from April 2023, being £795 rent and £205 towards the arrears. He submitted he had paid £1435 towards the arrears since April. He accepted that he was over six months in rent arrears. He calculated the arrears stood at £5845.
10. Mr Shepherd advised he lived in the Property with his 14-year-old daughter. He worked full time as an energy assessor and had had that job for about a year and a half. Arrears had arisen when things had got on top of him in his personal life. He advised that he was moving to Falkirk at the beginning of December.
11. Ms Brown accepted she was not in a position to challenge Mr Shepherd's submissions on the level of arrears without an up-to-date rent statement. However, she submitted that it was clear that the arrears were substantial.

Reasons for Decision

12. 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.
 - The Cost of Living (Tenant Protection) (Scotland) Act 2022.
13. 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 12A (substantial rent arrears).
14. 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.
15. 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 12A of Schedule 3 is 28 days.
16. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states that it proceeds on Ground 12 A of schedule 3 of the 2016 Act and states the amount of arrears at Part 2 of the Notice. The Notice to Leave specifies the date the Applicant as landlord expects to become entitled to make an application for an eviction order namely 4 August 2023. 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 received by the Respondent on 4 July 2023, intimation by email being provided for in terms of Clause 4 of the tenancy agreement between the parties. In the circumstances the Tribunal is satisfied the Respondent has been given sufficient notice of 28 days. Accordingly, the Notice to Leave complies with Section 62.

17. Paragraph 5 (a) of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 (“the 2022 Act”) introduced additional grounds of repossession and amended Schedule 3 of the 2016 Act on 28 October 2022, including the introduction of Ground 12A. Ground 12A (Substantial rent arrears) provides –
- “(1) It is an eviction ground that the tenant has substantial rent arrears.
(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—
(a) the tenant has accrued rent arrears under the tenancy in respect of one or more periods,
(b) the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy when notice to leave is given to the tenant
on this ground in accordance with section 52(3), and
(c) the Tribunal is satisfied that it is reasonable to issue an eviction order.
(3) In deciding under sub-paragraph (2) whether it is reasonable to issue an eviction order, the Tribunal is to consider—
(a) whether the tenant being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit,
(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers under paragraph 12(4)(b) (and continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022).
(4) For the purpose of this paragraph—
(a) references to a relevant benefit are to—
(i) a rent allowance or rent rebate under the Housing Benefit Regulations 2006 (S.I.2006/213),
(ii) a payment on account awarded under regulation 93 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.”*

18. Paragraph 1(1) and (2) of Schedule 2 of the 2022 Act introduced certain restrictions on residential evictions. Paragraph 1(5) provides that where an eviction order relates to a private residential tenancy under the 2016 Act the

restrictions do not apply where an order for eviction is granted on various grounds including Ground 12A.

19. The Tribunal considered the Respondent was not opposing the order for eviction. The Respondent accepted he was in more than six month's arrears. However, Ground 12A is 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.
20. The Tribunal considered the issues set out in the application together with the documents lodged in support. Although there was one pre action requirement letter which was dated the same day as the Notice to Leave the Tribunal was persuaded by Ms Brown's submissions that Ground 12 A had been established and that it was reasonable to evict. The Applicant was elderly, suffered with ill health and was suffering from financial hardship. On the other hand, the Respondent accepted he was in substantial arrears of over six months and did not oppose the application. He intended to vacate the Property at the beginning of December. The Tribunal noted that notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Glasgow City Council had been served. The Tribunal was satisfied on the basis of the documents lodged, together with submissions made by Ms Brown and Mr Shepherd, that the factual basis of the application had been established. A case under Ground 12A of Schedule 3 of the 2016 Act as amended by the 2022 Act was accordingly met. The balance of reasonableness in this case weighted towards the Applicant.
21. In the circumstances the Tribunal considered that in terms of Ground 12A of Schedule 3 the Respondent is in substantial rent arrears of over six months and that it is reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

Decision

22. 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

8 November 2023

Legal Chair

Date