



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/23/3122

Re: Property at 1/2 10 Rothes Drive, Glasgow, G23 5PZ (“the Property”)

Parties:

Mr Chris Simpson, 8 Ilay Court, Bearsden, G61 1RT (“the Applicant”)

Ms Nicole McMurray, 1/2 10 Rothes Drive, Glasgow, G23 5PZ (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Mary Lyden (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 1/2 10 Rothes Drive, Glasgow, G23 5PZ 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 his name may enter thereon and peaceably possess and enjoy the same.

Background

- 1. By application dated 1 September 2023, the Applicant’s agent 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”). The action is based on the Respondent’s rent arrears.

2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the parties dated 27 April 2022, a Notice to Leave dated 12 June 2023 with proof of recorded delivery dated 13 June 2023, a rent statement, and an email dated 25 July 2023 addressed to Glasgow City Council with a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003.
3. On 20 October 2023, the Tribunal accepted the application under Rule 9 of the Regulations.
4. On 20 November 2023 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 11 December 2023. The Tribunal advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 15 January 2024. This paperwork was served on the Respondent by Stuart Sinclair, Sheriff Officer, Glasgow on 21 November 2023 and the Execution of Service was received by the Tribunal administration.
5. The Respondent did not lodge any written representations by 11 December 2023.
6. On 13 December 2023 the Tribunal issued a Notice of Direction for the Applicant to lodge an up to date rent statement together with correspondence with the Respondent regarding the arrears. The Applicant’s agent lodged a rent statement to 25 November 2023, text messages to the Respondent and email correspondence with the Respondent to 18 December 2023.

Case Management Discussion

7. The Tribunal proceeded with a CMD on 15 January 2024 by way of teleconference. Mr Stephen McGlone from Westgate Lettings and Estate Agents appeared on behalf of the Applicant. 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 was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in her absence.
8. The Tribunal had before it the Private Residential Tenancy Agreement between the parties dated 27 April 2022, a Notice to Leave dated 12 June 2023 with proof of recorded delivery dated 13 June 2023, a rent statement to 25 November 2023, text and email messages with the Respondent and an email dated 25 July 2023 addressed to Glasgow City Council with a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003. The Tribunal considered these documents. The Tribunal noted the Notice to Leave

proceeded on Ground 12 (three months' rent arrears) of Schedule 3 of the 2016 Act and that in terms of Clause 8 of the tenancy agreement the rent was £695 per month.

9. Mr McGlone moved the Tribunal to grant an order of eviction. He advised the Respondent had moved into the Property in April 2022 with her partner and two children who he believed were 2 and 15 years of age. The Respondent fell into arrears almost immediately. Mr McGlone explained they entered into a repayment agreement with her in about September 2023 when they agreed she would pay £200 per week. They had tried to work with the Respondent, but she has stopped paying rent, the last payments being in December when she paid £200 on 11 December 2023 and another payment of £200 on 27 December 2023. The Tribunal noted from the rent statement that arrears to 25 November were £5226. Mr McGlone could not advise the Tribunal as to the current arrears figure but confirmed that as she was not covering the rent they had increased. They had not specifically referred her to advice agencies and he was not aware whether or not she was on benefits. Mr McGlone understood the Respondent and her partner both worked. The Tribunal noted the Respondent's email of 18 December 2023 made reference to her receiving wages. He believed the Respondent was about 40 – 45 years of age and was not aware of a change of circumstances. He was also not aware whether the Respondent had been contacted by Glasgow City Council following the service of the Section 11 Notice. Mr McGlone explained that in his experience the Council would not take any action with regards to rehousing until after an order had been granted. He was not aware of any health issues in the family.

Findings In Fact

10. The Applicant and the Respondent agreed by way of Clause 8 of a Private Residential Tenancy Agreement dated 27 April 2022 in relation to the Property that the Respondent would pay the Applicant a monthly rent for the Property of £695.
11. The Respondent has fallen into arrears of rent and is in breach of Clause 8 of the tenancy agreement.
12. The Applicant's agent contacted the Respondent about her rent arrears by text. It was agreed the Respondent would make weekly payments of £200 from September 2023. As at 25 November 2023 the arrears were £5226.
13. The Respondent's last payments were on 11 December 2023 when she paid £200 and on 27 December 2023 when she paid £200.
14. On 12 June 2023 Applicant's agent served a Notice to Leave on the Respondent by way of Recorded Delivery. This was received by the Respondent on 13 June 2023. The said Notice requested that the Respondent remove from the Property by 31 August 2023.

15. The Notice to Leave proceeded on Ground 12 of Schedule 3 of the 2016 Act on the basis that 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.
16. There are no outstanding benefits issues that will have any impact on the arrears.
17. The Respondent lives with her partner and two children and is in employment.
18. A Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 was served on Glasgow City Council on 25 July 2023.

Reasons for Decision

19. 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.
20. 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 originally proceeded on Ground 12 (three months rent arrears).
21. 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.
22. 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.
23. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states the Respondent is in three months' rent 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 31 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 13 June 2023. In the circumstances the Tribunal is satisfied the Respondent has been given more than sufficient notice of 28 days. Accordingly, the Notice to Leave complies with Section 62.

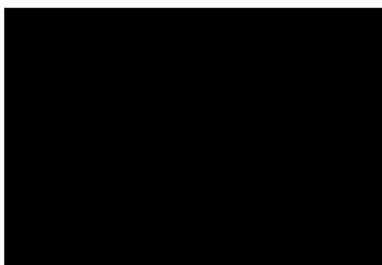
24. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the submissions made by Mr McGlone. The Tribunal considered that the Respondent had not disputed the basis for the application. The Tribunal considered the Respondent's poor payment history since the start of the tenancy. Arrears had increased to £5226 as of 25 November 2023 being the equivalent of over seven months' rent. The payments made by the Respondent in December 2023 of £400 did not cover the monthly rent of £695. There are no outstanding benefits issues. The Tribunal was satisfied on the basis of the documents lodged, together with submissions made by Mr McGlone that the factual basis of the application had been established. A case under Ground 12 of Schedule 3 of the 2016 Act was accordingly met. The Tribunal noted that notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Glasgow City Council had been served.
25. 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 relevant circumstances of the case. In this case the Tribunal was satisfied on the basis of the submissions of Mr McGlone that the Respondent had accrued arrears. Although the Tribunal did not consider that the Applicant's agent had complied with the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020, they had regularly contacted the Respondent since arrears started to arise in an attempt to get her to engage. It would not be reasonable to expect the Applicant to continue to bear that level of substantial arrears with the Respondent not making sufficient payments to cover the rent. The Respondent had also not engaged with the Tribunal process. There were no outstanding benefits issues. The arrears were increasing by the month and had reached such a level that there was very little choice but for the Tribunal to grant the order. The Tribunal considered the Respondent lived with her partner and that they were both believed to be in employment. Although they had two children, the Respondent had not engaged with the agents to advise of any change in circumstances. It appeared that there was no reason for the Respondent incurring arrears. The family had no known disabilities or vulnerabilities. The balance of reasonableness in this case weighted towards the Applicant.
26. In the circumstances the Tribunal considered that in terms of Ground 12 of Schedule 3 the Respondent has been in rent arrears for over three months and that it is reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

Decision

27. 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.



Legal Chair

15 January 2024

Date