



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber)**

Chamber Ref: FTS/HPC/EV/23/3230

Re: Property at 109 Oak Road, Abronhill, Cumbernauld, G67 3LE (“the Property”)

Parties:

Mr John Francis Parr, 1/18 Main Street, Cumbernauld Village, Cumbernauld, G67 2RS (“the Applicant”)

Ms Andrea Reid, Ms Catriona Gillespie, 109 Oak Road, Abronhill, Cumbernauld, G67 3LE; Flat 5, 67 Main Street, Uddingston, G71 7EP (“the Respondent”)

Tribunal Members:

Virgil Crawford (Legal Member) and Janine Green (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

BACKGROUND

1. During June 2019 the Respondents rented the Property from the Applicant. There was no written lease between the parties. The rent payable is £540.00 per calendar month, according to the Applicant. The first named Respondent, Andrea Reid, was of the view that the rent payable was £487.50 per calendar month.
2. The second named Respondent forwarded written submissions to the Tribunal advising that she did not oppose an order for eviction. She advised she vacated the premises during September 2021 and the Applicant was aware of that. Documentation was provided which indicated the landlord did,

indeed, know that the second named Respondent was no longer residing at the Property.

3. The Respondents had been in arrears of rent prior to the second named Respondent vacating the premises. The arrears of rent continued to rise thereafter.
4. The Applicant presented an application to the Tribunal seeking an order for eviction of the Respondents from the Property on the basis of substantial rent arrears. On the basis of the Applicant's assertion that rent was due at a rate of £540.00 per month, as at the date of lodging the application the arrears of rent amounted to £12,833.25. As at the date of the Case Management Discussion, arrears of rent amounted to £13,774.25.
5. The Applicant had previously intimated a notice to leave upon the Respondents.
6. The Applicant had intimated a notice in terms of s11 of the Homelessness Etc. (Scotland) Act 2003 upon the local authority.

THE CASE MANAGEMENT DISCUSSION

7. A Case Management Discussion was assigned to be held by teleconference at 10am on 15th December 2023. The Applicant was represented by Miss C Mullen of Messrs T C Toung, Solicitors, Glasgow. The Applicant also participated in the discussion and had a supporter, Duncan Scott, present also. The first named Respondent, Andrea Reid, participated in the Case Management Discussion. She had a representative, Caroline Aitkenhead also. The second named Respondent did not participate. As indicated, she had previously written to the Tribunal advising she did not oppose an order for eviction.
8. Miss Mullen moved the Tribunal to grant an order for eviction. She advised that arrears of rent were continuing to increase on a monthly basis. The arrears of rent now amounted to £13,774.25. That was approximately 25 months rental payments.

The First Respondent's Position

9. The first Respondent, Andrea Reid, did not accept that the rent arrears were as high as £13,774.25. That, however, is on the basis she believed the rent payable was £487.50 per month rather than £540.00 per month. She accepted, however, that there were arrears of rent and that the arrears of rent would be substantial, even on her version of events.
10. The Tribunal noted, from the rent statement, that at the commencement of the tenancy a number of payments in the amount of £540.00 had been made. Miss Reid advised that these payments were £487.50 for rent and an

additional payment to pay up the tenancy deposit which had apparently been requested. That was not accepted by the Applicant.

11. The Tribunal noted also, however, that while some payments of £540.00 had been made at the commencement of the tenancy, the arrears of rent, in fact, commenced as at the second month of the tenancy when only £370.00 was paid. The arrears of rent thereafter continued to increase and were never, at any point, cleared.
12. Miss Reid suggested to the Tribunal that the arrears arose due to the second named Respondent, Miss Gillespie, vacating the premises in September 2021 and she becoming solely responsible for rental payments. When the Tribunal pointed out that arrears of rent existed prior to September 2021, Miss Reid expressed surprise at that but was unable to provide any explanation for the arrears at that stage.
13. Miss Reid suggested that the arrears were partly due to fault on the part of the Applicant. She intimated that, after Miss Gillespie vacated the premises, she asked the Applicant to provide her with a tenancy agreement in her sole name. She suggested that, had that been done, she would have been able to obtain an increased level of benefits to cover her rent payments. She advised the Tribunal that she was currently receiving £150.00 per month by way of contribution towards her rent. She believed she would have been entitled to double that amount if she had been provided with a tenancy agreement in her own name. Even on that version of events, however, she would still have been receiving significantly less by way of benefits than was due in relation to rent. She suggested that she would have found money to pay over and above the benefit payment but was unable to specify how much that would be.
14. Even allowing for the suggestion by Miss Reid that rental payments were only £487.50 per month, arrears of rent would still have been in excess of £10,000.00. On either version of events, the arrears were substantial, longstanding and had continually increased since the second month of the tenancy.
15. Miss Reid is currently unemployed, in receipt of benefits and there is no realistic prospect that she would be in a position to make payment of the rent due on an ongoing basis.
16. Miss Reid advised that she is single, has no children residing with her at the Property. She advised that she suffers from chronic arthritis and chronic depression. She has been in contact with the local authority about the possibility of securing alternative accommodation.

The Applicant's Position

17. On behalf of the Applicant, Miss Mullen advised that the rental agreement between the parties was a verbal agreement entered into in 2019. While the

second named Respondent had vacated the premises in September 2021, there was no obligation on the Applicant to provide a new rental agreement to Miss Reid in her own name.

18. In relation to the Applicant, while eviction was being sought due to rent arrears, it was his intention to sell the Property if he obtained vacant possession. The Applicant is 57 years of age. He previously worked part time but was currently on long term sick leave. He is unlikely to work again. He has an elevated level of prostate antigen. His main income, at present, is from adult disability payments due to his medical condition. He currently resides in local authority accommodation. He has no other property. This is the only property rented by him. He has an interest only mortgage requiring payment of £372.37 per month. The payments being received from the Respondent do not even cover the interest payments on his mortgage. Accordingly, he wishes to sell the Property when vacant possession is obtained to enable him to repay the mortgage on it.

FINDINGS IN FACT

19. The Tribunal found the following facts to be established:-
- a. The parties entered into a verbal rental agreement during June 2019. The rent payable was no less than £487.50 per month.
 - b. In July 2019 the Applicants failed to make payment of the full rent due. They fell into arrears, therefore, on the second month of the rental agreement.
 - c. The arrears of rent continued to arise thereafter. Since the second month of the tenancy, there has always been arrears of rent.
 - d. The second named Respondent vacated the Property in September 2021.
 - e. The arrears of rent continued to accrue thereafter. As at the date of the case management discussion, the arrears of rent amounted to no less than £10,000.00. The arrears of rent, accordingly, are substantial.
 - f. The Applicant intimated a Notice to Leave upon the Respondents.
 - g. The Applicant intimated a Notice in terms of S11 of the 2003 Act to the local authority.
 - h. The Respondent is not in a position to make payment of the full rental payments due on an ongoing basis.
 - i. The Respondent resides alone at the Property.
 - j. The Applicant has significant health issues which are likely to render him unfit to work again.
 - k. The rental payments being received from the first named Respondent are less than the mortgage payments which require to be made by the Applicant. The ongoing rental arrangement, therefore, is resulting in financial unfairness to the Applicant.
 - l. It is reasonable in the circumstances that an order for eviction be granted.

REASONS FOR DECISION

20. The arrears of rent are substantial, longstanding and have been continuing to increase for a significant period of time.

21. The first named Respondent is unable to make payment of the full rent payments due on an ongoing basis, even allowing for her suggestion that rent is £487.50 per month, rather than £540.00 per month.

22. In assessing the reasonableness in relation to the Parties, having regard to the fact that the Applicant is unfit for work, is unlikely to be fit for work at any time in the future, is living in local authority accommodation, is surviving on state benefits and is receiving less by way of rent than is required to be paid by him in relation to the mortgage for the Property on a monthly basis, any issue of reasonableness falls in favour of the Applicant.

23. While the ground of eviction, being substantial rent arrears, is not affected by the Cost of Living (Tenant Protection) (Scotland) Act 2022, the Tribunal, having regard to the time of year, approaching the festive holiday period, granted an order for eviction but provided that the date upon which it can be enforced, if necessary, will be no earlier than 12 noon on Friday 29th January 2024.

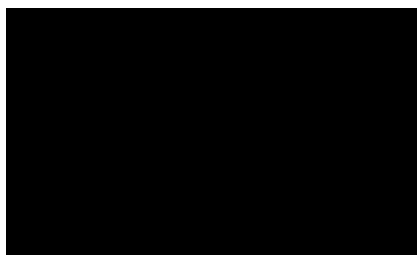
DECISION

The Tribunal granted an order against the Respondents for eviction of the Respondents from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 12A of Schedule 3 of said Act (substantial rent arrears)

Order not to be enforced prior to 12 noon on 29th January 2024

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.



15 December 2023

Legal Member/Chair

Date

