



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/23/1570

Re: Property at 150 Old Rutherglen Road, Glasgow, G5 0RH (“the Property”)

Parties:

Mr Waliur Rahman, 48 Errol Gardens, Glasgow, G5 0RR (“the Applicant”)

Mr Kvestan Hussain Mahmod, 150 Old Rutherglen Road, Glasgow, G5 0RH (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order

Background

- 1 By application to the Tribunal dated 16th May 2023 the Applicant sought an eviction order against the Respondent under ground 5 of Schedule 3 of the Private Housing Tenancies (Scotland) Act 2016.
- 2 In support of the application the Applicant provided:-
 - (i) Tenancy Agreement between the parties;
 - (ii) Notice to Leave dated 1 February 2023 citing ground 5 together with certificate of service by Sheriff Officers;
 - (iii) Notice under section 11 to Glasgow City Council together with covering email; and
 - (iv) Affidavit by Mr Amirud Din dated 1st February 2023.

- 3 By Notice of Acceptance of Application a Legal Member with delegated powers from the Chamber President agreed that there were no grounds to reject the application. A case management discussion was therefore assigned and a copy of the application paperwork, together with notification of the date and time of the Case Management Discussion, was served on the Respondent by Sheriff Officers.

The Case Management Discussion

- 4 The Case Management Discussion took place by teleconference. The Applicant was represented by Ms Colette Kerr, Solicitor. The Respondent was in attendance.
- 5 Ms Kerr explained that the Applicant sought an eviction order under section 51(1) of the 2016 Act. The application complied with the statutory requirements and was supported by an affidavit by Mr Din, a member of the landlord's family, explaining why his family wished to occupy the property. A copy of the Notice to Leave had been given to the tenant and notice had also been given to the local authority. Neither the Applicant nor Ms Kerr had received any written representations from the Respondent. In terms of reasonableness, Ms Kerr confirmed that Mr Din required the property for his family. The Applicant wished an eviction order so that Mr Din's family could take up occupation. They were presently living in cramped conditions and had been unable to secure alternative accommodation. It was very difficult. Mr Din had a wife and three children, and his current two bedroom property was unsuitable for their needs. Ms Kerr also understood that the Respondent was in rent arrears in the sum of £4000, although she appreciated that had not been formally put to the Tribunal. In response to questions from the Tribunal Ms Kerr advised that she had no further information regarding the period over which the arrears had accrued, nor did she know the extent of the Applicant's property portfolio.
- 6 The Respondent addressed the Tribunal. He advised that he had spent around £6000 in upgrading the bathroom in the property. The Applicant had advised that he would receive a reduction in rent as a result. The Respondent explained that he had resided in the property since 2013 and had carried out various upgrading works over that period. The Applicant had not done anything until last year when he fixed the boiler. The Respondent advised that he understood the Applicant to have around six or seven rental properties in the area. The Respondent explained that he had applied to various housing providers for accommodation including housing associations and the Council, but had not been offered anything although his wife did have some priority points in view of her health condition. He had been in Glasgow for 25 years and has full-time work in a shop. He lived in the property with his wife and two children, aged 19 and 20. His son was about to go to university and his daughter worked as a dental nurse. His wife had recently had an operation and was currently bedbound. The property was suitable for his family's needs. The Respondent advised that he had tried to seek advice from six different solicitors but had been turned down. He would leave the property if he could, as the Applicant had been a good landlord, however he simply couldn't obtain another property at this time. He opposed the eviction order on that basis.

- 7 Having heard from the parties the Tribunal determined the issue to be resolved as whether it was reasonable in all the circumstances to grant an eviction order. On that basis the Tribunal determined to fix a hearing at a date to be assigned.
- 8 The Tribunal further confirmed that it would send details of advice agencies on the Tribunal website to the Respondent as it would be in his interest to seek advice regarding the proceedings. An email was sent to him on 8 September 2023 with this information.
- 9 A Direction was issued under separate cover confirming the deadlines for submitting any additional documents that parties wished the Tribunal to consider, as well as a list of any witnesses they wished to give evidence at the hearing. Following the Case Management Discussion the Tribunal received a list of witnesses and list of documents from the Applicant by email on 13th October 2023 which included:-
 - (i) Letter to Tribunal from Saleha Begum on behalf of the Applicant;
 - (ii) Companies House Filing History for Ultra Retail Ltd;
 - (iii) Companies House Overview for Ultra Retail Ltd;
 - (iv) Companies House Personal Appointments Information for KVESTAN HUSSAIN MAHMUD;
 - (v) Letter from TC Young Solicitors dated 13th July 2021 to Waliur Rahman together with notice to leave and sheriff officer's execution of service;
 - (vi) Sample rental extracts from Right Move's website; and
 - (vii) Excerpts from Bank of Scotland Statements.
- 10 On 19th December 2023 the Applicant emailed the Tribunal and submitted further documentation including:-
 - (i) Copy letter to the Respondent regarding rent arrears;
 - (ii) Rent Statement; and
 - (iii) Copy recorded delivery receipt.

The Applicant advised that a request for amendment was sought to include ground 12A as a second ground for eviction.

- 11 The Tribunal received nothing from the Respondent in response to the Direction.

The Hearing

- 12 The hearing took place on 12 January 2024. The Applicant was present and represented by Ms Kerr. The Respondent was in attendance. The Tribunal confirmed that the Applicant had three witnesses, namely the Applicant, Saleha Begum and Amirud Din.
- 13 As a preliminary point the Ms Kerr explained that the Applicant wished to amend the application to include ground 12A. The Tribunal considered the

request for amendment. It noted that Ms Kerr had referred to rent arrears at the Case Management Discussion but had stated that these had not been included in the application. The Tribunal considered that the request had been made at a very late stage in the proceedings, shortly prior to the hearing. The Tribunal would have expected the request to have come either prior to, or during, the Case Management Discussion. There was no reason offered by Ms Kerr as to the timing of the request. She confirmed that the arrears dated back to June 2022. On that basis the Tribunal could not identify any just cause for allowing the amendment and the request was therefore refused.

- 14 As a further procedural point, the Respondent indicated to the Tribunal Clerk prior to the commencement of the hearing that he was working and expressed concern about the length of the hearing. The Tribunal set out at the start of the hearing how it would proceed, namely that the Applicant would lead their evidence first, followed by the Respondent. The Tribunal proceeded to hear from the Applicant's first witness, Sahera Begum. The Tribunal then invited the Respondent to ask Ms Begum any questions by way of cross-examination. He declined. The Applicant's first witness then left the call. The Respondent queried this and was advised by the Tribunal that he was not to leave the call, and that he would have the opportunity to put forward his evidence after the Applicant's case had concluded.
- 15 The Respondent then left the call without further comment at approximately 10.40am. The Tribunal attempted to telephone him using the numbers provided however the calls went to voicemail. A message was left urging the Respondent to rejoin the call. The Tribunal also attempted to contact the Respondent by email but received no response.
- 16 Having considered the explanation provided to the parties by the Tribunal as to the conduct of the hearing, and noting that it had been made clear to the Respondent that he was not to leave the call, the Tribunal determined to proceed in his absence. The Tribunal was satisfied that he had received proper notification of the hearing under rule 24(1) of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 ("the Rules").
- 17 The hearing resumed at 11.30am in the absence of the Respondent. The Respondent was therefore not present during the evidence of the Applicant and Amirud Din, and did not give evidence himself.
- 18 For the avoidance of the doubt the following is a summary of the evidence given by the Applicant's witnesses, and does not constitute a verbatim account of what was said during the hearing.

Saleha Begum

- 19 Ms Begum stated that she was 41 years old, the daughter of the Applicant and the niece of Amirud Din. She confirmed her occupation as a civil servant. She was very familiar with the property at 150 Old Rutherglen Road, having been involved in discussions regarding the tenancy. The property was owned by her

father and let to the Respondent. She was involved in conversations when the tenancy originally commenced back in 2013, and latterly during its term. The property was a terraced house with three bedrooms, lounge, large dining kitchen, bathroom and a front and back garden.

- 20 Ms Begum advised that she was not that familiar with the property Mr Din was currently occupying. She confirmed that Mr Din had four children from a previous marriage and three young children from his current marriage. He needed a larger property to live in with his children. Ms Begum confirmed that her mother and father would assist Mr Din with childcare as both Mr Din and his wife were in employment. The property at Old Rutherglen Road was very close to where her parents lived and would therefore suit this arrangement. The plan was for Mr Din to reside there on a long term basis due to the issues with his current property. It would make his life easier. She understood he was on the cusp of being made homeless. Although she didn't have much detail as to the problems he was facing with his current property, she knew he was desperate to move.
- 21 Ms Begum confirmed that the property was around the corner from where her parents lived. In 2015 she had found herself pregnant and homeless. It was suggested that she could move into the property, however it was occupied by the Respondent at that time. The Respondent made it clear he had no intention of moving. Her father had asked him to move out but he became aggressive and refused. Ms Begum had been left in a vulnerable position. She had a young child and was pregnant with her second. She had to live with friends. It was a difficult situation. Her father had the property but she was unable to move in. Her father hadn't pushed the matter with the Respondent at the time. A few years later the issue had come up again and Ms Begum wished to move into the property. The Respondent again refused to leave and was served with a Notice to Leave. Ms Begum referred to the paperwork that had been lodged by the Applicant in this regard which evidenced the service of a Notice to Leave in July 2021. Ms Begum advised that her father had decided not to proceed with legal action at that time because the Respondent had stated that he would leave the property voluntarily. However he had not done so.
- 22 Ms Begum explained that it was a frustrating situation. Her father had a residential property that it made sense for her to live in however she was unable to do so. She was now settled in a new property and her uncle had found himself in the same situation. He needed the property however the Respondent refused to leave and had stopped paying rent. There was always an excuse from the Respondent. He was not being reasonable and was not holding himself accountable. He was living in the property rent free. Her father meantime was working double shifts to pay the mortgage on the property. Ms Begum noted that the Respondent had stated he was looking for alternative accommodation however he had not provided any evidence of this. She urged the Tribunal to conclude that her father had been more than reasonable in his dealings with the Respondent. Her father was extremely stressed by the whole situation. He was at an age where he should be taking a step back from work and enjoying a retirement, however he was not able to do that. He had to work extra shifts to cover the mortgage for the property. Ms Begum was worried

about his mental and physical health. The property was his retirement plan. Ms Begum confirmed that her father was approximately 64 years old and worked as a taxi driver. She believed Mr Din to be in his mid-50s. She confirmed that her parent's property was one street away from the property.

Amirud Din

- 23 Mr Din confirmed that he had provided the affidavit lodged with the application paperwork. He advised that he had since moved out of the property he occupied with his family in Barrhead due to racial abuse. He was currently residing with a friend. It remained his intention to move into the property owned by the Applicant. His brother, the Applicant, and his sister in law assisted with his childcare and the property was therefore well suited to the needs of himself and his family, being round the corner from the Applicant's home and closer to other family members. He intended on moving into the property with his partner and three children on a long-term basis. The current property in Barrhead was not suited to his needs. It was a two bedroom property whilst the Applicant's property was larger with three bedrooms. Mr Din stated that he was self-employed with a cleaning company and worked in a restaurant on a part-time basis. His partner was a classroom assistant. He and his family were currently living apart due to the issues at their current property. The sooner he could move into the Applicant's property, the sooner his family could be together again.
- 24 Mr Din advised that he had faced a lot of racial abuse whilst living in Barrhead and he could no longer deal with it. His family were suffering because of it. The Police had been unable to do anything. There had been items thrown in his garden. It had gotten to the point that it was decided best for him to move out until another property could be sorted out. He had moved from the property in Barrhead on or around December 2023. His partner was stressed from living alone with the children without him there to help. His children didn't know what was happening. It wasn't good for them. His children were aged 6, 5 and 2. He confirmed that the property in Barrhead was let from the local authority. The Applicant's property at 150 Old Rutherglen Road was about the same distance from the restaurant where he worked, about a 10 to 15 minute drive. He was also self-employed as a cleaner and travelled to various properties for that work.

The Applicant

- 25 The Applicant confirmed he was 63 years old and employed as a taxi driver. He owned the property currently rented to the Respondent. An application had been submitted to the Tribunal on the basis that the Applicant wished for his brother to move into the property as it was more suited for the needs of his brother and his family. His brother was Amirud Din. Mr Din had also been receiving racist abuse at his current property and had required to leave, therefore separating from his family. If Mr Din was able to move into the Applicant's property he would be closer to the Applicant and his wife for childcare. The Applicant explained that he had attempted to discuss this on

various occasions with the Respondent however there was nothing he could do. It was a tense situation.

- 26 The Applicant noted the Respondent's statement that he had spent £6000 on upgrading the bathroom in the property. The Applicant advised that he had been provided with no evidence from the Respondent to vouch for this. When the bathroom flooded the Applicant had sent a builder out to the property to inspect it. The builder had confirmed a cost of £1500 to rectify the damage. The Applicant had accepted that. However the Respondent had refused this, and wanted to get his own builder out. The Applicant had never given the Respondent consent to offset any repairs or upgrades against the rent arrears. The Applicant had asked the Respondent for receipts for the work that was done however these were not provided and the Respondent had subsequently blocked his number. The Applicant had not been given entry to the property. The Respondent had changed the locks. The Applicant understood he had also put in false walls and the property was not being properly heated and ventilated. The Applicant was therefore concerned about the condition of the property and the costs of reinstating it. The Applicant advised that he had also received complaints from a local housing association which provides factoring services, about the state of the garden, as well as from neighbours in the vicinity.
- 27 The Applicant advised that he just wanted to move his family into the property. It was intended for them. The Respondent had been very stubborn. He had threatened the Applicant to prevent him from taking action. The Applicant denied that he had 6 or 7 properties that he let out, as had been alluded to by the Respondent. He had the property at Old Rutherglen Road, and one other property that was let to his daughter Ms Begum. The Applicant explained that he found the whole situation to be extremely stressful. He had sought medication from his doctor and was on tablets for depression. The delay in getting the property back had affected his health.
- 28 Following the conclusion of the Applicant's evidence, Ms Kerr was given the opportunity to make closing submissions. She summarised the evidence heard, and moved the Tribunal to grant the eviction order on the basis that the ground had been met and the order was reasonable in the particular circumstances of the case. In response to questions from the Tribunal Ms Kerr confirmed that the arrears under the current tenancy agreement amounted to £9000, however taking into account the arrears that had accrued prior to that whilst the Respondent was in occupation, the total figure was £18,000.
- 29 The hearing concluded and the Tribunal confirmed that it would issue its decision in writing.
- 30 Following the conclusion of the hearing the Respondent telephoned the Tribunal. He was advised that the hearing had finished and that he would receive the decision in due course.

Applicable Legislation

- 31 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Private Housing Tenancies (Scotland) Act 2016 (“the 2016 Act”), as amended by the Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020:-

1 - Meaning of private residential tenancy

1) A tenancy is a private residential tenancy where—

(a) the tenancy is one under which a property is let to an individual (“the tenant”) as a separate dwelling,

(b) the tenant occupies the property (or any part of it) as the tenant’s only or principal home, and

(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

(2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

51 First-tier Tribunal’s power to issue an eviction order

(1) The First-tier 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 applies.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

52 Applications for eviction orders and consideration of them

(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—

(a) subsection (3), or

(b) any of sections 54 to 56 (but see subsection (4)).

(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.

(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—

(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or

(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

54 Restriction on applying during the notice period

(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.

(2) The relevant period in relation to a notice to leave—

(a) begins on the day the tenant receives the notice to leave from the landlord, and

(b) in the case of a notice served before 3 October 2020 expires on the day falling—

(i) 28 days after it begins if subsection (3) applies,

(ii) three months after it begins if subsection (3A) applies,

(iii) six months after it begins if neither subsection (3) nor (3A) applies.

(c) in the case of a notice served on or after 3 October 2020, expires on the day falling—

(i) 28 days after it begins if subsection (3B) applies,

(ii) three months after it begins if subsection (3C) applies,

(iii) six months after it begins if neither subsection (3B) nor (3C) applies

(3) This subsection applies if the only eviction ground stated in the notice to leave is that the tenant is not occupying the let property as the tenant's home. [ground 10]

(3A) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the tenant has a relevant conviction, [ground 13]

(iv) that the tenant has engaged in relevant anti-social behaviour, [ground 14]

(v) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour, [ground 15]

(vi) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(vii) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, [ground 17] or

(b) the only eviction grounds stated in the notice to leave are—

(i) the eviction ground mentioned in subsection (3), and

(ii) an eviction ground, or grounds, mentioned in paragraph (a)

(3B) This subsection applies if the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(a) that the tenant is not occupying the let property as the tenant's home, [ground 10]

(b) that the tenant has a relevant conviction, [ground 13]

(c) that the tenant has engaged in relevant anti-social behaviour, or [ground 14]

(d) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour. [ground 15]

(3C) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(iv) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or [ground 17]

(b) the only eviction grounds stated in the notice to leave are—

(i) an eviction ground, or grounds, mentioned in subsection (3B), and

(ii) an eviction ground, or grounds, mentioned in paragraph (a).

62 Meaning of notice to leave and stated eviction ground

(1) References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,

(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.

(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.

Schedule 3, Part 5

(1) It is an eviction ground that a member of the landlord's family intends to live in the let property.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) a member of the landlord's family intends to occupy the let property as that person's only or principal home for at least 3 months, and

(b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.

(3) A member of the landlord's family is to be regarded as having the intention mentioned in sub-paragraph (2) if—

(a) the family member is incapable of having, or expressing, that intention, and

(b) the landlord and (if different) a person entitled to make decisions about where the family member lives, intend that the family member will occupy the let property as the family member's only or principal home for at least 3 months.

(4) For the purposes of this paragraph, a person is a member of the landlord's family if the person is—

(a) in a qualifying relationship with the landlord,

(b) a qualifying relative of the landlord,

(c) a qualifying relative of a person who is in a qualifying relationship with the landlord, or

- (d) in a qualifying relationship with a qualifying relative of the landlord.*
- (5) For the purposes of sub-paragraph (4)—*
- (a) two people are in a qualifying relationship with one another if they are—*
- (i) married to each other,*
 - (ii) in a civil partnership with each other, or*
 - (iii) living together as though they were married,*
- (b) “a qualifying relative” means a parent, grandparent, child, grandchild, brother or sister,*
- (c) a relationship of the half blood is to be regarded as a relationship of the whole blood,*
- (d) a person’s stepchild is to be regarded as the person’s child,*
- (e) a person (“A”) is to be regarded as the child of another person (“B”), if A is being or has been treated by B as B’s child.*
- (6) In a case where two or more persons jointly are the landlord under a tenancy, references to the landlord in this paragraph are to any one of them.*
- (7) Evidence tending to show that a member of the landlord’s family has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the person has that intention.*

The Cost of Living (Tenant Protection) (Scotland) Act 2022 is also relevant to this application, it having been received after 28 October 2022.

Findings in Fact

- 32 The parties entered into a private residential tenancy agreement which commenced on 1st May 2022. The Respondent previously occupied the property with his family under a separate tenancy agreement which commenced in 2013.
- 33 On 9th February 2023 the Respondent was served with a Notice to Leave by Sheriff Officers.
- 34 The Respondent is contractually obliged to pay the sum of £900 per month in rent under the terms of the said tenancy agreement.
- 35 Mr Amirud Din is the brother of the Respondent.
- 36 Mr Amirud Din intends to move into the property with his partner and three children, aged 6, 5 and 2 and occupy the property for at least three months.

- 37 The property currently occupied by Mr Din's family is not suitable for their needs, being a two bedroom property. The property owned by the Applicant at 150 Old Rutherglen Road would be suitable to the needs of Mr Din's family, being a three bedroom property close to the home of the Applicant and his wife who provide childcare for Mr Din.
- 38 Mr Din left his current property on or around December 2023 due to ongoing racial abuse. Mr Din is currently residing in alternative accommodation, separate from his partner and three children.
- 39 The Respondent has failed to pay rent under the terms of the current tenancy agreement since June 2022. The Respondent has accrued rent arrears in the sum of £9000 as at the date of the hearing.
- 40 There is no agreement in place whereby the Applicant consented to offset the payment of rent against costs incurred by the Respondent in carrying out repairs and upgrades to the property.
- 41 In July 2021 the Applicant served the Respondent with a Notice to Leave. The Respondent undertook to vacate the property but did not do so.
- 42 The Applicant owns one other rental property which is currently occupied by his daughter.
- 43 The Applicant is employed as a taxi driver. There is a mortgage over the property. The Applicant requires to work additional shifts in order to meet the mortgage costs.
- 44 The Applicant is currently on medication for depression. The Applicant's dealings with the Respondent have affected his health.

Reasons for Decision

- 45 The Tribunal took into account the application paperwork, written representations from the parties, the submissions at the Case Management Discussion and the evidence heard at the hearing in reaching a determination of the application. The Tribunal was satisfied that it had sufficient information upon which to make a decision.
- 46 Taking into account the overriding objective to deal with the proceedings justly and in particular to avoid delay so far as compatible with the proper consideration of the issues, the Tribunal considered the balance weighed in favour of continuing the hearing in the Respondent's absence. He had been given clear advice regarding the conduct of the hearing and had chosen to leave the call following the evidence from the first of the Applicant's witnesses. To adjourn the hearing would only incur further delay, resulting in unfair prejudice to the Applicant who had been present with his witnesses and ready

to proceed. The Respondent had also been urged to seek advice regarding the proceedings and had been given a steer on where to find this from the Tribunal but had failed to avail himself of same and had failed to produce any evidence in terms of documents or witnesses to support the submissions he had made at the Case Management Discussion.

- 47 Turning to the legal test in this case, the Tribunal was satisfied that the Applicant had served a Notice to Leave upon the Respondent on 9th February 2023 which complied with the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017. The Tribunal was therefore able to entertain the application before it under section 52 of the 2016 Act.
- 48 The Applicant sought an eviction order under ground 5 of Schedule 3 of the 2016 Act. Having considered the affidavit from Mr Din, and his evidence at the hearing, the Tribunal was satisfied that Mr Din was a qualifying relative, being the brother of the Applicant, that he intended to move into the property with his family, and that this would be on a long term basis in excess of three months. The Tribunal found Mr Din to be open and frank in his statements during the hearing and therefore concluded that his position was credible in this regard.
- 49 The Tribunal therefore considered the reasonableness of making an eviction order and the relevant factors in this case. The Respondent had made various statements at the Case Management Discussion to support his opposition of the application. He stated that he had invested £6000 in upgrading the property, on the understanding that this would be offset against his rent account. However he had provided no proof of any such agreement with the Applicant, nor any vouching to support the costs he had incurred. The Tribunal was therefore unable to give much weight to this in terms of a relevant consideration when determining reasonableness.
- 50 The Tribunal did not accept the Respondent's statement that the Applicant had multiple rental properties. Again, no evidence had been submitted by the Respondent to support this point. The Applicant had given evidence that he had two properties that he rented out and the Tribunal had nothing before it to refute this. The Applicant had been credible in his evidence to the Tribunal.
- 51 The Respondent had further stated that he was actively seeking alternative accommodation and wished that he could move from the property. He had stated that the Applicant was a good landlord, which appeared at odds with his assertion that the Applicant had failed to carry out repairs, with the exception of the boiler. The Tribunal therefore found it difficult to accept the version of events he had outlined at the Case Management Discussion. The Respondent had also mentioned his wife's health issues, however, in the absence of any further evidence to support this statement, the Tribunal could give little weight to it.
- 52 The Tribunal found it more believable that the Applicant would wish to have his family members residing in the property that he owned, and that his brother Mr Din had a need for accommodation of the nature offered by the property at 150

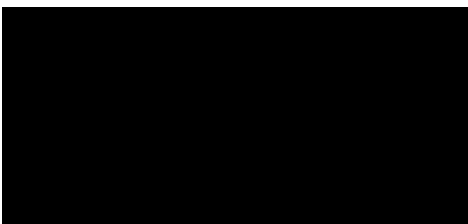
Old Rutherglen Road. The Tribunal took into account the circumstances that had led to Mr Din vacating his current address and the suitability of the Applicant's property in terms of size and access to childcare. The Tribunal also accepted that there had been attempts by the Applicant to recover possession of the property at an earlier stage, based on the previous Notice to Leave which was served on the Respondent in July 2021. The evidence from the Applicant regarding his dealings with the Respondent led the Tribunal to conclude that it had been a challenging situation which would have had an ongoing impact on his health. It was a credible explanation from the Applicant. The Tribunal further found both the Applicant and Ms Begum to be genuine when describing the impact on their family. The Tribunal accepted that, based on the terms of the current tenancy agreement which commenced in May 2022, the Respondent had accrued rent arrears to the financial detriment of the Applicant.

53 Accordingly having weighed all relevant factors in this case the Tribunal ultimately concluded that the balance weighed in favour of the Applicant and it would therefore be reasonable to make an eviction order.

54 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.



25 January 2024

Legal Member/Chair

Date