



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/23/3505

Re: Property at 71 Fotheringay Road, Pollockshields, Glasgow, G41 4LQ (“the Property”)

Parties:

Mrs June Wilkinson, 1 Maidstone Close, Leigh, Lancashire, WN7 5TE (“the Applicant”)

Mr Naweed Nasir, 71 Fotheringay Road, Pollockshields, Glasgow, G41 4LQ (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member) and Frances Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is entitled to the Order sought to evict the Respondent from the property.

Background

1. The Applicant submitted an application under Rule 109 of the Housing & Property Chamber Procedure Regulations 2017 (“the Rules”) for an order to evict the Respondent from the property.
2. A case management discussions (“CMD”) took place in this case on 22 February 2024. The Tribunal issued a note and notice of direction following that discussion. The Tribunal assigned a further CMD for 9 May 2024 at 10am.
3. On 25 April 2024, the Tribunal received written submissions from both parties’ representatives.

4. The Respondent's representative submitted further written representations by email on 8 and 9 May 2024.

The case management discussion – 9 May 2024

5. The CMD took place by conference call. The Applicant joined the call and was represented by Miss Gwenan White, trainee solicitor. The Respondent joined the call and was represented by Miss Emily McFadyen, solicitor. This case called alongside a related case which proceeds under chamber reference FTS/HPC/CV/23/3462.

Applicant's submissions

6. The Applicant's representative made submissions in support of her motion for an order to be granted. It was submitted that the Respondent had failed to comply with the notice of direction issued on 22 February 2024 in respect that only one letter document relating to universal credit had been lodged (covering the claim from 5 March to 4 April 2024). The Respondent advised the Tribunal on 22 February 2024 that universal credit had been awarded since January, so not all of the required documents had been lodged. The universal credit document indicates that the Respondent has received self employed income of £325. On the basis of that and the value of the universal credit claim, the Applicant considers that the Respondent is unable to afford the tenancy. On the basis of the documentary evidence lodged, it appears that the Respondent has insufficient funds to pay rent plus £421 per month, as he proposed at the last CMD. It was also submitted that the Respondent has failed to adhere to his own payment proposal made at the last CMD. He was to pay rent plus £421 per month, with the first payment due on 28 February 2024. The rent statement lodged reflects that a payment was made on 1 March 2024 towards ongoing rent and a payment towards arrears was made on 5 March 2024. There have been only two payments made towards rent arrears since the last CMD but there should have been three payments made. The Respondent has therefore demonstrated a failure to comply with his own payment proposal within a short time since the last CMD. The rent arrears are substantial (£8,868 as at the end of April 2024) and the Applicant is concerned that the Respondent is not able to fulfil his obligations to pay rent and arrears. The bank statements lodged disclose that at the date of the last CMD, the Respondent's bank account was in arrears by £6. The day after the CMD, a number of credits were made to the account with a narrative "loan". Further sums were credited to the Respondent's bank account and the sum of £5,000 was withdrawn in March 2024. The bank statements do not show the receipt of universal credit, and that was one of the requirements of the notice of direction. The bank statements show ad hoc loan payments but do not disclose a normal income stream from which the Respondent could meet his financial obligations in respect of the tenancy. Even if the Respondent did comply with his proposal to pay rent plus £421 towards arrears, it would take almost two years to repay the arrears. That is not acceptable to the Applicant and it is not reasonable to expect her to wait for that period of time before receiving payment of the rent arrears. Separately, the

Respondent has failed to lodge any documentation which demonstrates the efforts he has made to find alternative accommodation.

7. The Applicant previously made an application for an eviction order and the Respondent paid the arrears in full shortly before the CMD in that case. As a result, the application for an eviction order was dismissed. Following the dismissal of the application, the Respondent ceased payment of rent, which has resulted in the present proceedings being raised.
8. The Applicant would be prejudiced if the tenancy continues. She suffers from a medical condition and that has been exacerbated by the stress of managing the tenancy. She is using her personal income and savings for upkeep of the property including repairs, insurance, gas safety checks, factor fees and the like. She has had temporary administrative posts and has no steady or secure income. She also has to provide support to an adult child.
9. Finally, the Applicant believes that the property is not suitable for the Respondent and his family. The property has three bedrooms and one bathroom. The Respondent is living in the property with his wife and four children aged 16. The Applicant believes that there are a number of other properties in the area which have four bedrooms which would be suitable for the Respondent.

Respondent's submissions

10. The Respondent's representative made submissions in support of her motion to continue consideration of both applications to a further CMD or hearing. It was submitted that consideration of the application should be continued to monitor the payment arrangement. It would be unreasonable to evict the Respondent and his family. A reasonable proposal has been made by the Respondent and he should be given an opportunity to make the payments proposed. The Applicant previously claimed that she was suffering financial hardship but since she has not vouched that financial hardship, the Tribunal has insufficient information to consider the issue of reasonableness. She has not produced her full financial information, not has she vouched her partner's financial circumstances. The Applicant is not paying a mortgage in relation to the property and although she has vouched some payments she makes relative to the property, it is a landlord's duty to pay those costs. It was submitted that the Respondent has not defaulted on the payment arrangement. He paid rent for February on 1 March 2024 and made a payment towards arrears on 5 March 2024. He paid the rent for March on 28 March 2024 and made a payment towards the arrears on 18 April 2024. He paid the rent for April on 29 April 2024 and is still due to make the payment towards rent arrears. It was submitted that there is no prejudice to the Applicant if the Respondent makes the payment towards rent arrears a couple of weeks after he pays rent. The Respondent's income from self employment fluctuates. It was £325 in March but was less than that in April. The Respondent is paid in cash but declares his self employed income to the Department for Work and Pensions. He does not pay in cash from his self-employment to his bank account. Payments in relation to universal credit are made to the Respondent's wife's bank account.

11. The Respondent's personal circumstances are such that it would not be reasonable to grant an order evicting the Respondent from the property. He has 4 children aged 16 who are completing their school exams. Their school is only a 10 minute walk from the property. If an order was granted, their higher education would be significantly disrupted.
12. The Respondent has suffered a number of family bereavements, the most recent of which related to his brother who passed away in March. Reference had been made by the Applicant's representative to a cash withdrawal of £5,000 from the Respondent's bank account. That withdrawal was to pay for his brother's funeral using funds which had been lodged in his account by his nephew.
13. The Tribunal asked why the requirement in the Direction to provide evidence of efforts to find other housing had not been complied with and the Respondent's representative said that her client had not been in the right frame of mind and that he had not made efforts as he was affected by the various bereavements in his family and he wanted to stay in the property.

Discussion following questions from the Tribunal members

14. There was one area in which factual dispute was identified. That related to a discussion about a change in the payment date of rent and whether the Applicant was obliged to send the Respondent a direct debit mandate to make payment. The Applicant's position is that the parties agreed in March 2023 that the payment date for rent could change from the first to the twenty eighth day of the month, but that was on condition that rent was paid timeously. The Applicant's position is that this was a proposal made by the Respondent to which she would only have agreed on condition that rent was paid, but payment of rent stopped, and therefore rent payments were due in accordance with the tenancy agreement, that is on the first day of the month. The Applicant wrote to the Respondent advising that she could not effect a direct debit and that the Respondent would need to arrange a standing order with his bank. The tenancy agreement provided for rent to be paid by standing order. The Respondent's position was that the parties agreed in December 2023 that the payment date for rent could change to the twenty eighth day and that the Applicant was to send out a direct debit mandate, but she failed to do so. The Applicant's position was that this had not been agreed.
15. When asked why the Respondent did not make the payments on 28 February 2024 as promised, he explained that this was an oversight because he was upset about his brother who was very ill.
16. The Tribunal observed that the Respondent's bank statements disclose that he received sums in excess of £1310 on 29 February 2024 from four individuals and the narrative indicates that these are loans. The Respondent explained that his four children lent him this money. It was noted that there were several other credits with a narrative "loan", including one from N Nasir. The Respondent explained that that payment came from his other bank account. He advised that

he could lodge his other bank statement and that of his wife, along with additional documentation in relation to the universal credit claim.

Findings in Fact

17. The parties entered into a private residential tenancy which commenced 22 March 2019.
18. The Applicant served Notice to Leave on the Respondent by recorded delivery post on 9 August 2023.
19. The Respondent has been in rent arrears for more than three consecutive months.

Reason for Decision

20. The Tribunal proceeded on the basis of the documents lodged and the submissions made at the CMD. The Applicant relied upon ground 12 of the Private Housing (Tenancies) (Scotland) Act 2016. The rent statement lodged discloses that the Respondent was consistently in arrears of rent from March 2020 to February 2023 and thereafter from May 2023 to date. At the last CMD, the Respondent proposed paying rent plus £421 per month towards arrears and told the Tribunal that the first payment would be made on 28 February 2024. The total payment expected from the Respondent was £1,671 per month. Payment was not made on 28 February, but rather two payments were made on 1 and 5 March, which the Tribunal was told represented February's payments. Those payments totalled £1,673. The Respondent then paid £1236 on 28 March 2024 and £425 on 18 April 2024 and the Tribunal was told that these payments represented payments for March. Those payments totalled £1,661. The only other payment made by the Respondent was for £1236 on 29 April 2024. Although it was submitted that the Respondent had adhered to his payment proposal, it was clear that he had not.
21. The Tribunal was not persuaded to continue the CMD again to monitor payments proposed by the Respondent. The CMD had already been continued on one occasion for that purpose. It is appropriate that applications such as this are progressed expeditiously. The Tribunal was mindful of the overriding objective to deal with applications justly and avoiding delay. The Tribunal had sufficient information before it to consider the issue of reasonableness.
22. Although the Tribunal identified one area in which there was a factual dispute, that dispute was immaterial to the issue of reasonableness. There was therefore no requirement to fix an evidential hearing.
23. In light of the information provided by the Respondent, it was clear that he had not lodged the documentation required of him in the notice of direction issued on 22 February 2024. No material had been lodged to demonstrate that he had

looked for alternative accommodation. Only one document relating the universal credit claim had been lodged, although the Respondent accepted that he had more documentation about that.

24. It appeared that the Respondent had not fully disclosed his financial position. His self employed income was not shown in the bank statements lodged and the explanation was that he was paid cash in hand. The Respondent advised that he had another bank account but the statements for that account were not disclosed. The universal credit claim was paid to the Respondent's wife's bank account and vouching of those payments was not disclosed. The bank statements that were lodged demonstrated that the Respondent was borrowing money from others, including his children. The Respondent has been in arrears of rent since March 2020, with the exception of two months in March and April 2023.
25. It would be incongruous to expect the Applicant to fully vouch her financial position whilst at the same time, the Respondent had failed to do so, despite the notice of direction. The Tribunal considered that it did not require full vouching of the Applicant's financial position in order to consider the issue of reasonableness.
26. The Tribunal must balance the interests of the parties and on balance, concluded that if the tenancy continues, the Applicant would be more prejudiced than the Respondent. From the financial information provided, it appears to the Tribunal that the Respondent cannot afford the tenancy. Payment of rent is the primary obligation of the Respondent and for almost four years, he has failed to keep the rent account up to date. The Respondent was given fair notice about these proceedings. He was also given an opportunity to make payments by instalment since the last CMD and failed to adhere to that proposal.
27. The Tribunal was grateful to parties' representative for the very full submissions made. The Tribunal was satisfied that ground 12 was established. In light of all of the circumstances outlined by parties' representatives, the Tribunal was satisfied that it was reasonable to grant the order for eviction.

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 Member/Chair

9 May 2024

Date