



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/23/2120

Re: Property at 2/2 24 Tulloch Street, Glasgow, G44 4BZ (“the Property”)

Parties:

Mrs Marthe Law, 5 Ailort Avenue, Glasgow, G44 3NJ (“the Applicant”)

Mr Ross Owens, 2/2 24 Tulloch Street, Glasgow, G44 4BZ (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Angus Lamont (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for recovery and possession should be granted in favour of the Applicant.

Background

1. An application was received by the Housing and Property Chamber dated 20th June 2023. The application was submitted under Rule 109 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on grounds 1 and 12 of the Private Housing (Tenancies) (Scotland) Act 2016.
2. On 19th September 2023, all parties were written to with the date for the Case Management Discussion (“CMD”) of 27th October 2023 at 10am by teleconferencing. The letter also requested all written representations be submitted by 10th October 2023.
3. On 21st September 2023, sheriff officers served the letter with notice of the hearing date and documentation upon the Respondent by letterbox service. This was evidenced by Certificate of Intimation dated 21st September 2023.

4. The case was conjoined with case FTS/HPC/CV/23/2121
5. A CMD was held on 27th October 2023 at 10am by teleconferencing. The Applicant was present and represented herself. Ms Christine Worthington was present as support for the Applicant. She took no part in the CMD. The Respondent was present and represented himself. The Applicant said that she was still seeking an order for eviction. The Applicant is intending to sell the Property. She has one other Property. She has chosen to sell this Property as the Respondent has stopped paying the rent. She has ongoing costs with the Property. She inherited the Property in the 1980s. It is not mortgaged. She has factoring agent costs and insurance costs. The Applicant said that she is elderly and has a significant health condition. She intends to sell her other property in the future too. The Respondent said that he is not opposed to the granting of an order. He has had his own business as a tree surgeon. He damaged his knee and needs an operation. He was due to get the operation at the end of last year but it was postponed. He does not know when he will be allocated a new date. He has telephoned the hospital department but they do not answer the phone. He has been unable to work and has been receiving Universal Credit. He has been receiving £300 per month as the Housing Element of Universal Credit. This is £160 short of the rent. He has not paid what he receives to the Applicant as he has found it hard to manage financially due to the Cost of Living Crisis. The Respondent has not investigated getting a Discretionary Housing Payment or any other financial assistance to pay for the shortfall of the rent. The Tribunal asked about investigations that the Respondent had made with his local authority regarding being rehoused. The Respondent said that he has not contacted them. He had contacted Shelter Scotland but had been passed from department to department which had caused him to be stressed. He has been suffering from health conditions deriving from not being able to work. He is not able to get an equivalent private tenancy as they rent costs have increased since he began renting this property. He equivalent rent currently is £800-900 per month. He is concerned about being allocated inappropriate temporary accommodation from his local authority. He is concerned that such accommodation will exacerbate his health condition. The Respondent said that he is keen to work once he has had his operation. He had spoken previously to the Applicant about buying the Property but then had to stop work due to his knee. Very unfortunately his mother is gravely ill and has only a few months left. She has discussed with him that he will inherit money from her that will allow him to purchase the Property. He would like to remain in the Property and pay off the arrears. The Applicant said that she would consider the Respondent buying the Property but only once the Property is vacant and is on the open market. She would not consider selling it to him as a private sale given the rent arrears. The Tribunal noted that this application is under grounds 1 and 12. It appears that ground 1 may have been met but the requirements for ground 12 may not. There needs to be clear evidence regarding Pre Action Requirements. What had been submitted was simply details of what actions the Applicant had taken rather than evidence of these actions. This has not been lodged. The Applicant would need to lodge evidence to support that they have been complied with. Also the Tribunal needs to see a clear rent account to show four columns which are the date the rent was due,

the rent, the rent paid and the remaining total. This should be from the start of the tenancy. If the Applicant wishes to proceed with ground 1A then full details of her personal finances will need to be lodged. Ground 1A allows an order to be granted and sent after the 1 month appeal period. For grounds 1 and 12 any order will not be able to be enforced until 31st March 2024. The Applicant should consider her position and inform the Housing and Property Chamber as soon as possible if she wishes to proceed with ground 1A. If the Applicant wishes to proceed with ground 1A a direction will need to be sent to her will items that will need to be lodged for ground 1A. It was noted that this ground is that there is financial hardship on the part of the Applicant. The Applicant's other rental property will be taken into consideration. The Applicant should notify the Housing and Property Chamber no later than 1st December 2023 if she wishes to proceed with ground 1A in order that the direction can be issue and allow the Applicant time to comply with it and it can be notified upon the Respondent. There is not the same obligations for ground 1. The Applicant should take advice if she wishes to proceed with grounds 1A and 12. The Tribunal only has to find one ground to be met to grant an order. It would have made a decision on grounds 1 and 12 but could not do so as ground 1A was raised in the papers. The Tribunal will continue to a further CMD to allow for the Applicant to consider her position. The case was adjourned to a further date to allow for the Respondent to consider which ground or grounds that she wished to pursue for eviction. The Respondent should consider her position as to which grounds she wishes to proceed with and contact the Housing and Property Chamber by 1st December 2023.

6. On 22nd December 2023, all parties were written to with the date for the Case Management Discussion ("CMD") of 9th February 2024 at 10am by teleconferencing.
7. On 18th January 2024, the Applicant emailed the Housing and Property Chamber attaching a rent account for the period 9th April 2019 to 25th January 2024 showing arrears of £7450. This email also attached a text message from the Respondent notifying her of his mother's death in July 2023 and emails with the DWP and Glasgow City Council.
8. A CMD was held on 9th February 2024 at 10am by teleconferencing. The Applicant was present and represented herself. Ms Christine Worthington was present as support for the Applicant. She took no part in the CMD. The Respondent was not present and not represented. The Applicant said that the Respondent is still in the Property. He has still not paid his rent charge. She still wishes to sell the Property. She noted that she is now seeking interest at 8% as per the lease for the conjoined case. She no longer wishes to rely upon ground 1A. She wishes to revert to ground 12 as per her application. The Tribunal noted that this ground was raised in her application and the Notice to Leave. However, the Pre Action Requirements have not been submitted. This is required before the Tribunal can consider granting an order. The Applicant said that she has written to him. She will find this information and submit it. She sent Whatsapp messages to the Respondent with all of the Pre Action Requirements. This was sent on 17th January 2024. The Tribunal noted that this is after the application was raised. She said that the arrears are now £7450.

The Applicant will lodge the Pre Action Requirements. If she is not able to locate this or reviews her papers and finds that the Pre Action Requirements have not been sent prior to the application being lodged then the Applicant will consider her position whether she needs to start the process again. The CMD was continued to allow the Applicant to lodge Pre Action Requirements documentations. Failing which for her to consider her position.

9. On 3rd May 2024, all parties were written to with the date for the Hearing of 6th June 2024 at 10am by teleconferencing.
10. On 16th May 2024, the Applicant's solicitor emailed the Housing and Property Chamber removing ground 12A, lodging a letter confirming that an estate agent had been instructed and confirming that the case was to proceed under ground 1. A rent statement was lodged for the period 9th April 2019 to 25th April 2024 showing rent arrears of £8830 with no payments since November 2022.

The Hearing

11. A hearing was held on 6th June 2024 at 10am by teleconferencing. The Applicant was not present but was represented by Ms Anna Bruce, Solicitor, Jones Whyte Solicitors. The Respondent was present and represented himself.
12. Ms Jones said that the Applicant still wished to sell the Property. While there is no mortgage on the Property, the Applicant is still having to pay costs such as insurance. The Applicant is seeking to sell the Property with vacant possession as selling it with a sitting tenant will reduce the price of the Property. Ms Jones said that the Applicant is elderly and wishes to consolidate her current house with the proceeds of this property to buy a bungalow which would be more suitable. She said that the Applicant does not keep well. She has found this process to be stressful. Ms Jones addressed reasonableness. She said that the Respondent has not made payments. The arrears sought £8830. Since the amendment was made the arrears have increased by £450 (which is one months rent) to £9280.
13. The Respondent said that he has been through a bad patch with poor mental and physical health. He had returned to work in the last two weeks. He is self employed. The Respondent does not dispute the arrears. He has not paid over the Housing Element of Universal Credit as he needed that money to pay bills as the cost of living is very high. He now hopes to address the arrears by paying £800 per month from 25th June 2024. He will pay more when he has more. As he has only just returned to work in the last two weeks so will not be paid before 25th June 2024. He is self employed but has had his clients return to him. He is confident about the payments. The Tribunal noted that this is not an arrears case but that this goes towards the reasonableness test.
14. The Respondent said that he and his brother were taking his father to court to have the correct allocation of shares released from his father's company. The Respondent said that his father had fraudulently forged his and his brother's signatures. They were now owed money on that basis. His father has had a second stroke and cannot communicate. The Respondent said that his step

mother had confirmed that his father had forged their signatures. He has emails from the solicitor. His brother had instructed the solicitor and paid for the solicitor's costs. The case is due to be completed in court soon and he will get his money which he will pay to the arrears. The Tribunal adjourned briefly and asked for the emails to be located and forwarded on. On returning from the adjournment the Respondent said that the solicitor is on annual leave until Monday but that he would get emails sent onwards at that point. He did not have any emails but could get them from his brother if necessary. Respondent said that should he be not evicted then he would sign something to say that he would pay his rent and his arrears. He said that he would expect to earn at least £150 per day. He can earn up to £2000 per week, though he has to pay employees from that wage. He expects to get some big jobs soon.

15. The Respondent has been told that he requires points to be rehoused. He had looked to get advice from Shelter but was passed from department to department. He got frustrated and stopped the call. This was before the October CMD. Since then he has not tried to get any further help including money advice. He has not been assessed as homeless. He cannot afford another private tenancy as that would cost him £800-£900 per month. He could not afford to pay that and pay the arrears to this property. He believes that he will be rehoused in a hostel. This would cause issues with his mental health. In terms of his mental health, he is not under a psychiatrist and does not have a Community Mental Health Nurse or other specialist input. He is on beta blockers for anxiety.
16. The Respondent apologised to the Applicant for all that she has gone through in this process. He really likes his home and wants to stay in it. He reiterated that he would pay £800 if he had a further opportunity of more time to demonstrate it.
17. Miss Jones raised issues of creditability. She said that the Respondent has not paid since November 2022. Now he is looking to pay more than the rent but is also not able to pay that amount for a private tenancy.
18. The Tribunal adjourned to deliberate. On returning it stated that the decision was to grant an order for eviction.

Findings and reason for decision

19. A Private Rented Tenancy Agreement commenced 9th April 2019.
20. The Respondent persistently failed to pay his rent charge of £450 per month. The rent payments are due to be paid on 25th day of each month. He has not paid any rent since November 2022.
21. The Respondent was awarded £300 per month from Universal Credit as Housing Element. He did not pay that amount to the Applicant.
22. The Respondent has not sought money advice.

23. The Respondent has not sought a Discretionary Housing Payment to supplement his Universal Credit Housing Element payment.
24. The Respondent does not dispute that the arrears are due to the Applicant.
25. Though the Respondent has offered to pay the rent charge and the arrears from 25th June 2024 with a total payment of £800 per month he has not paid anything to the rent account since November 2022. He has not tried to make any payments since either he was served his Notice to Leave in January 2023 or since first appearing in front of the Tribunal in October 2023. He has not sought money advice to assist him to be able to continue to make payments even though he was being paid the Housing Element of Universal Credit.
26. The Applicant has instructed an estate agent to sell her property when she has vacant possession of the Property.
27. The Respondent had previously said that his mother was very gravely ill. He said he would get money from the estate which he would use to buy the Property. The Respondent said that his mother was in a care home now. The Tribunal was glad to hear that his mother was not in such a grave place as he had anticipated but it did seem to be a very different issue now which still stated that he had to wait to be released the money from another party. It should be noted that the Tribunal held no expectation of money from this means to be paid to the Applicant. It is mentioned as a point of credibility. The position regarding his father was not previously mentioned yet it has reported by him as going to the last court date very soon. It would be reasonable to presume that the Respondent knew about this issue when the case called at the CMD on 27th October 2023 or 9th February 2024. The Respondent had no evidence that he could forward to the Tribunal to confirm the position of the court case even though it was at the later stage of the court process. This raised issues of credibility with the Tribunal in terms of the Respondent's evidence.
28. The Tribunal was satisfied that it reasonable to grant an order for eviction. The Respondent has been aware of this judicial process since January 2023. He first attended a CMD on 27th October 2023. During the Tribunal process he has failed to take any action to make payments due, to reduce his rent liability with a Discretionary Housing Payment or seek money or legal advice. The Applicant is elderly and no longer wishes to be a landlord. She wishes to sell the Property to allow her to amalgamate this property value with the value of her own property to purchase a bungalow which is more suiting to her ongoing needs. The situation with the rent arrears and this judicial process has affected her health.
29. There is no evidence of the Respondent's health conditions. He has not lodged any evidence to support the extent that he has been disabled by his mental health in particular.

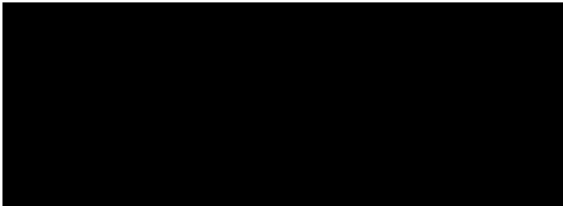
30. There are no issues of reasonableness that prevent an order from being granted.

Decision

31. The Tribunal found that ground 1 has been established and granted an order in favour of the Applicant.

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.



___G.Miller_____
____ Legal Member/Chair

6th June 2024

Date