



Decision and Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/23/0851

Re: Property at 161 Fenwick Road, Giffnock, Glasgow, G46 6JB (“the Property”)

Parties:

Giffnock United Reformed Church, 18 The Pines, Millholm Road, Cathcart, Glasgow, G44 3YB (“the Applicant”)

Mr Jason Murray, 161 Fenwick Road, Giffnock, Glasgow, G46 6JB (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The Tribunal determined to grant an eviction order in terms of Ground 12A of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 in that the tenant has accrued substantial rent arrears in respect of the tenancy over one or more periods, the cumulative amount of these rent arrears amounts to more than 6 months' rent in terms of the tenancy when Notice to leave was given and it is reasonable to grant the eviction order.

The decision of the Tribunal was unanimous

Background

1. This application for an eviction order in terms of Rule 109 of the Tribunal rules of procedure along with a related application for a payment order in terms of Rule 111 (HPC/23/CV/0937) were first lodged with the Tribunal on 15th March 2023 and accepted by the Tribunal on 31st March 2023. The applications first called for case management discussion by teleconference at 2pm on 9th June 2023.

Productions Lodged

2. The Tribunal had sight of the application, a paper apart, a tenancy agreement, a Notice to Leave and email sending this to the Respondent, a notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003, an email sending this to the local authority, a rent statement and a letter said to have been sent to the Respondent in terms of pre action protocol requirements. Further representations were lodged on behalf of the Applicant which were a petty cash voucher for walling in asbestos, an email regarding the fitting of a door and a new lock, a petty cash voucher for replacement of an electrical consumer unit at the property, an invoice for this unit, and an invoice regarding boiler replacement at the property. The Tribunal also received rent statements and minutes of the Applicant Church elders' meeting on 27th January 2021.

3. For the Respondent the tribunal had received representations on the law applicable to any agreement between the parties from Mr. Watson the Respondent's former solicitor, a series of photographs appearing to show work being done at premises, including a photograph of a television mounted on a wall and the list submitted by the Respondent himself in January 2024 setting out the sums which he said he had spent renovating and decorating the rented property.

Issues Not in Dispute

4. There was no dispute that the parties had entered into a private residential tenancy at the property with effect from 12th June 2020 and that the monthly rent payable is £1350. The level of rent not paid was also accepted although it was said that this was not due because of an agreement said to have been made to pay for redecoration at the property to be set off against the rent. Although initially the Respondent's former solicitor Mr. Watson had indicated that he was objecting to the validity of the notice to leave served on the Respondent, he later withdrew the objection which meant no issue was being taken to the validity of the notice to leave served on the Respondent. In addition, no issue appeared to be taken regarding the service of a notice to the local authority in terms of section 11 of the Homelessness Etc (Scotland) Act 2003 and the fact that pre action protocol correspondence had been sent to the Respondent.

Issues in Dispute

5. The issues which appeared to be in dispute between the parties were whether the outstanding rent arrears were lawfully due or whether there had been some form of agreement between the Applicant church and the Respondent, whether verbal or in writing to allow the Respondent to carry out work at the property and set this against any outstanding rent. The Respondent's position appeared to be in his e-mail before the part heard hearing on 20th February 2024 that he had spent in excess of the sum said to be due in terms of outstanding rent and this should be set off against the sum said to be due in terms of rent arrears.

6. In terms of the legal position as regards any such agreement Miss Matthew had made written submissions on this and said that even if there was such an agreement (which was denied) it would have to be in writing to be legally valid and such an agreement would not override the terms of the tenancy agreement. She submitted that

even if there had been an agreement to allow the Respondent to carry out general decoration at the property there had been no discussion linking this with the rent in any way and no agreement in writing to offset any such costs against the rent. It was also suggested on behalf of the Applicant that if the tenant was seeking to be compensated for improvements carried out at a property this must rest on express contractual or statutory provision. The Respondent's former solicitor Mr Watson had submitted written submissions and made oral submissions at the hearing in October 2023 to suggest that a verbal agreement to this effect would be legally enforceable and need not be in writing in terms of section 1(1) and 1(2) of the requirements of Writing (Scotland) Act 1995.

Procedural History

Case Management Discussion 9th June 2023

7. The case management discussion on 9th June 2023 was attended by Mr Jarvie from Bannatyne Kirkwood and France solicitors and by the Respondent who represented himself. The Respondent asked for an adjournment of the case management discussion to a later date as his long-standing solicitor was ill and not able to take on legal work and as a result, he required to instruct a new solicitor. The request for an adjournment was not opposed and the case management discussion was continued until 3rd August 2023. The Tribunal issued a Direction requiring the Respondent or any solicitor instructed by him to lodge written representations as to his position on matters by 7th July 2023.

Case Management Discussion 3rd August 2023

8. The adjourned case management discussion took place on 3rd August 2023. Miss Matthew of Bannatyne Kirkwood and France appeared for the Applicant and Mr Gordon Watson, then a solicitor, appeared on behalf of the Respondent who did not attend. Mr Watson indicated that he had not received all of the papers and there had been a delay in clarifying whether the Respondent would be legally aided or not. He said that the Respondent's position was that there had been an agreement regarding renovations carried out at the property and this would affect the amount of any outstanding rent. He said that the reasonableness of granting an order might also be argued. Mr Watson requested an adjournment to see all the papers and to take further instructions. The Tribunal was aware that the application and supporting papers had been sent to Mr Watson's colleague on 25th July but he confirmed he had not seen these. The request to adjourn was opposed but granted by the Tribunal and a hearing was fixed to take place by video conference on 15th September 2023. The Tribunal issued a Direction requiring a note of any witnesses to be called at the hearing to be lodged and requiring the Respondent's solicitor to lodge written representations as to the amount of rent agreed to be outstanding if any and whether there was any objection to the procedure and notices lodged to support the eviction.

9. The Applicant's representative Miss Matthew submitted a list of witnesses and an inventory of productions to the Tribunal on 1st September 2023. The Applicant's representative also made legal representations on the position as regards claims for improvements by a tenant.

Webex Hearing 15th September 2023

10. On 15th September just before 9.50am the Tribunal received an email from the Respondent's then solicitor Mr Watson indicating he might be late for the hearing due to train issues and indicating that the Respondent had not returned to Scotland from a recent trip abroad for a medical procedure. This email indicated that a motion to adjourn the hearing would be made.

11. When Mr Watson attended the Webex hearing on 15th September he moved to adjourn to a later date. His client was abroad, although he could produce no evidence of that, and there had been a funding issue. He was not prepared for the hearing and gave an undertaking that if the hearing was adjourned, he would lodge a "stateable case" on behalf of the Respondent. The request to adjourn was strongly opposed due to the level of rent arrears accrued and the prejudice to the church if there were further delay. The Tribunal granted an adjournment of the hearing with some reluctance.

12. On 27th September 2023 Mr Watson for the Respondent submitted written representations indicating the Notice to Leave was not valid as it was not in proper form and had not been properly sent to the Respondent's email address. Further, it was suggested that it would be unreasonable to grant the order the parties having agreed that the Respondent could fully refurbish the 5-bedroom property to make it suitable for his disabled son and that the Applicant had at least verbally agreed to the works and attended to assess the works. It was suggested that the Respondent could provide receipts for all the work and it was said that the Applicants had contributed amounts to the cost of materials. It was said that these improvements amounted to more than any debts due by way of rent arrears.

Adjourned Hearing 20th October 2023

13. The Hearing was adjourned to 20th October 2023. On 6th October 2023 the Applicant's representative submitted a new witness list, an inventory of productions and a response to the Respondent's submissions. Witness statements from Jennifer Ainsworth and Michael Williams were also submitted on behalf of the Applicant.

14. On 20th October 2023 the hearing commenced by video conference and the Respondent was present and represented by Mr Watson. Mr Watson indicated he was no longer taking issue with the Notices to Leave sent for the application. Mr Williams gave evidence to the Tribunal.

15. Mr Watson requested that the Hearing be partly heard to allow Mr Murray to lodge invoices and receipts for the work done at the property as he had not anticipated that these matters would require to be lodged but following Mr Williams' evidence he considered he required to do this and suggested these were relevant to credibility and to the issue of whether there was any agreement regarding renovation of the property

and payment of the rent between the parties. The work done had been calculated to include the cost of Mr Murray's time as he had formerly been a builder before retiring due to ill health. Mr Watson submitted that the tradesmen instructed included builders, plasterers, electricians and painters and decorators. He said that some of the material was in the Respondent's mother's garage and would have to be retrieved. This motion was opposed by the Respondent's solicitor who said that the Applicant had never has sight of any such invoices, did not know if these existed but submitted that the issue of the amount of work which may have been done done was not central to the Applicant's case. The hearing was adjourned partly heard to allow the Respondent to lodge invoices and receipts. The Tribunal issued a direction to parties to require these receipts to be lodged along with any further legal representations on the issues raised. The Hearing was continued partly heard until 9th November 2023.

Part Heard Hearing 9th November 2023

16. On 9th November 2023, neither the respondent nor his solicitor joined the Webex call at 10am. At around 10.15 am the Tribunal Chair instructed the Tribunal clerk to telephone Mr Watson on the number that he had provided to the Tribunal. The clerk reported that there was no answer from this number. An alternative number for GS Watson Law was obtained from the Law Society of Scotland website. Contact was made with Mr Watson around 10.25 am. Mr Watson explained to the Tribunal clerk that he was in a hotel and was having difficulty with the Wi-Fi. He then joined the Webex hearing by telephone only. Mr Watson explained that as well as the issues he was having with Wi-Fi, he had received from his client a text message together with a screenshot of a photograph of a badly damaged car, dated at 9.41am, indicating that his son had been in an accident and so he would not be attending the hearing. As a result of this Mr Watson had sent an email to the Tribunal at 10.19am, seeking to continue the hearing to another date. Mr Watson acknowledged that he had not lodged any invoices or receipts in response to the Direction. He indicated that a meeting between him and his client the day before had not gone ahead. He understood that Mr Murray had information including a statement from Mr Williams which it was suggested would support Mr Murray's position. Mr Watson was able to update the Tribunal as the morning continued advising that Mr Murray's son was not badly hurt but had an arm injury and pain in his torso. Mr Murray attended the hearing by telephone only at 2 pm but said that he was unable to give evidence given what had happened that morning with his son. He said he had driven his son from Stirling Community hospital where he had not been seen, to Queen Elizabeth hospital Glasgow A&E to be examined. He was unable to confirm the location of the crash or the registration mark of the vehicle and thought his son's friend's father rather than an ambulance had taken him initially to the Stirling hospital. The request to adjourn was opposed on behalf of the Applicant and after some consideration, the tribunal agreed to adjourn the hearing partly heard to a later date. In the course of the hearing that day the legal issues were considered, and the Tribunal decided to hear evidence on the question of whether there was an agreement before the question of any validity it might have was considered.

Part Heard Hearing 30th November 2023

17. The hearing was continued until 30th November 2023 at 2pm. On the morning of that day Mr Watson requested that the Hearing be adjourned as he was unwell. He also indicated that the Respondent Mr Murray was unwell and had been in hospital for something which was described as “serious” and had been advised to rest. Mr Watson’s email indicated that Mr Murray was to provide him with vouching for his attendance, discharge from hospital and unfitness to attend for the continued hearing. As far as his own health was concerned, he described in detail difficulties he was having in relation to care of a relative and how his health had deteriorated shortly before the hearing and this meant he could not instruct another agent to appear on his behalf. The motion to adjourn was opposed by the Applicant’s solicitor. The Tribunal was reluctant to adjourn the hearing again and noted that no vouching had ever been lodged for the Respondent’s previous absence and no receipts or documentation for work said to have been done at the property had been lodged on behalf of the Respondent. The Tribunal balanced the ongoing delay in dealing with matters against the fact that the Respondent’s position could not be advanced at the continued hearing as neither he nor his solicitor could apparently be present.

18. With some considerable reluctance the Tribunal continued the hearing partly heard to 20th February 2024 and issued a direction requiring the Respondent’s solicitor to lodge vouching for the Respondent’s absences to date, written representations setting out his complete position as to why rent had not been paid during the tenancy, receipts, statements and any invoices said to be available to support the Respondent’s position regarding the rent and in respect of work said to have been done at the property, confirmation that the tribunal could proceed to issue a decision without the need for a further hearing in the event that the Respondent lodged written representations regarding his position and the receipts invoices and statements referred to above and the Applicant agreed to such a course of action. The tribunal also required that in the event that the Respondent’s solicitor was unable to attend for the continued hearing he should advise the tribunal of this as soon as possible and instruct alternative representation for the Respondent as appropriate. The Applicant was directed to confirm that in the event that the Respondent’s representative lodged representations and the receipts invoices and statements referred to above that the matter could be dealt with without another hearing and in the event that any further written representations were required to be lodged on behalf of the Applicant that these were lodged within two weeks after the respondent lodged further material.

19. On 11th December 2023 an e-mail was received from the Respondent’s solicitor’s firm indicating that the Respondent and his family would vacate the property in full by midnight on 19th January 2024 and return the property keys by the same date. The email indicated that given the time of year, the approach of Christmas and the number of people in what was a large family who would be impacted by having to leave the property, the hope was expressed that the proposal would be agreeable to allow the family to be together over Christmas until their new home was available in mid-January 2024. No mention was made in this e-mail of the outstanding rent.

20. On 8th January 2024 the tribunal received representations from the Applicant’s solicitor confirming that they had no objection to both applications being dealt with administratively without the need for a further hearing. In response to the indication by the Respondent that the property would be vacated by the 19th of January 2024 the

Applicant's solicitor indicated that they were proceeding with both the eviction and civil applications before the tribunal.

21. On January 17th, 2024, the tribunal received an e-mail from the Respondent's solicitor Mr. Watson advising the tribunal that his practising certificate had been withdrawn and that he required to withdraw from acting in the application. Mr Watson indicated that his position related to Conveyancing related matters in which he understood no party had suffered any loss and were not related to his practice as a court practitioner. In an email he indicated that it was for the Respondent himself now to address the suggestion that he had given an undertaking to vacate the property in January 2024 and indicated that he understood it was likely that the tribunal might discharge the continued hearing and fix a peremptory diet but that he had no standing to make any motion on behalf of the Respondent.

22. The tribunal also received representations dated 8th January 2024 directly from the respondent Mr Murray. These representations were headed "161 Fenwick Rd Giffnock and keys handed back to agents". The e-mail contained a list of sums of money against descriptions of work done and materials in relation to certain rooms at the property. The list contained the name of a person said to be a decorator and the sums mentioned were totalled in the e-mail and said to amount to £30,374. In the e-mail the Respondent stated that the owner of Key Homes would send in a written statement to say that he was a friend of the Respondent and was able to provide him with tradesmen, that the tradesmen had done the work on the house and would testify that they had seen and spoken to Michael from the church while the work was getting done and gave him quotes for doing work on the church. At the end of the e-mail Mr. Murray stated that he would like a new date for the "trial" so that he could give evidence along with the contractors and the letting manager. No reason was given for the request for a later date for the hearing to conclude and no reason was given as to why the Respondent or his witnesses could not attend or the date already fixed for the continued hearing on 20th February 2024. No request was made in the email for an adjournment in order to obtain new legal representation.

23. As the tribunal was aware that Mr Murray the Respondent was no longer represented the details of the continued hearing to take place by teleconference were sent directly to Mr Murray by email on 9th February 2024. No other information or communication was received from the Respondent prior to the hearing on 20th February and no additional information as to why he was seeking a later date.

Part Heard Hearing 20th February 2024

24. On 20th February 2024 the tribunal convened for the continued hearing in relation to both applications. Mr. Williams attended on behalf of the Applicant and was represented by Miss Matthew and there was no appearance by or on behalf of Mr. Murray. The tribunal raised his representations of 8th January 2024 and the request for a later date which had been made. Miss Matthew for the Applicant opposed any further continuation and pointed to the history of the tribunal proceedings and the number of adjournments granted at the request of the Respondent or his previous solicitor. She pointed to prejudice which the church Applicant was now suffering due to the continuing rise in rent arrears. She further pointed to the failure on the part of

the Respondent to properly engage with the tribunal's directions as to production or vouching for absences on the part of the Respondent, failure to lodge documentation which was said to show the Respondent's position and failure to lodge invoices for the work apparently carried out at the property. The tribunal considered the history of the matter and the Respondent's representations. It was clear he was aware of the date of the hearing as he had been copied into the e-mail from his former solicitor withdrawing from acting. It was correct to say that tribunal directions had not met with a proper response by or on behalf of the Respondent, the tribunal had granted several adjournments to accommodate the Respondent to allow him to set out his position in full and to lodge the appropriate productions. No reason had been given by the Respondent as to why he wished to have a later date and in all of the circumstances and given the lengthy history of the matter the tribunal considered it was appropriate to continue in the absence of the Respondent having regard to the overriding objective to be fair to parties and given the substantial delays which had been incurred due to the Respondent's absences and failure to lodge documentation upon which he wished to rely. The tribunal decided to proceed with the continued hearing in his absence for these reasons, noting that it was aware of his position on matters and his former solicitor had been able to put his position to Mr Williams in evidence during cross-examination.

Evidence

25. Mr Michael Williams gave evidence on behalf of the Applicant at the hearing on 20th October 2023. He confirmed he had prepared a witness statement dated 13th October 2023 and adopted the statement as being his position on the matter. He confirmed that he was a church elder for the Applicant church and was also the property convener for the Church. The church had entered into a private residential tenancy at the property with the Respondent with effect from 12th June 2020 with monthly rent payable of £1350. The rented property had been the church manse and the tenancy was dealt with by Clyde Property on behalf of the church. Mr Williams acted as the church contact with Clyde and also dealt with tenants directly.

26. Mr Williams said that he had been contacted by Mr Murray on a number of occasions during the tenancy. He had asked if he could redecorate the property to his own taste and this had been agreed by Mr Williams provided he met the costs of this and that the redecoration was tasteful. Mr Williams' impression was that the decoration was to be cosmetic only. There was no discussion about why the Respondent wanted to redecorate and no discussion or agreement regarding any compensation for any redecoration or that this was to be set off against the rent due for the property. The conversation had taken place early in the tenancy and Mr Williams had mentioned this at an elders meeting which had taken place in January 2021.

27. Mr Williams indicated that he had to seek the authority of the church to allow the redecoration and that the matter had been raised at the Elders' meeting. He said he had raised this at an Elder's meeting in January 2021 and noted that the redecoration had been carried out at the expense of the tenant Mr Murray.

28. Mr Williams indicated that he had the ability to authorise expenditure on behalf of the church for costs or repairs up to £500 but not above that level. There had been discussions between him and the Respondent regarding certain repairs required at the property. The Respondent had on some occasions made contact with him to advise that work was required and said that he would arrange to have it done. The Respondent instructed the work to be done and the costs were then to be reimbursed. These issues were the subject of specific conversation and agreement between Mr Williams and the Respondent Mr Murray.

29. In particular Mr Williams recalled that the Respondent had contacted him early on in the tenancy when asbestos had been found behind a wall in the living room at the property. The Respondent indicated that he could instruct a contractor who would remove or contain the asbestos. The Respondent found a contractor who would wall in the asbestos for £500 and the work was done and Mr Williams transferred the money to the Respondent. The Applicant had lodged a petty cash voucher in the sum of £500 in relation to this transaction. On a second occasion Mr Williams was advised by the Respondent that the main fuse box at the property was not working and Mr Murray agreed to obtain and organise an electrician to deal with this issue. The electrician indicated that the fuse box needed to be replaced and this was done. Mr Williams transferred £400 to the Respondent to cover this repair and a petty cash voucher for this sum and an invoice from the electrician has been lodged to show this.

30. Mr Williams was not aware of extensive renovation of the property and no discussion had taken place regarding this other than the Respondent asking if he could redecorate the property to his own taste. He was clear that he had never been asked if a sensory room could be installed at the property for the Respondent's son and there was never any suggestion this was agreed or would be paid for by the Church.

31. Mr Williams spoke of other repairs which had been done at the property. He referred to a boiler being replaced at the property in March 2022 and this was paid directly to the contractor who installed it and the invoice was produced. Mr Williams said that the church had tried to be good landlords and accepted that the property had to be kept in good order and properly maintained. The church's income had decreased by around £20,000 at that time due to the level of rent arrears. Any money not used for the upkeep of the property was put into church funds and used for work they did in the community.

32. Mr. Williams was cross-examined by Mr. Watson, the Respondent's former solicitor. Mr. Williams explained that the extent of the relationship between the parties before the tenancy commenced was that he had first encountered Mr Murray when he made an application to take on the rented property. Mr Williams had explained to Mr Murray that applications had to go through Clyde Property. Mr Murray had been successful in obtaining the rental. He had spoken to him on a number of occasions regarding repairs and did not keep a note of these. He said sometimes he had spoken to Mr Murray on his own but sometimes with someone else. Mr Murray had told Mr Williams the things he intended to do at the property which included a new back door and repairs to the electrics.

33. Mr Williams said that he was aware that Mr Murray had a son who was living at the property who had autism and at some stage during the tenancy he had told him about his son's difficulties and explained the problems he had in a fairly detailed way. He was not aware as to any degree of severity of the condition suffered by Mr Murray's son but said that he knew generally of the condition as he had a grandchild with similar problems. Mr Murray had told Mr. Williams that he had a son with complex needs and there had been a discussion about making the property more suitable for his needs. Mr. Williams said there had been numerous discussions but no particular discussion on this matter and that no particular discussions had taken place regarding specific modifications to the property to accommodate Mr Murray's son's condition. He said that when matters were raised by Mr Murray in relation to required repairs, work was done. Mr Williams confirmed that he was not aware of sensory issues in relation to autism or soundproofing. He confirmed that what had been discussed and agreed was the replacement of the back door, the fitting of a boiler, a washing machine, and dealing with a fuse box replacement. He said that Mr Murray would call up and say that something was required to be fixed and this was actioned. Mr Murray had said he was going to do lots of things to the property itself and at the time Mr Williams gave evidence in October 2023 he said he had not been in the property for over a year and that the lighting at the property had been updated and new fire alarms had been installed. There had been no discussion with Mr Murray regarding lighting or a sensory room. He said his role was to advise the elders of the Church of what was being done in relation to the property and would let the elders know what was happening. It was put to Mr. Williams that he had known Mr Murray's detailed personal circumstances and that the lines had been blurred regarding expenditure and that Mr Williams did not want to admit this. Mr. Williams did not agree with his suggestion and said that any major work had to be approved and he confirmed that he had given Mr Murray £500 for the work that had been done regarding asbestos found in the property and that he done this without going to the elders but did advise the elders that this had happened. He said it was some time since that matter had come up in discussion at an elders meeting and that the expenditure authority limited limit which he had was £500. It was suggested to Mr. Williams that the church's intention was that should Mr Murray be evicted a minister would be moved into the property. Mr Williams confirmed that the church had been without a minister for some time and that when they got a minister the minister had wanted to look at having the manse and that this had been raised previously and they had asked for an eviction order for the minister to move in. A notice to Leave had been sent in relation to rent arrears and the minister had been hosted elsewhere by the Synod as the church was a member of the Synod of Scotland, part of the United Reformed Church in the UK. He said that the church had had to host the minister at their own cost.

34. Mr Williams confirmed that the church had considerable capital by way of cash in the bank and property. It owned the church site and a flat that was let out and the manse itself which was the let property in this application. He said in order to sell the property they would lose the church and they didn't want that and that the church was run by its members. As of October 2023, he said that the church had about £100,000 in the bank but this had gone down to about £80,000. He said that the church accountant kept telling the elders that if they lost £15,000 per year, they would not last very long. He said this particular dispute was not going to bankrupt them soon but given the amount of money they were losing in relation to the rental it would speed this

process up. He said at the rate of £35,000 per year not being paid in rent the church would effectively become “broke” in two years’ time. He said the majority of elders were elderly and wanted to keep the church going and wanted to sort out its poor financial situation before it became more financially dire. He said he was not aware of Mr Murray’s income and no facts regarding his financial situation. He said that he had paid rent from Morocco but didn’t know the circumstances around this.

35. In re-examination Mr Williams stated that at the beginning of the tenancy Mr Murray had asked to redecorate and that he had thought this meant perhaps that he would carry out periodic redecoration. He said that the church had redecorated one room every year in previous tenancies and he understood that the redecoration would take place over time. He said he had no idea that Mr Murray wanted to redecorate the whole property and said he believed that one room a year would be redecorated which would take six to seven years to redecorate. He said that the church had re-decorated and re-carpeted when the tenant before him had moved in he said he would have to look up the precise figures but he said that £12,000 he believed had been spent including carpets and he did not accept that Mr Murray had done over £20,000 of work at the property. He said that the occupied rooms had had new carpets and when Mr Murray asked if he could do certain things he (Mr Williams) asked if it would be alright with the church board and he said there was never any mention in these discussions of offsetting rent against redecoration or payment for the work done. He confirmed that the church had paid the cost of a new back door which was discussed with Mr Murray and a boiler. Invoices for both jobs had been lodged with the Tribunal. These costs were covered by the church and no further invoices whatever were submitted by Mr Murray to the church for work done at the property. Mr. Williams recollected that a fuse box had been fixed and a repair had been requested when a shower had stopped working. Mr Murray had said he would get a new shower as he was planning to do up the bathroom himself. He had told Mr. Williams there was no need to have the shower fixed on that basis and he don’t know he didn’t know if Mr Murray had gone ahead and renovated the bathroom.

36. Mr. Williams indicated that he was a volunteer not a landlord as such. He was asked why repair works which were the landlord’s responsibility were allowed to be done by Mr Murray. He said he had taken Mr Murray with a degree of trust that he would get jobs done after discussion and the church reimbursed him for these from petty cash. It was put to Mr. Williams that this might have allowed Mr Murray to think that he had carte blanche to do other jobs at the property but Mr Williams was adamant that this was not the case. He said he didn’t know the extent to which the property had been renovated and did not know if soundproofing had been installed. He said he was never asked for money for these jobs and would like to see invoices for the works carried out. He said that he understood Mr Murray had stopped paying rent when the church had mentioned the idea of him leaving the property to allow a minister to take up occupation of it. As regards the walling in of the asbestos Mr Murray had said the people who did the work would put a sticker on the wall to show that the asbestos had been properly sealed in to meet any safety requirements. He never received any proof that the work had been done and did not see any paperwork. The back door replacement and the new boiler had been paid by the church. Other minor things had cropped up such as a blocked toilet which had been removed and replaced. The church had paid for new smoke alarms to be installed at the property. Mr Williams said

that he had not spoken to Mr Murray since he had carried out the works and believe they had last spoken in August or September of 2022. At that stage Mr Murray was already two months' rent in arrears from the previous year. Mr. Williams understood he had moved back from Morocco and had required to fly there to complete certain paperwork but was delayed because of the pandemic. There had been no discussion of any kind regarding the rent and Mr. Murray had simply stopped paying it.

37. The church had found out about the rent arrears simply when they didn't get the rent from Clyde property. They had made inquiries and were told him that Mr Murray had simply stopped paying. Clyde Property had tried to arrange meetings with Mr Murray towards the end of 2022. It had been suggested in an e-mail from Mr Murray to Clyde Property that he had spent £10,000 at the property but this had never been mentioned to Mr. Williams or anyone at the church. Clyde Property had not carried out inspections of the property during the COVID period. He had received 2 reports from Clyde on visits to the property that Mr Murray was refusing entry. There was no report of extensive changes of the property made by Clyde Property and no such pictures in their report. Mr Williams said that he kept everything on record in case he ever needed it. There was no report from Clyde in 2023 and no report in 2022 and the pictures he had seen from the report in 2020 one did not show any major changes to the property. He said at no point had he seen any evidence of major changes to the property although he remembered seeing redecoration in one of the main front rooms or the hallway. He said he did not go poking around to see if the property had been done up and did not go into the children's rooms. He said on one occasion he asked the church accountant to attend the property with him and that the only reason for that person's attendance was to witness any conversations with Mr Murray. He said no real audit had been done in relation to the redecoration and he had taken Mr Murray's word for the fact that he simply wished to redecorate the property. He said he had no reason to doubt or to believe that Mr Murray was lying to him as he had appeared to be a perfectly honest person and Mr. Williams that treated him that way. He said that he was not a joiner or a housebuilder and he had accepted statements made by Mr Murray. He said he had looked at the reports on the property and the pictures provided by the letting agents and was content that Mr Murray would get in touch with him by phone if anything was needed. In re-examination he confirmed that the issues regarding the rent arrears now claimed to be agreed to be offset against the rent had never been raised with him. It was never suggested that rent was being withheld due to repairs and no such suggestion had been made to Clyde Property. Any permission given for redecoration was at the cost of the tenant.

Part Heard hearing 20th February 2024

38. On 20th February 2024 Mr. Williams reiterated that the only permission for any works given to the Respondent were a couple of years before the hearing on 20 February 2024 to redecorate the property to his taste. The Elders had had a meeting and allowed Mr Murray to go ahead with this. Mr Williams could not comment on the costs referred to by the Respondent in his e-mail of January 2024 where he claimed £6500 for a cinema audio wall. Mr Williams said he had been in the property in January 2024 after it had been understood that Mr Murray and his family intended to leave the property as set out in the email received by the Tribunal in December 2023. He had seen what he described as a huge television on the wall. On his visit in January 2024

was no evidence of that amount of redecoration having been done but he did not check the entire property. He was clear that at no point had the Applicant needed to do any decoration beyond the front room. He said he was not aware of a new lintel above the living room window or whether the staircase was bolted to the wall and whether a false ceiling had been built. He said that the church had installed smoke detectors in line with regulations while Mr Murray was a tenant at the property and that they had also installed a new fuse board and had paid this by way of petty cash to Mr Murray. He could not understand why these works were necessary and said there was no reason for another fuse board. Mr Williams queried the entry on the list of costs submitted by the Respondent which related to rubbish removal. He said that when they had attended the property in January 2024 there was a large amount of rubbish at the back of it. Mr Williams indicated there had been no agreement for third parties to come and uplift rubbish and disputed whether this had been done.

39. Mr Williams had reported to the elders that the front room at the property had been decorated and accepted that he had seen this during a visit to the property. This was the visit after 19th January 2024 when he had visited with a representative of Clyde Property in order to carry out a checkout inspection and report. At that stage it seemed that items of furniture had been moved but it became clear that Mr Murray had not vacated the property. He said some rooms were being inspected when the Respondent's son had appeared and said that Mr Murray was in Abu Dhabi. Mr Williams had formed the view that the property looked abandoned as there seemed to be no furniture in it. They had found a fish tank with fish in it and the representative from Clyde Property had contacted the RSPCA and it was at this point that Mr Murray's son had arrived with a van apparently to continue to empty the property. Mr Williams said that he must have been in touch with Mr Murray who phoned Clyde Property and stated that he was still a tenant at the property and would be back on the 8th of February.

40. Mr Williams indicated that before this conversation they believed that the property had been unoccupied for a reasonable amount of time. No keys had been returned to them. Mr Williams said that from what they could see there did not appear to be much property there only what Mr Williams described as rubbish or bike parts in the garage and in the garden.

41. Mr Williams accepted that he had been aware that Mr Murray had been redecorating the front room and he accepted that he may have even been in the property when this was taking place and said that he had seen people working at the property but had never asked them for quotes for work for the church and never received any quotes. He said that any suggestion of this nature was completely untrue he said there were a small number of items which had been in the list lodged by Mr Murray which had been done at Mr Murray's own expense.

42. Mr Williams advised that Mr Murray had been approached regarding the rent arrears by Clyde Property and phone calls to him to obtain the rent but these had not been successful. Clyde Property had tried to arrange a meeting when Mr Murray stopped paying the rent but Mr Murray said he was not moving because of the work carried out at the property. In September of 2022 a member of staff at Clyde Property went through all the details of the proposed eviction and what would happen should

he vacate the property Mr. Williams understood in discussions that Mr Murray had told Clyde Property that he was not paying rent because he had not been paid for the work done by him at the property.

Submissions 20th February 2024

43 Miss Wooley for the Applicant confirmed she was seeking eviction in terms of Ground 12A of the Private Housing (Tenancies) (Scotland) Act 2016. The rent arrears now due at the property were £27,000 and arrears started to accrue on the 12th of October 2021. As of June 2023, around £16,000 of rent arrears had accrued and at the time of service of the notice to leave a sum of just over £9,000 in arrears had accrued. The current arrears were around £27,000 and amounted to 20 months' rent. Her submission was that the Applicant should not have to pay a penny to reimburse Mr Murray and submitted that his refusal to pay rent was simply a delaying tactic on his behalf to avoid having to leave the property. She submitted that all of the evidence submitted was in favour of the Applicant's position and suggested that it had been firmly conveyed to the tribunal that there had been no agreement of any kind and that there had been extensive evidence to support this. She said there was no explicit or implied agreement regarding refurbishment and repair of the property to offset rent. Mr Murray had been told he could redecorate to his own taste and at his own expense. In addition, sums had been paid for the walling in of the asbestos, and the fuse box and funds had been given on those occasions. There appeared to be an agreed procedure for authorising any repairs. From these previous interactions she submitted that Mr Murray would have been aware he could not have reasonably assumed that any costs would be met given the history. She said there was no evidence of any alleged agreement to meet costs. Had there been such an agreement the church would effectively have been giving Mr Murray a blank cheque when he redecorated and this was not done. He had paid rent on several occasions while repairs were ongoing. He knew that payments were to be made and her submission was there was no evidence of an alleged agreement and no verified costs had been put forward. She further pointed out that there was no express contract produced to suggest any form of agreement had taken place nor was there any statutory provision that the Respondent could point to, in support of his position. He knew that payments were to be made and it was suggested that the question of an agreement had been raised now as a delaying tactic. On the question of reasonableness, Miss Wooley pointed to the deficit of £27,000 in rent arrears which it was said was badly impacting the finances of the church. The property required to be rented out or used by a minister and there were serious implications for the church's finances if the current situation continued. She submitted it was not sustainable for the tenancy to continue and the only agreement that had been given was to redecorate tastefully at his own expense. The Applicant was not aware of some of the suggested redecoration. She referred to written submissions made after the hearing on 20th October. She submitted that the rental was affecting the activity of the church. Their capital resources were approximately £100,000 which was now reduced to £80,000. While the capital resources might seem substantial the deficit for this year was nearly £20,000 and if the situation continued in a period of four years the church would have no money left. It was suggested that the church was in deficit of around £30,000 due to the rent

arrears and legal fees incurred in seeking an eviction order and civil it was submitted in all the circumstances it was reasonable to grant the order.

44. As far as the legal position was concerned Miss Wooley adopted the written submissions lodged on behalf of the Applicant. She said that if an agreement existed this would require to be in express terms. She submitted that any claim for compensation by a tenant for improvements must rest on an express contract or statutory provision. In this regard she referred to Gloag and Henderson, Introduction to the Law of Scotland, 9th Edition 1987 at page 163. The Applicants had lodged a copy of Renfrew District Council v Gray 1987 SLT (Sh Ct 70) but did not specifically refer to this case.

45. As regards the need for an express contract in relation to any agreement regarding recompense the Applicant's representative submitted in writing that such a contract could be written or verbal but if verbal, the contract would have to be clear and express in its terms for both parties and terms cannot be implied by the actions of either party. It was submitted that the Respondent was suggesting that the Applicant agreed to work being carried out either expressly or implicitly. It was submitted that a reasonable person would expect if an agreement had been entered into to allow the installation of a sensory room that an express agreement would be in place so that both parties were aware of their obligations in terms of the contract. It was further submitted that the Applicant could not authorise works without knowing the express terms of any agreement for works e.g. the nature of the work and the cost. It was submitted that no such express terms existed and there could be no agreement.

46. The tribunal was satisfied that it had sufficient information upon which to make a decision and that the proceedings had been fair.

Findings in Fact

47. The parties entered into a private residential tenancy at the property with effect from 12th June 2020.

48. The monthly rent payable in terms of the tenancy is £1,350.

49. Some rent arrears accrued under the tenancy from October 2021 but rent was paid after that date until when it stopped being paid at all by the Respondent after August 2022.

50. The rent arrears accrued stand at around £27,000 as of February 2024.

51. The property was a church manse and is rented out on behalf of the Applicant church by Clyde Property but Michael Williams an elder of the church acted as property convener and liaison between the church and the leasing agents and had contact with the tenant Respondent during the tenancy.

52. Mr Williams had authority to deal with costs or repairs of up to £500 but above that figure required to seek authority from the church.

53. During the tenancy the Respondent reported to Mr Williams some issues at the property which required repair and these included a blocked toilet, a new boiler and back door. Mr Williams dealt with these as they were raised with him by the Respondent and this procedure was used for a number of issues raised.

54. The Respondent reported to Mr Williams the finding of asbestos in a wall at the property and he arranged for this to be walled in at a cost of £500, a sum reimbursed to him by Mr Williams on behalf of the Applicant.

55. A petty cash voucher for £500 was completed to cover the cost of paying the Respondent this sum of £500 for the asbestos treatment.

56. The Respondent Mr Murray reported to Mr Williams that a fuse box required to be replaced and he arranged for this to be replaced, and the sum of £400 was reimbursed to him by Mr Williams on behalf of the Applicant.

57. A petty cash voucher for £400 was completed by Mr Williams to cover the cost of paying the Respondent this sum of £400 for the replacement fuse box.

58. Early in the tenancy the Respondent asked Mr Williams if he could redecorate at the property and was told he could do that provided the decoration was tasteful and no mention was made in this conversation of any suggestion that the Applicant would meet the costs of any such redecoration or set these off against the rent.

59. The Minutes of an elders' meeting In January 2021 note that Mr Williams reported to the meeting that the Respondent had redecorated at the property at his own expense.

60. Some redecoration of the property has taken place during the tenancy but the extent of this is unclear and no invoices or receipts for work said to have been done have been lodged by the Respondent.

61. There was no express or implied agreement by the Applicant at any time during the tenancy that they would reimburse the Respondent for any renovations at the property or set these off against rent payments.

62. When rent was paid during the tenancy the Applicant was not aware of the source of income used to make these payments but there is no information to suggest that the rent arrears have accrued due to a failure or delay in payment of a relevant benefit to or on behalf of the Respondent but instead it appears that the Respondent simply stopped paying it.

63. There are substantial rent arrears accrued at the property and as of February 2024 no rent had been paid since August 2022.

64. At the date of service of the Notice to Leave in January 2023 rent arrears in excess of six months' rent in terms of the tenancy had accrued.

65. In December 2023 the Respondent's then solicitor's firm wrote to the tribunal indicating that the Respondent and his family would vacate the property in full by 19th January 2024 and would return keys by then, their new home being available to them in mid-January 2024.

66. Following this email Mr Williams and a representative of Clyde property attended at the property after 19th January 2024 to carry out a checkout report as they understood the Respondent would have vacated the property by then.

67. On attending at the property they noted that the property appeared to be lacking furniture and may have been unoccupied.

68. The Letting Agent was contacted by the Respondent on the day of their attendance at the property to say that he was still a tenant and would be returning on 8th February 2024.

69. The Respondent submitted a list to the Tribunal dated 8th January 2024 setting out sums said to have been spent on renovation at the property and the work carried out. The sums submitted amounted to £30,374 but no invoices or receipts were received to vouch for this sum.

70. The Applicant sent a notice to leave by email to the Respondent dated 12th January 2023 setting out that eviction was sought in terms of Grounds 12 and 12 A of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 and that an application to the tribunal would not be submitted before 12th February 2023.

71. The Notice to Leave was emailed to the Respondent by Clyde Property on 12th January 2023.

72. A Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 was sent to East Renfrewshire Council on 15th March 2023 in relation to this application.

73. A pre-action protocol letter dated 6th December 2022 covering sources of support in paying the rent was sent to the Respondent by email,

74. The Applicant church has capital in the bank but this has been reduced by over £20,000 as a result of the rent arrears and whilst the church retains capital of around £ 80,000 this reduction has affected their activities and, in a few years, if the situation continued their capital reserves would diminish completely.

Reasons for Decision

75. The tribunal was satisfied having considered the evidence, together with the representations and productions submitted by the parties, that no agreement existed between them whether in writing or orally which would have allowed the Respondent to seek to have outstanding rent due as a result of the tenancy agreement at the property set off against the cost of renovations he said had been done at the property.

76. The tribunal accepted the evidence of Michael Williams as being credible and reliable in all respects and was satisfied on the balance of probabilities that no agreement existed, that the eviction ground had been made out and that there were substantial rent arrears at the property which started to accrue in 2021 with no rent being paid after August 2022.

77. Mr Williams was clear in his evidence that there was an established communication method between himself and the Respondent on the issue of any repairs or required work to the property during the tenancy. The Respondent would bring any such matters to Mr Williams' attention and the work was either carried out or after discussion and agreement with Mr Murray the Respondent was authorised to have the work done and was reimbursed directly by Mr. Williams. Petty cash vouchers lodged supported Mr Williams' evidence as regards the issues around the finding of asbestos and the replacement fuse box.

78. The Respondent's position appeared to be that there was an agreement between the parties that he could renovate and redecorate the property and that this would be reimbursed by the Applicants, presumably by way of set off against the rent clearly due in terms of the tenancy agreement. It was suggested during the tribunal proceedings that witnesses would speak to Mr. Williams agreeing to this and that the Respondent had a statement from Mr. Williams to that effect but no such statement was ever produced. There had been early in the tenancy a request by the Respondent to Mr. Williams as to whether he could redecorate and this was agreed to, provided any such redecoration was "tasteful". There was no discussion regarding who would pay for the cost of such renovation or redecoration and it was clearly Mr Williams' understanding that if the Respondent wished to decorate this would be at his own expense. Support for Mr Williams' position came in the minutes of January 2021 of the church elders' meeting where it was stated that he reported to the meeting that the manse had been redecorated at the Respondent's own expense. The Tribunal accepted the submissions of the Applicant's solicitor that he knew that the rent was due on a monthly basis at the property and no reasonable person would have expected that a short conversation about whether he could redecorate would amount to an agreement that any redecoration or renovation costs would be met by the Applicant. As was mentioned by the Applicant's witness Mr Williams to enter into such an agreement would effectively have been to give the Respondent a blank cheque which they had not done and would not have done.

79. The tribunal's decision was made at a part heard hearing on the 20th February 2024 in the absence of the Respondent. The application was beset with delays as a result of requests for adjournments at the instance of the Respondent. His absences from the proceedings were never vouched despite assurances that this could be done and despite a request to adjourn in order to lodge invoices and receipts in respect of work done at the property which the tribunal was told had to be recovered from the Respondent's mother's garage, no such information was ever received. After the Respondent's solicitor withdrew from acting the tribunal received a list from the respondent of work said to be done amounting to over £30,000 again without any receipts or invoices. The Respondent at that stage had made a request for a later date without giving any reasons and given the history of the matter and the overriding objective to be fair to parties the tribunal continued in the absence of the Respondent

in the knowledge that his position had been made known to the tribunal and the only witness to give evidence to the tribunal directly had been cross-examined on his behalf by his former solicitor.

80. That there was no agreement between the parties as to recompense or offset of rent in respect of any renovations which may have been done at the property was all that the tribunal was required to find in respect in finding the eviction ground was made out and that the rent arrears were lawfully due by the Respondent. However for the sake of completeness the tribunal considered that even if there had been clear terms expressed between the parties which could have amounted to an agreement to override the contractual obligation to pay rent as set out in the tenancy agreement or to offset the cost of renovation work against the rent, the tribunal considered that the Respondent would still have failed in his counterclaim as he did not properly address the costs of any work done or provide vouching for these. The Tribunal also noted that in this case given the clear terms of the tenancy agreement the Tribunal might have expected to see any such other agreement (had it existed) to be in writing perhaps added at the end of the tenancy agreement as an amendment, something which had already been done in the agreement to allow for the Respondent to keep a dog at the property.

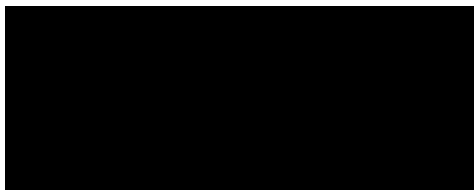
81. The Tribunal was satisfied that the Respondent's apparent failure to pay the rent could not in the absence of express agreement as discussed above, allow a defence to the eviction action given the remedies said to be open to a tenant who does not enjoy full possession of a leased property as set out in **Renfrew District Council v Gray 1987 SLT (Sh Ct 70)** which are retention of rent, abatement of rent and if required an action for damages. The Respondent in this application did not argue that he was not enjoying full enjoyment of the property so in the absence of an agreement for the renovations to be paid there can be no contractual basis for these costs to be claimed. The Tribunal was not required to consider a claim for unjustified enrichment but observes that if that were the case the Respondent would have required to demonstrate that a benefit had been received, the amount of any loss which he had suffered and that the situation was unjust in some way. There was no properly vouched evidence before the tribunal as to the amount of work which may or may not have been done at the property and it appeared that the Respondent had simply requested to redecorate as a matter of his own preference which of course he would do at his own cost and risk.

82. The tribunal considered whether it was reasonable to grant an eviction order. It considered all of the circumstances before it and weighed up all the factors under consideration in order to give appropriate weight to these. The rent arrears were substantial with no rent having been paid since August 2022 and it appeared that the Respondent had simply decided to stop paying rent. He had apparently agreed to leave the property in January 2024 around the time when the family's new home was to be ready and there was no suggestion made at any stage in the proceedings that eviction would render the Respondent and his family homeless or in any difficulty. The Tribunal was never advised on his behalf as to how many persons lived at the property and the property appeared to be unoccupied in January 2024 when Mr Williams visited. The nonpayment of the rent was restricting the activities of the Applicant church and depleting their capital and would in a few years' time render them in a

position where they had no funds left. In these circumstances and given the level of rent arrears accrued here (around £27,000) it was reasonable to grant an eviction order.

Decision

The Tribunal determined to grant an eviction order in terms of Ground 12A of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 in that the tenant has accrued substantial rent arrears in respect of the tenancy over one or more periods, the cumulative amount of these rent arrears amounts to more than 6 months' rent in terms of the tenancy when Notice to leave was given and it is reasonable to grant the eviction order.



V.Bremner

Legal Member

20.2.24

Date