



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

Chamber Ref: FTS/HPC/EV/23/1207

**Re: Property at Flat 2/1, 26 Belsyde Avenue, Drumchapel, Glasgow, G15 6AR
("the Property")**

Parties:

Mr Edward Baillie, 3 White City Close, London, W12 7EB ("the Applicant")

Miss Syeda Zaineb, ("the Respondent")

Tribunal Members:

Virgil Crawford (Legal Member) and Mary Lyden (Ordinary Member)

BACKGROUND

1. By lease dated 12 December 2019 the Applicant let the Property to the Respondent.
2. A Notice to Leave dated 19 January 2023 was served upon the Respondent. The Notice stated that eviction was being sought on two grounds
 - firstly, the landlord wished vacant possession of the Property to enable a relative of his – his sister – to reside within it,
 - secondly, the Respondent is in arrears of rent and a payment order has previously been granted by the Tribunal in relation to that.
3. A Notice in terms of s11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the local authority.
4. The Respondent opposed the eviction.
5. On 1 January 2023 arrears of rent amounted to £6,132.00.

6. On 22 January 2024 arrears of rent amounted to £456.25.
7. On 1 March 2024 arrears of rent amounted to £875.95.
8. The application for an eviction order was opposed and, in the circumstances, a Hearing was fixed. An in-person Hearing was assigned for 22 January 2024. Evidence was led on that day but the Hearing required to be adjourned to enable submissions to be made thereafter. A further date was assigned for 1 March 2024 to enable submissions to be made by Parties, the Hearing on that date being conducted by teleconference.
9. The Respondent opposed each ground upon which an eviction was sought for specific reasons and, separately, argued it was not reasonable for eviction to be granted.

THE HEARING

10. The Applicant was represented by Mr R Barr of Messrs DJ Alexander, Letting Agents. The Respondent was represented by Mr Christman of LSA. The Applicant was not personally present but participated by way of teleconference. His sister, Jane Baillie, attended personally as a witness.
11. At the outset of the Hearing, it was agreed by Parties that, as at that date, rent arrears of £456.25 remained outstanding. Mr Barr confirmed that his client was still seeking an eviction order on grounds of rent arrears given the history of the arrears. While the arrears had been reduced, the assurance given previously that they would be cleared has not been met and, as stated, it was a matter of agreement that there were still arrears of rent.
12. Separately, an application for eviction was still being sought on the ground that a member of the Applicant's family intended to reside in the Property. The Respondent accepted that the necessary requirements for that ground to be established had been met but argued that it was not reasonable for an order for eviction to be granted.
13. Mr Christman, on behalf of the Respondent asked that her address be redacted from any decision to be published. Reasons were provided for this. There was no objection to that on behalf of the Applicant and, given the reasons provided, the Tribunal was willing to comply with that request.

14. The Respondent had produced a report from a psychiatrist, Dr Stirling. He was not available to attend to give evidence. His report, however, was admitted in evidence. Separately, the Respondent wished to call a Dr Dania Thomas as a witness but she was not available to attend personally due to commitments out with the country. A statement prepared by her, however, was received and admitted in evidence.
15. The Respondent is pregnant and required breaks throughout the Hearing. The Tribunal facilitated those breaks for her physical comfort. On various occasions, the Tribunal enquired whether there should be a further break but the Respondent advised she did not wish that at certain points. The Tribunal made it clear that if a break was required at any time that should be made known and would be facilitated.

THE EVIDENCE

The Applicant, Edward Baillie.

16. Mr Baillie gave his evidence by teleconference. His evidence was fairly brief, he pointing out that the case has been ongoing for a significant period of time. All information he wished to provide has already been provided in written submissions and at previous callings of the case. In essence, however, he wishes vacant possession so his sister, Jane Baillie, can reside within the Property.
17. His sister previously had her own home. She removed herself from there a number of years ago in order to look after their mother. She did that for the benefit of the family and her mother. His sister, Jane Baillie, sold her own home after moving in with their mother.
18. The home in which Miss Baillie is now residing – their mother's old home – was affected by both noise from other properties within the tenement and movement/vibration as a result of other activities occurring within the tenement block. This was affecting the health of Jane Baillie.
19. Mr Baillie wished to allow his sister to now live in the Property to remove the stresses she was encountering. Separately, the Applicant was of the view that it was the right thing to do to look after his sister as she had given up a number of years of her life to look after their mother.
20. Upon examination by the Tribunal, Mr Baillie advised that his sister was living within their mother's old flat. She had lived there

for a period of two years. Their mum then went into a care home and died approximately one year later. His sister sold her own home to enable her to move in with their mother. His mother's home was affected by noise coming from other properties within the tenement block. When Mr Baillie was within his sister's home – his mother's old home - having returned to Glasgow for their mother's funeral, he heard noise himself which appeared to be coming from the top floor flat. His sister's home is on the ground floor. His own Property, for which he was seeking the eviction order, is a top floor flat so there would be no residents above his sister to cause any noise for her.

21. He advised that, while his sister will not admit it, he noticed that she has lost weight. She also appeared tired and stressed. She has been sleeping on the sofa within the home with earplugs in to reduce the effects of the noise coming from elsewhere within the tenement.
22. Upon cross examination by Mr Christman, on behalf of the Respondent, Mr Baillie confirmed he had submitted two written statements to the Tribunal. While these had been written by him, they had been proof read by his family as he is dyslexic. The statements were put to him. The statements suggested that there was noise within his sister's home and movement within the flooring etc. as a result of activities within other properties from within the tenement. It was suggested to him that it was not plausible that there was movement within the floors of his sister's home as a result of other properties within the tenement block. Mr Baillie confirmed that his position is that there was such movement.
23. Various documentary productions were put to Mr Baillie. It was pointed out to him that the landlords, the Wheatley Group, had investigated and did not consider the claims being made by Miss Baillie to be established. The Glasgow housing association ("GHA") attended at the home and found no structural faults. The environmental health department of the local authority had attended at the home and did not consider there to be a statutory nuisance. Correspondence between Jane Baillie and Glasgow City council was referred to. It was suggested to Mr Baillie that his sister had been exaggerating the extent of any problem. The Applicant disputed all these assertions made on behalf of the Respondent.
24. When referring to Mr Baillie's second statement, reference was made to comments within it that Mr Baillie was suffering from high blood pressure and high cholesterol. He confirmed that he had not lodged a medical report in support of that. It was suggested that his

high blood pressure, cholesterol, headaches and sleep problems were being caused by other things rather than the situation his sister finds herself in. The Applicant advised that these difficulties only started when this case commenced. He was not on any medications for these conditions until this eviction process commenced. He advised that he is still in employment, still attends the gym and still plays badminton.

25. Upon further questioning by the Tribunal, the Applicant confirmed his mother had lived within her home at Cloan Avenue, Drumchapel for 30 years. There has been noise pollution at that home for around 6 years. His sister and mother had been offered a “like for like” move but his sister rejected that move at the time. At the time that offer was made his mum was still alive. His mum was suffering from dementia. It was important that his mum was familiar with her surroundings. If she “wandered” the neighbours knew her and would know where to return her. If his sister had accepted a “like for like” move it would have been detrimental to his mother’s health, his mother’s safety and the care being provided to her by his sister.
26. He advised that there has always been a certain level of noise within his mother’s home but the level of noise is now totally different.
27. When questioned by his own representative, Mr Baillie confirmed that the statements provided by him had been written in good faith. His sister’s experiences at her home are real, traumatic and stressful for her.
28. Upon further questions by the Tribunal, the Applicant confirmed that if he secures vacant possession and his sister occupies the Property she will not be paying any rent. Again, he feels that is appropriate given the level of care she provided for their mother. His position, essentially, is that it is now time for the family to look after his sister. She would, however, be covering all other costs associated with the Property to include council tax, gas, electricity etc.

Jane Baillie –

29. Miss Baillie gave evidence in person.
30. She confirmed that she was being affected by noise pollution and movement within her home. The noise causes her to wake up in the middle of the morning. She advised she had been awake since

3am that morning and, indeed, for the last 3 mornings. It is exhausting. There is no end to it.

31. Jane Baillie had provided a statement from her work which confirmed that her work is being affected by her personal situation. While she is still working, the quality of her work and her sickness record/ability to attend has been affected.
32. When questioned by Mr Christman on behalf of the Respondent, it was suggested that her evidence regarding the noise pollution and movement within her home were not credible. Miss Baillie disputed that. It was suggested that she has been exaggerating the severity of any problems. Again, Miss Baillie disputed that. She invited Mr Christman to come and sit in her house any time he wished, suggesting that this would enable him to confirm for himself what she is experiencing.
33. Mr Christman pointed out that she has contacted the Wheatley Group, GHA, Glasgow City Council Building Standards and Environmental Health. Each of those have investigated her complaints but none have witnessed the issue she refers too. Miss Baillie pointed out that they had each come out during the day and did not attend at a time when noise or movement was being experienced by her.
34. Miss Baillie was referred to a letter from GHA dated 21st February 2021 in which they referred to the problem she was claiming she was having and suggested that the vast majority of complaints are low level noise complaints. Miss Baillie pointed out that she is actually experiencing these problems and the description of the complaints as “low level noise” is one attributed by GHA rather than by her. Miss Baillie disputed, for the avoidance of any doubt, that her claims were false or exaggerated. She is genuinely experiencing noise pollution. She is genuinely experiencing movement/vibrations within her home.
35. When questioned by the Tribunal, Miss Baillie confirmed that she has also raised issues with her MSP. She was advised to do so given she was not getting the assistance she required elsewhere. She had previously been advised to keep a noise diary. She confirmed that there had been problems at her home for years, even when her mum was still alive. When she did keep the noise diary there was no specific pattern to the noise or movement. She suggested that her neighbour across the landing had made similar complaints to hers also. She advised her neighbour had a child who was autistic. She

ended up moving from the block because the noise was affecting her child.

36. Mr Christman referred Miss Baillie to a letter from Glasgow Council Building Standards dated 15th January 2021. It suggested they had been in touch with GHA. There were no structural faults. Miss Baillie pointed out that they simply attended and viewed her home. They did not make any structural enquiries or do any detailed survey. While she accepted the terms of the correspondence, she did not accept what was stated and questioned the extent of the enquiries made to justify that conclusion. Reference was made to an email which contained similar information and Miss Baillie's position remained the same.
37. When questioned further by the Tribunal, Miss Baillie advised that she has sought assistance from the Wheatley Group, Mears, Glasgow City Council, Citizens Advice, Scottish Housing Association and Shelter. She advised that within her home she would be able to hear noise when children were running around in the flat above her. She pointed out that, however, there were in fact no children in the flat immediately above her but there were in there in the top floor flat. In the circumstances, it was easy to ascertain that the noise was coming from that flat and transferring down to her ground floor flat. At first she thought someone was deliberately making a noise but it then became apparent this was becoming standard within the tenement block.
38. Mr Christmas suggested that various different bodies had investigated and failed to find information to support her noise complaint. Miss Baillie advised that there is noise. It was suggested she had been making this up. Miss Baillie disputed that, suggesting that if she was making this up it would suggest that she has mental health issues. Miss Baillie confirmed that she had refused a "like for like move" explaining it was not suitable for her mum at the time. She also pointed out that this was, at the time, it was her mother's tenancy rather than hers.
39. Miss Baillie confirmed to the Tribunal that, if she occupies the Property, she will not pay rent, but she will pay all other outgoings. She confirmed that she does not have any financial difficulties but she wishes to occupy the Property for the personal reasons outlined.

The Respondent

40. The Respondent had previously provided written submissions to the Tribunal. These stated she suffered from anxiety and depression,

suffers panic attacks and anxiety attacks and has experienced suicidal ideation. She has physical and psychological problems arising from the fact she is the victim of severe domestic abuse.

41. The evidence of the Respondent supplemented written submissions, a statement of Dania Thomas and two psychiatric reports which had been lodged on her behalf.
42. In oral evidence the Respondent confirmed she is a Pakistani National. She has a masters degree in accounting and finance, obtained in Pakistan, and an MSC in accounting and business management, obtained in Brunei.
43. She moved to the United Kingdom in 2017. She moved to Scotland in 2018 and in to the Property in September 2019. She was working as an operations manager at Ubuntu, an organisation which assists immigrants in the United Kingdom. That is employment she had after she moved to Scotland.
44. When she moved to the United Kingdom she was initially working as a senior administrator with a health care company. Her employment included arranging education for doctors.
45. She moved to Scotland, fleeing domestic violence in England.
46. In relation to the arrears of rent, these began in December 2020. At that point she had lost the right to work in the United Kingdom. She applied for a renewal of her right to work but the Application was not presented in time. She had approached a solicitor who sent a request to the Home Office, but she did not hear back. Due to delays occasioned by the COVID pandemic her right to work was not renewed. She contacted her local MP about the matter also.
47. She had presented an asylum application due to her need for protection having regard to the domestic violence she had encountered. This was refused. That decision has been appealed. She has not yet received a final decision in relation to that application but she would hope to have a decision soon. She does not currently have the right to work.
48. In relation to her ability to claim public funds, she is not entitled to claim benefits. She is not able to get credit. She cannot

get help with accommodation from Glasgow City Council or any other organisation.

49. When questioned by the Tribunal, she confirmed that she had discussed her position with Glasgow City Council but, because she is financially stable, she was not entitled to any assistance from the local authority. Her financial stability arises from the fact that she has re-married and is financially supported by her husband. Her husband resides in America. It is her intention, in due course, to move to America to reside with her husband.
50. In relation to the re-payment of arrears, she advised she was regularly in touch with Fine Holm, the former letting agents. She had previously explained that she lost the right to work in 2020. Her father passed away in 2021. She has a sister in Scotland but her sister was not able to assist her. Since she married, however, her husband has been financially supporting her and has been making payment towards arrears of rent.
51. It was noted in evidence that as at 1 January 2023 arrears of rent amounted to £6,132.00. As at the date of the Hearing, 22 January 2024, the arrears had been reduced to £456.25. The rental payments were currently £509.85 per month. The Respondent anticipated that the arrears would be paid in full by the end of January 2024. It is her position that she has done everything in her power to reduce the arrears.
52. The Tribunal was referred to the statement of Dania Thomas. Dania Thomas is Director of the Ubuntu Women's Shelter. The Ubuntu Women's Shelter provides women with short term accommodation. It thereafter assists them to move out to other accommodation, mostly in conjunction with the Home Office. It also supports women who have suffered violence. The Respondent has known Dania Thomas since she moved to Scotland.
53. The statement confirmed the Respondent currently works on a voluntary basis as an operations manager with the project. She mans the telephone lines and provides advice. Miss Thomas has experience in assisting people who are needing accommodation.
54. When the Tribunal enquired as to the Respondent's prospects of obtaining employment she indicated that her prospects were good as she always worked until her right to work was removed. She advised that her ability to obtain work may be affected if she was rendered

homeless. She suggested this would affect her credibility if she was applying for jobs and did not have a fixed address.

55. Reference was made to paragraph 12 of the statement of Dania Thomas. Paragraph 12 stated
“my understanding of the applicable Home Office guidance is that Wafa (the Respondent) would be ineligible for accommodation and support due to the money she receives from her husband”.
56. The Respondent confirmed it was her belief that she would not obtain any assistance from the Home Office in securing accommodation unless she had no financial support. Because she is supported financially by her husband, she believed the Home Office would not provide her with assistance to obtain accommodation. The Respondent stated that she had tried to obtain accommodation before but was not successful. This attempt was in 2022. She had a solicitor assist her in making the application. She advised she was not provided with accommodation as she was financially stable. As a result, it was her belief that if an eviction order was granted she would be rendered homeless.
57. The Respondent was asked why the Tribunal should accept what she is stating. She advised the Tribunal that she deals with people in a similar situation to herself.
58. Reference was made to the Immigration and Asylum Act 1999. In particular, reference was made to section 4 of that Act. Section 4 provides as follows:-

(1) (Repealed)

(2) The Secretary of State may provide, or arrange for the provision of, facilities for the accommodation of a person if—

(a) he was (but is no longer) an asylum-seeker, and

(b) his claim for asylum was rejected [or declared

inadmissible (see [sections 80A and 80B](#) of the [Nationality, Immigration and Asylum Act 2002](#)) .

(3) The Secretary of State may provide, or arrange for the provision of, facilities for the accommodation of a dependant of a person for whom facilities may be provided under subsection (2).

(4) The following expressions have the same meaning in this section as in [Part VI](#) of this Act (as defined in [section 94](#))—

(a) asylum-seeker,

(b) claim for asylum, and

(c) dependant.

- (5) The Secretary of State may make regulations specifying criteria to be used in determining–**
- (a) whether or not to provide accommodation, or arrange for the provision of accommodation, for a person under this section;**
 - (b) whether or not to continue to provide accommodation, or arrange for the provision of accommodation, for a person under this section.**
- (6) The regulations may, in particular–**
- (a) provide for the continuation of the provision of accommodation for a person to be conditional upon his performance of or participation in community activities in accordance with arrangements made by the Secretary of State;**
 - (b) provide for the continuation of the provision of accommodation to be subject to other conditions;**
 - (c) provide for the provision of accommodation (or the continuation of the provision of accommodation) to be a matter for the Secretary of State's discretion to a specified extent or in a specified class of case.**
- (7) For the purposes of subsection (6)(a)–**
- (a) “community activities” means activities that appear to the Secretary of State to be beneficial to the public or a section of the public, and**
 - (b) the Secretary of State may, in particular–**
 - (i) appoint one person to supervise or manage the performance of or participation in activities by another person;**
 - (ii) enter into a contract (with a local authority or any other person) for the provision of services by way of making arrangements for community activities in accordance with this section;**
 - (iii) pay, or arrange for the payment of, allowances to a person performing or participating in community activities in accordance with arrangements under this section.**
- (8) Regulations by virtue of subsection (6)(a) may, in particular, provide for a condition requiring the performance of or participation in community activities to apply to a person only if the Secretary of State has made arrangements for community activities in an area that includes the place where accommodation is provided for the person.**
- (9) A local authority or other person may undertake to manage or participate in arrangements for community activities in accordance with this section.**
- (10) The Secretary of State may make regulations permitting a person who is provided with accommodation under this section to be supplied also with services or facilities of a specified kind.**
- (11) Regulations under subsection (10)–**

- (a) may, in particular, permit a person to be supplied with a voucher which may be exchanged for goods or services,*
- (b) may not permit a person to be supplied with money,*
- (c) may restrict the extent or value of services or facilities to be provided, and*
- (d) may confer a discretion.*

59. Despite the terms of section 4, which state at subsections (2) and (3) that accommodation may be provided for a person who was an asylum seeker and whose claim for asylum was rejected – such as the Respondent – and accommodation for dependents, with no reference being made to financial support, the Respondent maintained her belief that she would not be provided with accommodation if she has financial support.
60. The Respondent advised the Home Office have strict rules in relation to affordability. If, in her role at the Ubuntu Project, a client contacts her in relation to obtaining support under section 4 of the 1999 Act the Ubuntu Project would work with that person closely.
61. When examined further by her legal representative, the Respondent made reference to the report provided by Dr Stirling. The Respondent met him once on 14 December 2023. She has seen the report he has prepared and she considers it to be accurate. It indicates she suffers from depression and PTSD.
62. She has gone through the trauma of being homeless in 2018. She is currently pregnant and wonders if she is doing the right thing bringing a child into this world. She is due to give birth on 24 March 2024. She had concerns about the possible impact on her pregnancy if she was to be evicted prior to the birth if she was homeless. She would have concerns about being rendered homeless after the birth of her child.
63. In relation to her immigration status she stated that, if she was evicted, it would affect her ability to instruct a solicitor to assist her with her application to remain within the country. There would be no secure address for confidential correspondence to be sent.
64. She has applied for criminal injuries compensation arising from the domestic violence she encountered previously. This application was presented in 2019. Solicitors are acting for her in relation to that but the application has not yet been determined. If she did receive an award of compensation from the Criminal Injuries

Compensation Authority she would be able to use those funds to make payment of any rent on an ongoing basis and any arrears which may still exist as at the date compensation is received by her. She advised that, similar to the solicitor dealing with her immigration application, if she was homeless she believed it would affect her ability to instruct and receive information and advice from the solicitor dealing with her criminal injuries compensation application.

65. Under cross examination the Respondent was asked if her pregnancy was planned. She advised it was. In her culture when a person marries they will generally have babies thereafter.
66. She advised that she sympathised with Jane Baillie, the Applicants sister. If, however, she compared each of their personal circumstances she believed that she was in a worse position than Jane Baillie. She is less privileged. Jane Baillie is working. The Respondent has nothing. In comparing herself to Jane Baillie she stated
“I am at zero and she is at ten”.
When asked about her longer term plan she stated
“this is not my forever home. I will not stay here forever”.
She explained that she has been through significant stress in the past three years and things have not been easy for her.
67. She does not know any timescales in relation to her asylum application.
68. The Respondent advised that she has already applied for American Immigration – “her green card”.
69. She has a sister who lives in Scotland. Her sister, however, cannot assist her either financially nor by providing accommodation to her. She has provided some financial assistance in the past but cannot now do so. In relation to her accommodation, her sister resides in a two-bedroom flat but she has three children. There is insufficient room to enable the Respondent to reside with her. In addition, there are cultural issues which affect the ability of family members to support the her.
70. Her sister is married. When asked if her brother in law, who is in employment would be able to, for example, act as guarantor to assist in securing another private residential tenancy, the Respondent advised that would not be possible. There were cultural reasons for his unwillingness to support her.

71. It was suggested to the Respondent that there was nothing to support her suggestion that she would not be eligible for funding or other support from the Home Office. The Respondent maintains her position in that regard. She does receive medical care from the NHS.
72. When asked by the Tribunal about her work with the Ubuntu Project, she advised that she would refer persons in a similar situation to her to a solicitor for assistance. They would also be passed to Migrant Help, an organisation supporting immigrants.
73. Under re-examination by her solicitor, the Respondent confirmed that, in her role at the Ubuntu Project, she would assess whether persons qualify for support in relation to their immigration status. The project does not, however, provide legal support or assistance and refers people to Migrant Help for that.
74. When the Tribunal asked again about support available in terms of the 1999 Act, the Respondent advised, at the conclusion of her evidence that, if she was offered accommodation it might not be in the same city as she is at present. (This comment appeared to contradict her earlier evidence that she would not be offered accommodation at all.)

OTHER EVIDENCE

Report from Dr Jeremy Stirling

75. A report from Dr Jeremy Stirling, Consultant Psychiatrist, was produced and referred to. This confirms the Respondent
- suffered from recognised mental disorders and, in particular, depressive episode and Post Traumatic Stress Disorder (PTSD).
 - Symptoms of depression include low mood, frequent crying, irritability and poor sleep.
 - Symptoms of PTSD include intrusive distressing memories of past trauma, flashbacks reliving experiences, sleep disturbance and irritability.
 - She receives monthly counselling which is helpful.
 - She is prescribed medication by her GP which can ease depression and anxiety symptoms.
 - If she were to be evicted and unable to secure satisfactory, alternative accommodation, then on balance of probabilities, there would likely be a deterioration in her mental state.

- She is currently late on in pregnancy and managing an eviction with her mental state already fragile would, in my opinion, be hazardous to her mental well-being.

Statement of Dr Dania Thomas

76. The statement of Dr Dania Thomas stated:-
- If the Respondent's immigration status was resolved she would be offered employment with the Ubuntu Project.
 - Having her (the Respondent's) possessions in one place and having security of tenure is critical for (her) mental health.
 - Ubuntu is giving (her) counselling support.
 - It is the understanding of Dr Thomas that the Respondent would be ineligible for accommodation and support due to the money she receives from her husband. (No information is provided as to the basis of this understanding on the part of Dr Thomas).

FINDINGS IN FACT

77. The Tribunal found the following facts to be established:-
- a) By lease dated 12 December 2019 the Applicant let the Property to the Respondent.
 - b) A Notice to Leave dated 19 January 2023 was served upon the Respondent. The Notice stated that eviction was being sought on two grounds
 - firstly, the landlord wished vacant possession of the Property to enable a relative of his – his sister – to reside within it and,
 - secondly, the Respondent is in arrears of rent and a payment order has previously been granted by the Tribunal in relation to that.
 - c) A Notice in terms of s11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the local authority.
 - d) On 1 January 2023 arrears of rent amounted to £6,132.00.
 - e) On 22 January 2024 arrears of rent amounted to £456.25.
 - f) On 1 March 2024 arrears of rent amounted to £875.95.
 - g) The Landlord is Edward Baillie. Jane Baillie is his sister.
 - h) Jane Baillie intends to occupy the Property on a permanent basis as her principal home. She intends to occupy it, therefore, for a period of at least 3 months.
 - i) The Respondent has been in arrears of rent for more than 3 continuous months.
 - j) The arrears of rent were not as a result of any delay or failure in the payment of any relevant benefit.

DISCUSSION AND REASONS FOR DECISION

78. In relation to the desire of the Applicant to have vacant possession to enable his sister to reside at the Property, the Tribunal, having heard evidence from both the Applicant and his sister, Jane Baillie, accepted the evidence of both witnesses. The Applicant was genuine in his desire to assist his sister as far as he could and appeared to consider himself to be indebted to her as a result of the significant sacrifice she made to look after their mother in the later stages of her life. He also appeared genuinely concerned for his sister and the difficulty she is experiencing in her current accommodation, commenting that when he last seen her, she looked tired, unwell and stressed.
79. In relation to Jane Baillie herself, she gave evidence about the problems she is experiencing at her current home in terms of noise pollution and movement within the Property. The Tribunal noted that she was challenged in relation to these matters, the challenge essentially suggesting that her evidence in relation to the noise pollution etc, at best, which exaggerated or, at worse, fabricated. While it was noted in evidence that Glasgow City Council and various other organisations had all carried out investigations and concluded that Jane Baillie's concerns and complaints were not justified, it was clear to the Tribunal the views of Jane Baillie were genuinely held by her. While, on one view, it was stated that various different organisations were not supportive of Miss Baillie in relation to her complaints, the fact of the matter remains that Miss Baillie had made reports to Glasgow City Council Building Control, Glasgow City Council Environmental Health, Glasgow Housing Association, Wheatley, Mears, Citizens Advice, Scottish Housing Association, Shelter and her MSP. It is unlikely she would have been so persistent if she did not genuinely believe there was a problem.
80. Miss Baillie's evidence, which was accepted by the Tribunal, also stated that her work was being affected by the stress she was encountering in her current living situation. It was also clear that she would benefit financially by being allowed to live within the Property as she would not require to make payment of rent. Miss Baillie, however, was candid with the Tribunal in stating that the financial saving to her was not a point upon which she was relying. It is not the case that she was under financial pressure. Had she been fabricating her evidence or exaggerating her position she could easily have said otherwise.

81. Having regard to the evidence of the Applicant and Jane Baillie, which was accepted by the Tribunal, the Tribunal had no difficulty in concluding that the Applicant does, indeed, wish vacant possession to enable a family member to reside within the Property. The Tribunal also accepted that this was reasonable in the circumstances.
82. Separately, the Tribunal accepted that there had been arrears of rent over a very long period of time. The arrears were significant at one point, albeit they had been reduced. The Tribunal, in the circumstances, considered that it was appropriate to grant an eviction order on the basis of rent arrears also.
83. While the Respondent gave evidence in opposition to the application, the Tribunal was not persuaded by much of her evidence. Some of her evidence was disingenuous. In particular, despite the clear terms of s4 of the 1999 Act, the Respondent attempted to persuade the Tribunal that she was not entitled to any support in relation to securing accommodation under that Act. The terms of s4, however, are clear.
84. The Respondent suggested that, in her role at the Ubuntu Organisation, she was familiar with the approach of the Home Office to such matters. Upon further questioning, however, it became clear that she was not legally qualified, the organisation did not provide legal advice and referred persons to Migrant Help for that.
85. The Tribunal also considered it to be telling that, while giving various reasons as to why she believed she would not be provided with accommodation, she concluded her evidence by pointing out that, if the Home Office provide her with accommodation, it can be anywhere within the United Kingdom whereas she wished to continue to reside in the locality in which she currently resides. This comment alone cast significant doubt on her earlier evidence to the effect she would not be offered accommodation by the Home Office.
86. It was not clear to the Tribunal why she would require to reside within the same locality in any event. What was clear from the evidence is that she receives neither financial nor practical support from her sister and brother in law. When she originally moved to the United Kingdom she lived in England. She already has plans to move to the United States of America. The Tribunal concluded that the evidence of the Respondent was designed to oppose the eviction with a view to enabling her to remain in the same accommodation until she, herself, decided it was appropriate to vacate. It is clearly

her intention to vacate the Property at some point. Her own evidence was that “this is not my forever home. I will not stay here forever” and she has applied for a “green card” and intends moving to the United States of America.

87. Even if the Respondent is correct in the position she attempted to explain to the Tribunal, that she would not be provided with any accommodation support by the Home Office, the Tribunal considered that it was not the role of the Applicant, as a private individual, to provide such support instead. If there are any gaps in the laws or procedures to assist persons seeking asylum, or who have been refused asylum, it is not for private individuals to be responsible for filling any such gaps.
88. Having regards of the terms of s4 of the 1999 Act, the Tribunal concluded that, whether she was receiving financial support from her husband or not, she was still entitled to support in securing accommodation. The terms of s4 are clear in that regard. Her application for asylum has been refused. She fits the criteria for persons who may be provided with support in terms of s4 of the 1999 Act.
89. The suggestion that an eviction order would affect her ability to instruct a solicitor in relation to her immigration status and her criminal injuries compensation application, also appeared to be disingenuous. Firstly, communication between solicitors and clients is now often by way of email rather than by post. Emails would still be able to be received irrespective of where the Respondent was residing. Secondly, however, the Respondent is well aware of the solicitors dealing with her applications. She can contact them directly by telephone, email or by attending at their office. The suggestion advanced by the Respondent, therefore, is one in relation to which the Tribunal could not give any weight.
90. While a statement had been provided by Dr Dania Thomas, this merely reflected the evidence of the Respondent and, similarly, contained suggestions which were contrary to the terms of the 1999 Act.
91. While psychiatric reports have been prepared also, and while the terms of the psychiatric reports were not disputed, the Tribunal did not consider they provided any significant information which affected the decision to be made by the Tribunal. In particular, the opinion of Dr Jeremy Stirling was “If she were to be evicted **and unable to secure satisfactory, alternative accommodation**, then

on balance of probabilities, there would likely be a deterioration in her mental state.” His opinion is subject to the proviso that the Respondent would not be able to secure alternative accommodation. The Tribunal was not satisfied that was, in reality, the case. In any event, as already stated, the Tribunal does not consider it the responsibility of the Applicant to fill any gaps in the provision of support to persons seeking asylum.

92. In relation to rent arrears, these have existed for a significant period of time. They have never been cleared, despite assurances that they would be. At one point they exceeded £6,000.00. As at the date of the evidential hearing on 22 January 2024 the arrears were below £500.00. As at the hearing on submissions on 1 March 2024 the arrears had increased again and were almost £900.00.
93. In the course of the submissions on the evidence the agent for the Respondent suggested that there had been no compliance with the pre-action protocol. The Applicant had previously forwarded correspondence to the Respondent in relation to arrears of rent but those letters related to a previous application to the Tribunal.
94. It is noted that compliance with the pre-action protocol is not mandatory but compliance with it, or a failure to comply, is a factor to be considered by the Tribunal. In this case the Respondent has been in arrears of rent for a number of years. She is aware of that. She has given assurances the arrears would be cleared (including to the Tribunal during a case management discussion). These proceedings themselves have been ongoing for a significant period of time. During the proceedings the arrears were reduced, but never cleared. They have increased again.
95. Separately, the application for an eviction order relies on a separate ground also. The pre-action protocol is not relevant to that other ground. The Tribunal is granting an eviction order on the other ground. In the circumstances, even if it is considered there has been a failure to comply with the pre-action protocol, the Tribunal does not consider it should be a bar to an eviction order being granted on grounds of rent arrears. In simple terms, the Respondent can be under no illusions as to the situation she is in in relation to arrears of rent and there is no reason for the Tribunal to conclude that further letters having been sent in compliance with the pre-action protocol would have made any difference to the situation.
96. Having considered the evidence before it the Tribunal concluded that the eviction grounds relied upon had been satisfied. The

Applicant does wish vacant possession for a relevant family member to occupy the Property. There have been significant arrears of rent previously and arrears of rent over an extensive period of time.

97. Thereafter, having considered the evidence, the Tribunal was satisfied that the position being adopted by the Applicant was reasonable. While extensive evidence was heard from the Respondent both orally and by way of documentary productions, the Tribunal did not accept significant parts of the evidence of the Respondent and did not consider that the evidence led before it by and on behalf of the Respondent led to a conclusion that it was unreasonable to grant an order for eviction.
98. In all the circumstances, therefore, the Tribunal granted an order for eviction.
99. Having regard to the fact the Respondent is pregnant, and having regard to the fact the Applicant's sister is living in other accommodation at present, the Tribunal determined that it was appropriate to defer the date of enforcement of the eviction order until 28 June 2024. That date is approximately three months after the date upon which the Respondent is due to give birth to her child and the Tribunal considered that it was reasonable and appropriate to defer the eviction for a period of three months after the anticipated confinement date.

DECISION

The Tribunal granted an order against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 5 and 12 of Schedule 3 of said Act.

Order not to be executed prior to 12 noon on 28 June 2024.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Virgil Crawford

1 March 2024

Legal Member

Date