



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

Chamber Ref: FTS/HPC/EV/23/1073

Re: Property at Top Floor Left, 219 Victoria Road, Torry, Aberdeen, AB11 9NH (“the Property”)

Parties:

Mr Derek Featherstone, 4 Hallcroft Rise, Rathro, Edinburgh, EH28 8RX (“the Applicant”)

Mr Michael Nwaobi, Top Floor Left, 219 Victoria Road, Torry, Aberdeen, AB11 9NH (“the Respondent”)

Tribunal Members:

Yvonne McKenna (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an Order for Eviction.

Background

1. By application dated 4 April 2023 , the Applicant applied to the Tribunal for an Order for Eviction based on Grounds 12 and 12A of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (‘the 2016 Act’) in respect of rent arrears.
2. The applicant lodged the following documents with the application:
 - Copy tenancy agreement
 - Rent statement
 - Notice to leave dated 1 February 2023 with proof of service
 - Section 11 notice dated 29 March 2023
 - Pre-action requirement letters sent to the Respondent.

3. The Tribunal issued a Direction to the Parties on 3 July 2023 to provide evidence in respect of the rent paid and Universal Credit payments. The Applicant complied with the Direction and submitted information showing that benefit payments were not made direct by Universal Credit to the Applicant. The Respondent complied with the Direction only to the extent that he provided a partial screen shot confirming receipt of a state benefit but which did not show that Universal Credit payments were made direct to Stonehouse Lettings. He did not provide any further information and declined to provide the full document.
4. A Case Management Discussion ('CMD') took place on 29 September 2023 when the Tribunal granted an Order for Eviction.
5. Following an oral hearing on 20 December 2023, the Upper Tribunal granted permission to appeal this decision. This was on the basis that the First-tier Tribunal had failed to properly address the issue of whether any rent arrears had been due to a failure or delay in payment of benefit, and in particular a failure of the Respondent's agents, Stonehouse Lettings to apply for direct payment of Universal Credit as the Appellant submitted they had agreed to do.
6. The Upper Tribunal specified in granting permission to appeal;-

".....It is clear from paragraphs 5 to 9 of the FTS written statement of 29 September 2023 that the appellant had raised the question of whether any arrears were due to a delay or failure in payment of Universal Credit, and in particular whether there had been a failure as regards the making of direct payment to the respondent's agents from this benefit. Further, the appellant had provided a screen shot which indicated that from September 2023 part of his Universal Credit would be paid directly to his landlord.

.....Yet at paragraph 13(v) of the written statement the FTS found in fact as follows: "There is no evidence that rent has been paid or will be paid by state benefits. (sic.) receives an element of housing benefit;". The second sentence of this paragraph is obviously incomplete, and incomprehensible. The finding in the first sentence is simply wrong. At least some evidence had been provided by the appellant at the hearing on 30 June 2023, and in the screen shot later produced, to the effect that rent had been paid or would be paid by state benefits. If the FTS was rejecting that evidence, it did not say that it was doing so, nor did it explain why.

..... At paragraph 15 of the written statement the FTS sets out parts of paragraphs 12 and 12A of schedule 3 to the 2016 Act. It does not set out either sub-paragraph 12(4) or 12A(3). It therefore did not expressly remind itself of the need to consider whether, at least in part, any rent arrears were due to failure or delay in payment of a relevant benefit. At paragraph 19 the FTS explains why it decided that it was reasonable to issue an eviction order. There is no reference in its 4 reasons to indicate that in making this decision it had considered the issues required of it by sub-paragraphs 12(4) or 12A(3).

.....In these circumstances there would appear to be a clear error of law on the part of the FTS. It either was unaware of the terms of sub-paragraphs 12(4) and 12A(3), and so failed to consider them when it should have, or it failed to give adequate and comprehensible findings and reasons for its decision that it was reasonable to evict in the light of the evidence before it which was relevant to these sub-paragraphs. Having identified a clear error of law on the part of the FTS, parties were in agreement that the appeal should be allowed and the case to be remitted to a freshly constituted panel of the FTS for rehearing.'

7. On 22 May 2024 the Tribunal issued a further Direction requiring the Respondent to provide ;

'Any documentation, including letters, e-mails, and screenshots to substantiate his position that, at least in part, any rent arrears were due to a failure or delay in payment of a relevant benefit.'

8. The Respondent provided information relating to his student loan and course tuition fees along with e-mails which he had sent to the original letting agents in July and August 2022 ;and to Stonehouse Lettings in December 2022 and February 2023 in which he had been contacted regarding the rent arrears. He stated that the letting agents should collect the money from Universal Credit. His e-mail dated 6 December 2022 to Stonehouse Lettings states;

'If you want your money then collect it from universal credit after all your devilish corrupts government stole my vehicle, defrauded my money, poison drinks and foods now miserable and frustrated because they can't pimps again. If you can't collect it universal credit then go to court.'

9. On 20 September 2023 the Respondent emailed Stonehouse Lettings stating;-

'My universal credit records shows that they are paying you so if you still want to bully and show of power since your police and corrupts ...can't see vehicles to steal and more ways to defraud money.....'

Same corrupts government officials that deduct £470 from universal credit but there's outstanding balance on rent. You want to steal and defraud then look for another ways since you can't pimp women.'

The Hearing 12 June 2024

10. A hybrid Hearing before a freshly constituted panel took place at Glasgow Tribunal Centre on 12 June 2024. The Applicant and his representative Mr Raphael Barr from DJ Alexander attended by video conference and the Respondent attended in person. Panel members were personally present. The Respondent had requested an in-person hearing as he wished to be present personally to argue his position.

11. DJ Alexander has taken over from Stonehouse Lettings as Letting Agents for the Property, and as Representative for the Applicant.
12. On 16 May 2024 the Applicant lodged an updated rent statement with the Tribunal. This updated rent statement was not contested by the Respondent.

Preliminary Matters

13. On 15 May 2024, the Applicant sought to add an additional Ground to the application as a basis for eviction namely Ground 14 that the tenant has engaged in relevant anti-social behaviour.
14. On 31 May 2024, the Applicant provided information in support of this additional ground to the Tribunal, and requested that this additional information should not be provided to the Respondent.
15. This application for non-disclosure was refused by the Tribunal on 10 June 2024. The Tribunal advised the Applicant's representative that in the particular circumstances of the case, for reasons of fairness and transparency, that it would be unfair to allow the request for non-disclosure. The Applicant was asked how they wished the Tribunal to proceed in light of this position.
16. On 11 June 2024, the Applicant provided redacted submissions/ evidence in support of the additional Ground 14 which were provided to the Respondent by e-mail.
17. At the Hearing, the Tribunal considered the request for amendment of the application in terms of Rule 14 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as a preliminary matter. The Respondent opposed the addition of Ground 14 being added to the application.
18. The Tribunal refused the request for this additional Ground 14 to be added at this late stage. In refusing this application to amend the application the Tribunal noted that this application was originally received in April 2023. The Notice to Leave did not include Ground 14. The case has already had a lengthy procedural history. It has been determined, then appealed to the Upper Tribunal. The appeal was successful, and the application remitted by the Upper Tribunal on 22 January 2024 for a re-determination by the Tribunal. Considering the over-arching objective of the Tribunal, and the above factors, it was not considered to be fair or equitable to add this Ground to the application, and the parties were advised that the application to amend the application was refused.

Oral Evidence

19. Evidence was provided from Mr Raphael Barr, Head of Customer Relations, DJ Alexander, the Applicant and the Respondent.

Evidence of Mr Raphael Barr Letting Agent (Summary)

20. An updated rent statement dated 16 May 2024 was supplied. Mr Barr stated that the current arrears of rent amount to £7,428.85. Currently Universal Credit are making 2 payments monthly of £135.48 and £36.87. This means that a total of £172.35 is being paid monthly. The rent due for the Property in terms of the tenancy agreement amounts to £330 per calendar month. This means that the rent arrears will continue to increase by £157.65 per month every month that the tenancy continues. The rent will never be covered. The Applicant has received no offer from the Respondent to pay for the balance and therefore in all the circumstances it is reasonable to grant the application for Eviction sought.
21. Mr Barr said that there was no evidence before the Tribunal from the Respondent demonstrating that the original Letting Agents had been instructed to contact and collect Universal Credit directly. The original Letting Agents at the time the tenancy agreement was signed were Geraghty Gibb Property Management Ltd. Then; Stonehouse Lettings had taken over as letting agents in November 2022. Stonehouse Lettings had at that stage applied for and requested direct payment of rent for the Property from Universal Credit.
22. Mr Barr said that he had been provided with the records for the Property from Stonehouse Lettings. He could not comment on what records the original Letting Agents provided to Stonehouse Lettings, but no evidence had been provided by the Respondent of any agreement that the original Letting Agents required to arrange rental payments. He pointed out that first and foremost it is the tenant's responsibility to arrange for rental payments to be made.
23. Mr Barr said that he had a telephone conversation personally with the Respondent on 15 May 2024. Mr Nwaobi told Mr Barr that he thought that the Department of Universal Credit were committing fraud. Mr Barr said that he was not clear what that meant. Mr Nwaobi told Mr Barr that he did not want to send any information to him as they would be against each other in court. Mr Barr told Mr Nwaobi that as letting agent he could perhaps assist and could contact Universal Credit in order to ascertain the position regarding rental payments and the accrued arrears. Mr Nwaobi had told Mr Barr that he thought that DJ Alexander was colluding with the Department of Universal Credit and therefore he did not want him to contact Universal Credit directly. Mr Nwaobi flatly refused for Mr Barr or for anyone concerned with his agency to make any approach to Universal Credit on the specific basis that they were colluding with them. Mr Nwaobi said that he thought this was why the letting agents had changed on 3 occasions. Mr Barr attempted to explain that he was working on behalf of the landlord to collect the rent. The Respondent ended the call and said that he would see Mr Barr in court.
24. Mr Barr said that he had followed that telephone call up with an e-mail to the Respondent. He had taken notes of the conversation. The e-mail had been sent on the basis of the notes he had recorded. He said that he had a Code of Conduct to abide by as a letting agent. He would not lie about this.

25. A short break was afforded to allow Mr Barr to produce the e-mails that had been exchanged to the Tribunal.

26. On 15 May 2024 at 12.16 Mr Barr e-mailed the Respondent as follows;

Dear Mr Nwaobi,

Thank you for your time on the phone just now.

Some of what we discussed included;

- You stated Universal Credit are paying DJ Alexander directly.*
- I confirmed this is currently two monthly payments- £135.48 and £36.87.*
- I advised this is under the monthly rent of £330 and so the rental arrears will increase every month.*
- You stated that Universal Credit are not paying the full rent as they told you that you are receiving a student loan.*
- You stated that you are a PhD researcher student.*
- You stated that you thought Universal Credit are committing fraud.*
- I explained that I wasn't clear on how they might be committing any fraud and that you are welcome to send us any information from them for us to look in to.*
- You stated you did not want to send me any information as we would be against each other in Court.*
- You stated that Universal Credit previously paid your full rent in Middlesborough.*
- I explained that we could try to assist you in asking Universal Credit to increase your rental payment, so the rental arrears would stop increasing, but you stated that we are colluding with them and didn't want us to do so.*
- You stated that was why the letting agent had changed from Geraghty Gibb to Stonehouse to DJ Alexander.*
- I explained that we wouldn't be colluding negatively with anyone and that we simply work on behalf of the Landlord to collect the rent and manage the property etc.*
- You ended the phone call, telling me that you'd see me in court.*

Please let me know if you would like to engage positively in relation to this case- the invitation remains open.

*Kind regards,
Raphael'*

27. On 16 May 2024 the Respondent had e-mailed Mr Barr at firstly at 4.14pm in the following terms;

'Why are you sending it to me? send it to universal credit because that is where my rent is coming from.

Before I move in, the housing agent asked me to present proof of income and how I will be paying the rent and I sent universal credit as the proof of income and that was how I will be paying the rent.

My rent come direct from universal credit, so send these document to them.

Your government officials want me to pay rent but instead deducting the rent money from my monthly universal credit.

Please stop sending me email and present your documents to the first tier tribunal court.

Don't send me email again and present whatever you have to the first tier tribunal court.'

28. Mr Nwaobi then sent a further e-mail at 4.22pm to Mr Barr in the following terms;

'Stop sending me email because you are sick and have a mental health problems.

Collect your landlord rent from universal credit and ask them to stop deducting it. Or wait for the first tier tribunal court hearing.'

Evidence of Mr Derek Featherstone, the Applicant (Summary)

29. Mr Featherstone said that when the Respondent first moved into the Property that Geraghty Gibb were his appointed letting agents. He recalled that a Marlene Leiper and a Graham Gibb were in charge.

30. The Respondent had agreed to rent the Property and the rent was stipulated as being £330 per calendar month. The Applicant's recollection was that the Respondent said that he was going to receive Universal Credit and a Bursary from University.

31. The Respondent moved in on 12 January 2022. He paid the rent for January and February 2022 in advance. Essentially this was the only money that he had received.

32. When he moved in, the Respondent had told Geraghty Gibb that he would receive £325 housing benefit.

33. In May 2022 he had received word from Geraghty Gibb that the arrears of rent outstanding amounted to £700. They had contacted the Respondent. The information which he had received from Geraghty Gibb was that there had been an issue with the Respondent's bursary payment from the University. Marlene Leiper had told him that an application for Universal Credit to be paid direct was unsuccessful as the tenant had to agree for the payment to be made direct and this had never happened. The Respondent had not authorised this as he was required to do. He recalled a couple of e-mails stating that the Respondent said he had an appointment in 2022 with

Universal Credit for the payment to be made direct. Mr Featherstone had received no further feedback.

34. Stonehouse Lettings had then taken over as letting agents. His impression was that both letting agents had attempted to contact Universal Credit directly
35. Mr Featherstone said that he had no idea how it came about that the Universal Credit payments had commenced in September 2023 to be paid directly. The first that he was aware of this was when the Respondent produced a screenshot to the Upper Tribunal. However, only part of the rent is being paid by Universal Credit. The Respondent needs to, or should be responsible for paying the balance of the rent himself. The rent is £330 per month. The Applicant is receiving only £172.35 per month which, by his calculations is only 52% of the rent due. He has been receiving this £172.35 per month only from 12 September 2023 to the present date.
36. Mr Featherstone said that he still required to pay for all of the associated costs with being a landlord for the Property. He is a private individual. He does not have a huge portfolio of properties. He owns 3 properties. He lives in one and rents out only a couple of properties. He has required to meet ongoing costs for the Property. There have been issues with the roof, in addition to other maintenance repairs and building repairs. Letting agents are another cost he has met. He does not have a lot of rental income. During the pandemic, his total expenditure exceeded his income. The only reason that the Property was not repossessed was that the landlord had to spend his own money in paying the mortgage. He has had to work overtime in his work as an engineer to make ends meet.
37. This ongoing case and the outstanding arrears are affecting him personally as well.

.Evidence of the Respondent, Mr Michael Nwaobi (Summary)

38. Mr Nwaobi said that prior to his move to Aberdeen that he had lived in Middlesbrough where he had completed his Masters Degree. He had applied to be a tenant at the Property. He was coming to Aberdeen to study for his PhD.
39. He said that he was asked for proof of how he would pay the rent at the outset by the original agents. He had provided proof that Universal Credit were paying for his full rent in Middlesbrough which had amounted to £370 per month. His application to be a tenant at the Property was approved on the strength of that information.
40. He had then paid 2 months rental in advance as he had been asked to do.
41. In 2022, he received an e-mail stating that the housing agent was not receiving the rent. He told Geraghty Gibb, the agent concerned, that he had agreed that Universal Credit would be paid direct to them at the time that he moved. He did not hear anything further from Geraghty Gibb about this.

42. Then, in 2023, he was asked by Stonehouse about the rent arrears. Mr Nwaobi said that he had agreed with the previous housing agents that they would approach Universal Credit directly. After some time Mr Nwaobi discovered that Stonehouse had gone to Universal Credit directly. This was at the same time that they had taken the matter 'to court'. It was at that point that he had taken a screenshot which he had produced to the Upper Tribunal which said that ;-

'You Need to know

We'll pay part of your Universal Credit to your landlord.

From 12 September 2023, some of your Universal Credit payment will be paid directly to your landlord.

Go to your journal for more details.'

43. Mr Nwaobi said that the Universal Credit department was deducting a percentage of the rent as they state that he is in receipt of student income. He pointed out that he is not in receipt of any student income. He receives a student loan. There is a difference, between student income and a student loan. His loan has an interest rate. He said that he has taken this up directly with Universal Credit.

44. He complained that he receives £6000 per annum and has to pay tuition fees of £4,400. This does not make sense to him. He does not understand why all of his rent is not being paid directly. He cannot afford to pay anything himself.

45. Mr Nwaobi said that Mr Barr should send an e-mail to Universal Credit asking that they stop money being deducted and to pay the full rent directly. He said that if Mr Barr did that, then the landlord would receive full rent and that there would be no need for this case. He said that the Universal Credit department and the landlord's agents were colluding against him. He submitted that this was corrupt, and that the Government in this country knew exactly what was going on.

46. He was asked who he thought was responsible for the shortfall of rent which is not being paid every month and for the rental arrears. He said that this was the responsibility of Universal Credit. He is looking for a job and conducting his research. He is fulfilling his obligations. He tells Universal Credit every week or month about what he has done to secure a job. They should be paying his full rent and not just a percentage of it every month.

47. His understanding is that the payment of £36.87 being paid monthly by Universal Credit is in relation to rent arrears.

48. Regarding his personal circumstances, he is a single man. He is going into Year 3 of his research.

Submissions for the Applicant

49. Mr Barr invited the Tribunal to grant an Order for Eviction based on Grounds 12 and 12A. He submitted that this was reasonable due to the level of arrears; He submitted that any payments towards the arrears currently being made would take years to be brought up to date.
50. He said that the Respondent had not come up with any plan to show how he could or would pay the ongoing rent or the arrears shortfall for the Property.
51. Meantime the landlord has brought to the tribunal's attention the overall ongoing costs he requires to meet, including maintenance costs, and associated costs entailed with being a landlord. All of these require him to pay out money due to the substantial rent arrears. This situation will only get worse as the arrears continue to grow.
52. He pointed out that the landlord had given evidence that all of this was taking a toll on him personally.
53. With regard to the Respondent's suggestions that the letting agents, DJ Alexander are in collusion with Universal Credit, and are committing fraud, he submitted that this was not plausible or reasonable. Nor was the suggestion that it was the responsibility of the letting agent to sort out the Respondent's rent payments direct with Universal Credit. The Respondent had not produced any evidence to demonstrate as he contended that either the department of Universal Credit or the letting agents were not acting in good faith. He had not produced any evidence that an agreement was reached with the original agents Geraghty Gibb, or Stonehouse or D J Alexander that the letting agents would be responsible for making any application to Universal Credit at the outset for the rent to be paid direct to the landlord.

Submissions for the Respondent

54. Mr Nwaobi concluded by stating that he did not have an issue with the landlord. He said that the landlord was not responsible for the problem. The landlord has been paying the letting agents but they have not been doing their job.
55. The letting agents are responsible for contacting the department of Universal Credit, not Mr Nwaobi.
56. He said that to move from the Property would be very difficult for him.

Findings in Fact

57. The Parties entered into a private rented tenancy agreement with a commencement date of 13 January 2022.

58. Monthly rent payable in respect of the tenancy is £330 payable per calendar month and in advance.
59. The Respondent has personally paid no rent at all for the Property from February 2022 to the current date.
60. The Respondent has been in continuous arrears of rent since February 2022.
61. The Respondent failed to provide authorisation to Universal Credit, during the period 13 January 2022 to September 2023 for benefits to be paid direct to the landlord.
62. From 12 September 2023 some of the Respondent's Universal Credit payment has been paid directly to the Applicant by two Universal Credit payments of 135.48 and £36.87. This means that a total of £172.35 is being paid monthly directly towards the rent.
63. The Applicant has served a Notice to Leave dated 1 February 2023 on the Respondent on the basis of Ground 12 and 12 A of Schedule 3 to the 2016 Act, and which was sent by e-mail on 1 February 2023.
64. On 1 February 2023 the rent arrears amounted to £3700.
65. On 1 February 2023 the Respondent was in rent arrears over three consecutive months and had substantial rent arrears equivalent to 6 months worth of rent.
66. As at the date of the application outstanding rent arrears amounted to £4360.
67. As at the date of today's hearing the arrears of rent outstanding amount to £7428.85.
68. The arrears are not due to any delay or failure in payment of a relevant benefit.
69. The Applicant has complied with the pre action protocol in relation to rent arrears eviction applications.
70. The Respondent accepts that the rent is due and outstanding.
71. The Respondent has not made any proposals to make payment of the rent due.

Reasons for the Decision

72. The Tribunal had regard to the application and the documents lodged by the parties. The Tribunal also took into account the oral evidence and submissions at the Hearing.

73. Section 51 of the 2016 Act states as follows:

51 (1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

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

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

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

74. Ground 12 of Schedule 3 to the 2016 Act states as follows:

Rent Arrears

(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2)

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

(a) For three or more consecutive months the tenant has been in arrears of rent, and

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

(4) In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider—

(a) whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, and

(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations.

(5) For the purposes of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971),

(ii) a payment on account awarded under regulation 91 of those Regulations,

(iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,

(iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,

(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.

(6) Regulations under sub-paragraph (4) (b) may make provision about—

(a) information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),

(b) steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,

(c) such other matters as the Scottish Ministers consider appropriate.

75. Ground 12 A of Schedule 3 to the 2016 Act states as follows:

Substantial rent arrears

12A

(1) It is an eviction ground that the tenant has substantial rent arrears.

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

(a) the tenant has accrued rent arrears under the tenancy in respect of one or more periods,

(b) the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy when notice to leave is given to the tenant on this ground in accordance with section 52(3), and

(c) the Tribunal is satisfied that it is reasonable to issue an eviction order.

(3) In deciding under sub-paragraph (2) whether it is reasonable to issue an eviction order, the Tribunal is to consider—

(a) whether the tenant being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit,

(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers under paragraph 12(4) (b) (and continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022).

(4) For the purpose of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the Housing Benefit Regulations 2006 (S.I.2006/213),

(ii) a payment on account awarded under regulation 93 of those Regulations,

(iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,

(iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,

(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.

76. The Tribunal were of the view in this case that the Applicant had established Ground 12 and Ground 12 A given the extent of the rent arrears. The Respondent did not contest the level of arrears. His only argument was that

he had instructed the original letting agents to deduct the Universal Credit direct.

77. In terms of both sub-paragraphs 12(4) and 12A (3) of Schedule 3 to the 2016 Act, in deciding whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, including Universal Credit.

78. The Tribunal was satisfied that the arrears were not due in whole or part to any failure or delay in payment of a relevant benefit. The Respondent contended that the rent arrears were due to the fact that the original letting agent had not made an application for deduction of Universal Credit to be paid directly to the landlord. He failed to accept any responsibility for attending to that application himself. The tenancy agreement clearly sets out that the tenant's obligation is to pay the rent. The rent is stipulated as £330 per month. No evidence was before the Tribunal that this was the letting agent's responsibility. Evidence was before the Tribunal that the Respondent had failed to authorise a direct payment prior to September 2023.

79. In September 2023, the landlord started to receive some of the rent direct by way of payments from Universal Credit. He has been receiving two monthly payments of £36.87 and £135.48 respectively directly (totalling £172.35 per month). There has been an ongoing shortfall of rent per month since September 2023 of £157.65.

80. It is unclear what payments of Universal Credit the Applicant received prior to that date representing rent for the Property. He has not provided that information despite Directions issued by the Tribunal.

81. In his appeal to the Upper Tribunal against the original decision the Respondent stated;-

'I told them vividly that I am going to pay my rent from universal credit and showed them proof of that too before moving in, then instead of them to collect the money from universal credit they ignored and waited till now, then before the rent deduction universal credit reduced my monthly income by deducting £470. So, obviously is a case of kill and divide by the universal credit and the housing agencies.'

82. The Applicant had produced an email dated 29 August 2023 from Stonehouse clients accounts department to a Lisa Campbell Head of Property Management at Stonehouse which stated ;

'Hi, I called UC to enquire on an update and they advised they had emailed us for more information.....'

'They confirmed Michael has been receiving the rental payments and they only stopped when we requested direct payment. That will be why he text us; I am too smart for you hence why all the traps

83. On 10 July 2023 the Respondent had e-mailed the Tribunal directly and had attached a document which was a screenshot stating that for the assessment period 6 June to 5 July 2023 in respect of the Applicant;-

*'Your payment this month is £172
This will be paid by 8pm on 12 July 2023.'*

84. The screenshot included a standard allowance and a Housing Allowance.

85. The clear inference is that up until September 2023, the Respondent was receiving additional Universal Credit, a proportion of which, related to his housing costs. He appears to have simply retained these benefits himself. Even if he had believed that he had asked for direct payments to be set up, it was made clear to him by a very early date, August of 2022 that this had not happened. He did nothing to facilitate the setting up of the direct payments himself.

86. He has clearly also become annoyed when the direct payments were set up in September of 2023, and his own benefits were reduced accordingly.

87. The Respondent believed that because Universal Credit covered his rent in full when he lived in Middlesbrough, the same would apply in Aberdeen, even though his circumstances had changed. This belief was clearly simply wrong. He attracts no responsibility to his own actions, for the continuing arrears. Even if his argument is that a student loan does not amount to an income, he has not argued this position with the relevant Universal Credit department. He has simply decided that this is a problem for the landlord, and is not anything to do with him. He has effectively sat back and done nothing to try to resolve the issue. The Tribunal find that this is an unreasonable stance to adopt. The Tribunal do not find that it is reasonable for the Respondent to argue that it is somehow the landlord's problem that Universal Credit are taking account of the Respondent's student loan as being an income, and not the Respondent's problem to try to resolve and take up. He has claimed that the letting agents and Universal Credit department are colluding against him. There is no evidence before the Tribunal of collusion whatsoever. He produced no evidence to the Tribunal upon which he had reached this assertion. The Respondent did not appreciate the irony in this suggestion, as it is of course detrimental for the landlord not to receive the full rent for the Property. Mr Barr had pointed out in his evidence that he was employed by the landlord to collect the rent.

88. Despite being given every opportunity to do so, the Respondent has not satisfied the Tribunal that the high level of arrears have been caused by an issue with relevant benefits.

89. The Respondent took no issue with any other aspect of the application. He did not challenge any other aspect. He accepted that the Notice to Leave was served correctly. He accepted the rent arrears were as claimed. He accepted that rent arrears were continuing to accrue on a monthly basis.

90. The Tribunal therefore had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order.
91. The Tribunal gave weight to the fact that the arrears were high and had increased significantly since the application had been lodged. The Respondent was not paying the ongoing rent and had paid nothing personally since his initial payment when he moved in.
92. The Tribunal took into account that the Applicant through his Representative had sought to make an arrangement with the Respondent and had sought to discuss the situation with him. The Respondent however had failed to engage appropriately.
93. The Tribunal was satisfied on the basis of the correspondence that had been produced that the Applicant had complied with the pre action protocol. The protocol requires information to be provided to tenants relating to the terms of the tenancy agreement, the level of arrears, the tenants' rights in relation to eviction proceedings, and providing information on where a tenant could access advice in relation to proceedings.
94. The Tribunal gave weight to the fact that there were no other people living at the Property. The Respondent is a single man. The Tribunal balanced the interests of the Respondent against those of the Applicant who is finding it difficult to continue to maintain the Property, and to fulfil his ongoing obligations, given the high levels of arrears, and the fact that the arrears continue to accrue. The landlord is losing income as a result of the Respondent's failure to pay rent and the rent due is continuing to increase. The level of rent arrears is not tenable.
95. Taking all the above factors into account the Tribunal determined that it was reasonable to grant an order for eviction.

Right of Appeal

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

Yvonne McKenna

12 June 2024

Legal Member/Chair

Date