



**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) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/EV/24/0451**

**Re: Property at 28 Kingsbridge Crescent, Glasgow, G44 4JU (“the Property”)**

**Parties:**

**t/a Thorn Properties, 27 Thorn Drive, Glasgow, G61 4ND (“the Applicant”)**

**Mr Martin Perratt, 28 Kingsbridge Crescent, Glasgow, G44 4JU (“the Respondent”)**

**Tribunal Members:**

**Yvonne McKenna (Legal Member) and Helen Barclay (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for eviction is refused.**

**Background**

1. An application was received by the Housing and Property Chamber dated 24 January 2024. The application was submitted under Rule 109 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”). The application was based on ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016, (‘the 2016 Act’), namely that the Respondent has been in rent arrears for three or more consecutive months.

2. On 20 June 2024, both parties were written to with the date for the Case Management Discussion (“CMD”) of 31 July 2024 at 10am by teleconferencing. The letter also requested all written representations be submitted by 11 July 2024.

3. On 21 June 2024, sheriff officers served the letter with notice of the CMD date and documentation upon the Respondent by personal service on his brother at the Property address. This was evidenced by Certificate of Intimation dated 21 June 2024.

4. The documents lodged with the application for eviction were;-

- Pre-action requirement letters dated 16 October 2023, 16 November 2023 and 15 December 2023
- Tenancy agreement
- Notice to Leave and e-mail confirmation
- Rent Statement
- Section 11 Notice
- E-mail to Local Authority intimating Section 11 Notice
- Bank Statements for period September 2023- January 2024
- Notice of Authority for Mrs Hornell to act for Thorn Properties and Mr John Hornell

5. The Respondent lodged written representations on 11 July 2024 together with some e-mails which had been exchanged between the parties.

6. On 22 July 2024 the Applicant lodged further written representations together with an updated rent statement and e-mails exchanged between the parties.

7. On 26 July 2024 the Respondent lodged further written representations

### **The Case Management Discussion**

8. The Application called for a Case Management Discussion (“CMD”) by conference call at 10am on 31 July 2024. The Applicant was represented by Mrs Alexandra Hornell. The Respondent was present on the call.

#### *The Respondent’s Position*

9. Mr Perratt said that at the date of the CMD that there were no longer any rent arrears due, and that he had brought the outstanding balance due to nil. He said that he had done his very best to get back on track with the rent account. He said that before he had ran into difficulties, that he had maintained rent payments on time for a 3 year period. He asked for the application to be refused.

10. He said that he had been depressed and had experienced a relapse of his ‘ms’ illness during 2023.

11. He is in gainful employment. He is the sole tenant and resides alone in the Property. He has, since February 2024, paid off more than £5000 towards his rent account. His rent is currently £592 per month and he said he would be well able to pay that monthly moving forward. He said that his income as a private hire cab driver had increased recently, due in the main to the fact that a lot of black cabs in Glasgow had been taken off the road, because of the low emission zone being introduced. This has impacted his income for the better. He said that he felt that he had made progress and had made a consistent effort to reduce his arrears. He was under the

impression that in the circumstances the Applicant would be happy for him to remain in the Property.

### *The Applicant's Position*

12. Mrs Hornell checked her bank account and confirmed that a payment of the outstanding final balance was made at 20.42 the previous evening. Therefore there were no arrears and she accepted that position.

13. She said that notwithstanding that position, that she very much wanted the action to progress and sought the eviction order. She said that up until the date of the CMD there were rent arrears. There has been a pattern of non payment of rent over the past 18 months, which has caused her stress, and distress, and has impacted her emotionally, financially and physically. She pointed out that over the period that the Respondent had fallen into rent arrears that she had required to meet the mortgage on the Property along with associated buildings insurance, safety tests and ongoing repairs.

14. Whilst there may currently be no arrears, the whole process has become too much. She has received multiple excuses from the Respondent regarding non payment of rent. He has ignored her calls, and has not replied to her e-mails, for long periods of time during the past 18 months. Rent has been paid in "drips and drabs" and not in full, on the due date, as per the tenancy agreement. She has found the whole experience very intense and distressing.

### **Findings in Fact**

15. The Tribunal made the following findings in fact:

- (i) The parties entered into a Private Residential Tenancy Agreement ("the Agreement") which commenced on 16 March 2020;
- (ii) In terms of Clause 7 of the Agreement the Respondent was due to pay rent to the Applicant in the sum of £550 per calendar month payable in advance;
- (iii) The rent was increased on 15 February 2022 to £575 per calendar month and on 16 October 2023 to £592 per calendar month.
- (iv) The Applicant has served a Notice to Leave on the Respondent on the basis of Ground 12 of Schedule 3 to the 2016 Act, and which was served on 21 December 2023;
- (v) On 21 December 2023 the Respondent was in rent arrears over three consecutive months;
- (vi) The Respondent has been in rent arrears over the three consecutive months prior to the CMD
- (vii) The Respondent cleared the balance of the rent arrears on 30 July 2024
- (viii) The Respondent is no longer in arrears of rent at the date of the CMD
- (ix) No rent arrears have accrued as a consequence of delay or failure of payment of a relevant benefit.
- (x) The Applicant has complied with the Pre-Action Protocol

## Reasons for Decision

16. 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.*

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

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

*(2) (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.*

18. Neither party indicated that there was any requirement for the case to proceed to a Hearing. Both parties were content that the Tribunal considered the position, and determined the application, on the written and verbal representations made to date. In terms of Rule 17 (4) of the Regulations, the Tribunal may do anything at a CMD which it may do at a Hearing, including making a decision.

19. The Tribunal considered the terms of the 2016 Act and were satisfied that the Respondent has been in arrears of rent for a period of three months right up until the day before the CMD. The Tribunal now has to decide if it is reasonable to grant the eviction order. The Tribunal therefore had to exercise its discretion in applying the facts to decide if it was reasonable to grant the order. The Tribunal considered that the Respondent had managed to clear all of the rent arrears off by the date of the CMD. He had demonstrated that he had managed to pay over £5000 towards his rent account since February 2024. The Tribunal accepted his position that his income had risen considerably, and that he was in a good financial position to be able to continue making his monthly rent payments when they are due. The Tribunal accepted that the Respondent had been stressed and anxious as a result of the Respondent's payment history until relatively recently. However, given the fact that there are no current arrears of rent, and the fact that the Tribunal accept that the Respondent is in a sound financial position at the date of the CMD, and is physically able to continue to work for the foreseeable future, it is not, taking all facts into consideration, reasonable to grant the order for eviction and accordingly this is refused.

## **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

Y. McKenna

**Legal Member/Chair**

**Date 31<sup>st</sup> July 2024**