

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 and Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/EV/24/2278

Re: Property at Flat 4, 46 Addison Road, Kirklee, Glasgow, G12 0TT (“the Property”)

Parties:

Peter McLean, 15 Kirklee Terrace, Kelvinside, Glasgow, G12 0TJ (“the Applicant”)

DJ Alexander, The John Cotton Centre, 10 Sunnyside, Edinburgh, EH7 5RA (“the Applicant’s Representative”)

Paul Hilton, Flat 4, 46 Addison Road, Kirklee, Glasgow, G12 0TT (“the Respondent”)

Legal Services Agency Ltd, 2nd Floor, Savoy House, 140 Sauchiehall Street, Glasgow, G2 3DH (“the Respondent’s Representative”)

Tribunal Members:

**Ms. Susanne L. M. Tanner KC (Legal Member)
Mrs. Mary Lyden (Ordinary Member)**

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”):

(1) was satisfied that Ground 12(1) in Schedule 3, Part 3 to the 2016 Act was established by the Applicant, in that on the day the tribunal considered the application for an eviction on its merits the Respondent was in rent arrears greater than one month’s rent and had been in arrears of rent for a continuous

period of more than three consecutive months up to and including that day; that rent arrears were not wholly or partly a consequence of a delay or failure in payment of a relevant benefit; that it was reasonable to make an order for eviction in the circumstances of the case; and made an order for eviction in terms of Section 51 of the 2016 Act;

(2) The decision of the tribunal was unanimous.

Statement of Reasons

Procedural Background

1. The Applicant's Representative made an application to the tribunal on 17 May 2024 in terms of Section 51 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act") and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules").
2. The Applicant seeks the Respondent's eviction from the Property under Section 51 of the 2016 Act on Ground 12 of Schedule 3 to the 2016 Act.
3. The Applicant's Representative provided the following documents in support of the Application:
 - 3.1. Private Residential Tenancy Agreement;
 - 3.2. Notice to Leave;
 - 3.3. Service of Notice to leave;
 - 3.4. Section 11 notice to local authority and proof of service;
 - 3.5. Rent statement; and
 - 3.6. Pre action protocol letters to the Respondent.
4. The tribunal's administration obtained a copy of the title sheet for the Property which show that the Applicant has been the registered proprietor since 3 December 2020.
5. On 30 May 2024, the Application was accepted for determination by the tribunal. A Case Management Discussion ("CMD") teleconference was fixed for 13 August 2024 at 1400h.
6. The tribunal sent letters of notification to all parties dated 8 July 2024 with the date, time and arrangements for joining the Case Management Discussion ("CMD") in relation to the Application. The Respondent was invited to make written representations in response to the Application by 29 July 2024. Both parties were advised that they were required to attend the CMD. The parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including

making a decision on the application which may involve making or refusing an eviction order. The parties were also advised that if they do not attend the CMD this would not stop a decision or order being made if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair.

7. Service of the Application paperwork and notice of the CMD on the Respondent on at the Property by Sheriff Officers was successful.
8. The Respondent appointed a Representative. Written representations were lodged on behalf of the Respondent.
9. On 31 July 2024, the Applicant's Representative lodged an updated rental statement.
10. On 1 August 2024, the tribunal issued Directions to the Respondent, seeking the following by 8 August 2024:
 - 10.1.1. Produce supporting evidence for the submission that the respondent has secured employment with Foreign and Commonwealth Development Office, including the following:
 - 10.1.1.1. His start date in employment and job title;
 - 10.1.1.2. his rate of pay of £75,000 per annum;
 - 10.1.1.3. confirmation that his first income from that employment will be paid in August 2024, at the pro rata rate of £75,000 per annum and the amount of the first payment; and
 - 10.1.1.4. the amount and frequency of subsequent payments
11. The respondent's representative asked for more time to comply. On 13 August 2024, the Respondent's representative lodged an offer of employment letter dated 10 August 2024 addressed to the Respondent.
12. An impact statement from the Applicant of the ongoing effect of non-payment of arrears and rent was lodged by the Applicant's representative.

CMD: 13 August 2024, 1400h, Teleconference

13. Mrs Leanne Young attended from the Applicant's representative. Ms Fiona Anderson attended from the Respondent's representative, with another colleague observing.

Respondent's Representative's submissions.

14. Ms Anderson said that the offer of employment letter to her client was sent to them yesterday and lodged this morning. The Respondent advises that he will receive his first salary on 27 September 2024. The annual gross salary is £75,000. The net monthly salary is £4505.08. He is also expecting to be paid a consultancy fee on or around 13 September 2024 and would hope to be able to make payment of the ongoing rental of £1095.00. It was unclear whether this would be a late payment for the rent due on 22 August 2024 or a payment for the rent due on 22 September 2024. The Respondent offers that once he is in receipt of his ongoing wages, he can pay the ongoing rental charge of £1095.00 per month, plus make additional payments to meet arrears, totalling £3285.00 per month. Ms Anderson said that, including the arrears for the payment due on 22 August 2024, the arrears would be cleared within 5 months.
15. Ms Anderson confirmed that these are instructions she received this morning so there had been no opportunity for them to be put to the Applicant's representative in advance of the CMD.
16. Ms Anderson said that the Application is opposed on the basis of reasonableness. She submitted that the rent statement with the Application shows that the Respondent met his rental obligations until November 2023. He was employed as a legal officer from October 2020. He had a gross salary of £55,000. He suddenly lost employment in November 2023. On receipt of a reduced wage he made an application for Universal Credit. There was an award for housing costs. Ms Anderson does not know the exact amount but she believes that it would have been restricted to £693.12 in line with Local Housing Allowance. She said that the Respondent did not seek welfare benefit advice. His view was that he would manage to seek alternative employment fairly quickly. If he had received advice, he could have applied for Discretionary Housing Allowance (DHA) which would have covered some of the shortfall. He also has to make financial contributions to his ex-wife who had medical treatment. He told his representative that he had no disposable income to meet the rent or the arrears and could not afford to make payments at the time but he is in a position to do so imminently. Ms Anderson submitted that the arrears balance would be cleared in a reasonable period. In response to questions from the tribunal she clarified that he did make a claim for Universal Credit but and received benefits which included housing allowance but his position is that he could not afford to make those payments over to the Applicant. Her understanding is that he received £695.00 per month for housing. Her instructions do not say what has happened to that money. She believes that the first Universal Credit payment was received in February 2024. It is her understanding that none of that has been paid to the Applicant. The tribunal raised the fact that the written representations stated on 29 July 2024 (para. 5) state that

he applied for Universal Credit in December 2023, the first payment was in January 2024 for £788.74 and the payment increased in February 2024 to £900.00. Ms Anderson was unable to confirm on the basis of her instructions which, if either statement was correct.

Applicant's representative's submissions

17. Mrs Young adjourned to take instructions from her client in relation to the offer made on behalf of the Respondent.
18. After the adjournment, Mrs Young confirmed that the client has reservations about the proposal put forward on behalf of the Respondent due to the history of lack of communication and promises to send payment plans through and not receiving them.
19. Mrs Young is instructed to seek the eviction order today.
20. In relation to reasonableness, Mrs Young referred to her client's impact statement and asked that it be taken into account. The continuing non-payment is having a detrimental impact on the Applicant. She said that they appreciated that the tenant has had hard times, as stated in the impact statement. However, they were never made aware of that by the Respondent when the arrears started. They have reached out to the Respondent multiple times, often weekly, in the past eight months to try to get this resolved. It was met with complete silence other than the one response on 4th, which was a promise to pay and a promise of a payment plan which did not materialise. She feels like they have explored every avenue to try to come to a resolution. Eviction would be the last option that anyone would want but her client feels that it is the end of the road with the amount of stress it is causing himself and his partner and the financial impact on them. She submitted that in the circumstances it was reasonable to make the eviction order.

Respondent's representative's submissions

21. Ms Anderson said that her instructions do not include whether there has been any discussions with her colleague and the Respondent as to the Applicant's impact statement. She cannot confirm whether it was shared with the client as one of her colleagues was dealing with the case.
22. Ms Anderson does not know if any advice has been tendered by her colleagues to the Respondent about his retention of the housing component of the Universal Credit payments which have been made since January / February this year and have not been paid by him to the Applicant. She said that the information that he

has been receiving these benefits was received on Friday afternoon in response to follow up questions identified by the representative. The respondent simply said to his representative that he could not afford to be making any contribution to the rent account.

23. Ms Anderson said that the property has two bedrooms. The Respondent lives alone in the Property. She accepted that a 2 bed property in Glasgow has a higher Local Housing Allowance than the figure which she had mentioned earlier in her oral submissions, which also differed from the previous written submissions (dated 29 July 2024 (para. 5)) which say that he applied for Universal Credit in December 2023, the first payment was in January 20204 for £788.74 and the payment increased in February 2024 to £900.00.

24. Ms Anderson had no additional submissions to make in relation to reasonableness.

25. The tribunal adjourned to consider the Application and both parties' written and oral submissions.

26. The tribunal makes the following findings-in-fact:

26.1. The Applicant is the registered proprietor of the Property.

26.2. There is a private residential tenancy agreement between the Applicant and the Respondent for the Property which began on 22 August 2023.

26.3. Rent is payable at the rate of £1095.00 per calendar month on the 22nd day of each month in advance

26.4. Prior to making the Application, the Applicant's agent wrote to the Respondent about the rent arrears with pre-action options.

26.5. On 27 March 2024, a Notice to Leave containing ground 12 of Schedule 3 to the 2016 Act was served on the Respondent.

26.6. At the time that the Notice to Leave was served there was £4380.00 rent arrears.

26.7. The Applicant has given the Respondent at least 30 days' notice that he requires possession.

26.8. The Application to the tribunal was made on 17 May 2024.

- 26.9. As at 13 August 2024, there have been rent arrears for more than three consecutive months.
- 26.10. As at 13 August 2024, the Respondent was in arrears of rent of £8760.00, with a further payment of £1095.00 due on 22 August 2024.
- 26.11. The Respondent last paid rent in November 2023.
- 26.12. The Applicant's Representative has regularly attempted to contact the Respondent about the rent arrears. The Respondent has not responded to any contact other than one communication in which he offered to make a payment plan which did not materialise.
- 26.13. The Respondent continues to reside in the Property.
- 26.14. The Property has two bedrooms.
- 26.15. The Respondent lives on his own.
- 26.16. Since in or about January 2024, the Respondent has been in receipt of Universal Credit with a housing component. The first payment in January 2024 was around £788.74 and the payment increased in February 2024 to around £900.
- 26.17. The Applicant has not made payment of the housing component of the Universal Credit to the Applicant and has retained it.
- 26.18. The Respondent's failure to pay arrears and rent has had and is having a significant financial impact on the Applicant.
- 26.19. The Applicant inherited half of the Property from his late mother and purchased the other half of the Property from savings.
- 26.20. The rental of the Property was intended to fund the Applicant's retirement.
- 26.21. The Applicant is aged 60.
- 26.22. The Applicant has to meet ongoing costs incurred in respect of the Property despite the non-payment of rent by the Respondent.
- 26.23. The Respondent lost his employment in or about November 2023.

26.24. The Respondent is due to commence a new employment in September 2024 with the first payment of income on 30 September 2024, in the sum of around £4505.08 net per month.

26.25. The Respondent is expecting a consultancy payment in or around mid September 2024 which would be at least £1095.00.

26.26. The Respondent has made proposals to pay £1095.00 in mid September 2024 after receipt of a consultancy fee and to commence paying the arrears from end of September 2024 onwards, in addition to rent falling due, over a period of around five months.

26.27. The Applicant does not wish to suffer the continuing financial impact of the arrears, which is also causing him and his partner significant stress.

26.28. The rent arrears are not a consequence of delay or failure in payment to the Respondent of relevant benefits.

27. Findings in fact and law

27.1. The tribunal is satisfied that the facts required in paragraph 12(2) of Schedule 3 to the 2016 Act have been established.

27.2. The tribunal is satisfied it is reasonable to make an order for possession.

Discussion

28. The order for eviction is sought in terms of Section 51 and paragraph 12(2) of Schedule 3 to the 2016 Act. The tribunal was satisfied that the requirements of those provisions have been met.

29. In relation to reasonableness, reference is made to the tribunal's findings in fact. The tribunal was satisfied that it was reasonable to evict the Respondent in the circumstances of the case.

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.

Ms. Susanne L. M. Tanner KC

13 August 2024

**Ms. Susanne L. M. Tanner K.C.
Legal Member/Chair**