

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

Chamber Ref: FTS/HPC/EV/24/1694

Re: Property at Flat 114, 101 Maxwell Street, Glasgow, G1 4EP (“the Property”)

Parties:

Gerard Houston, 1 Cartview Court, Busby, Glasgow, G76 8EW (“the Applicant”)

Jason Young, Flat 114, 101 Maxwell Street, Glasgow, G1 4EP (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. This is an application by the Applicant for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”). The PRT in question was by the Applicant to the Respondent commencing on 10 December 2023.
2. The application was dated 15 April 2024 and lodged with the Tribunal on that date. The application relied upon a Notice to Leave dated 12 March 2024 in terms of section 50 of the *Private Housing (Tenancies) (Scotland) Act 2016*, intimated upon the Respondent by email (in terms of the Tenancy Agreement) on that date. The Notice relied upon Ground 12 of Schedule 3 Part 1 of the 2016 Act, being that “the tenant has been in rent arrears for three or more consecutive months”. In regard to Ground 12, the body of the notice referred to the Respondent being in three months arrears. The rent stated in the Tenancy Agreement lodged was £1,400 a month due on the 10th of each month, meaning the arrears per the

Notice of Leave would have been £4,200 (though, as we note below, four months of rent, being £5,600, would actually have been in arrears as of the date of the Notice to Leave). The Notice intimated that an application to the Tribunal would not be made before 13 April 2024.

3. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon Glasgow City Council on 8 May 2024 was provided with the application. There was evidence in the application papers of compliance with provision of the pre-action protocol information in standard form to the Respondent by email on 26 January, 21 February and 2 March 2024.
4. We noted that the owners of the Property were the Applicant and his spouse, but the Tenancy Agreement was solely between the Applicant and the Respondent. Within our papers we noted that the Applicant's spouse provided written confirmation that she consented to all action being taken by the Applicant as landlord of the Property.

The Hearing

5. The matter called for a CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 10 October 2024 at 10:00. We were addressed by the Applicant. There was no appearance from the Respondent.
6. We were informed by the clerk that no contact had been received from the Respondent (or on his behalf) with the Tribunal. The Applicant said that no communication had been received from the Respondent in the last five weeks, despite recent WhatsApp messages from the Applicant to the Respondent asking for proposals on the arrears, which the Applicant could see had been read but had not been responded to. The last contact of any sort was a request by the Respondent, again by text message, around five weeks ago, for investigations into water ingress from an upstairs flat. The Applicant stated that this had been attended to by him but the Respondent had not engaged further. The Applicant recalled that that last contact on arrears was around two months ago, when – in a text exchange - the Respondent stated he had purchased a new business and would like to make payments so as to remain in the Property. The Applicant responded to ask that the arrears be addressed but no further response was received from the Respondent.
7. We considered that the Respondent had received clear intimation of the CMD by the Sheriff Officer instructed by the Tribunal and, having not commenced the CMD until around 10:20 (partly due to technical issues), we were satisfied to consider the application in the Respondent's absence. In any case, no attempt was made by the Respondent (nor anyone on his behalf) to dial in late to the CMD.
8. The Applicant confirmed that the application for eviction was still insisted upon and he believed the Respondent remained at the Property. He said that no payment of any sort had ever been received from the Respondent. The Tenancy Agreement did not seek a deposit, and the Respondent had been provided keys

to the Property despite not paying the first month's rent. At that time, the Applicant explained that the Respondent had said that his business had suffered a financial issue which would soon be resolved and that he would pay one week after entry. The Applicant received no payment and had been chasing for payments ever since. The Applicant confirmed that there 10 months of arrears, being £14,000, plus a further £1,400 due on the day of the CMD for the rent from 10 October to 9 November 2024.

9. The Applicant provided further submissions on the background in regard to the reasonableness of the application:
 - a. The Property was a flat and it was not believed to be specially adapted for the use of the Respondent.
 - b. The Respondent had been believed to live alone at the Property but neighbours had reported to the Applicant that the Respondent had recently been seen entering and leaving with another person, who may now be living at the Property.
 - c. The Respondent had held himself out to have his own business.
 - d. The Applicant knew of nothing to suggest the Respondent had ever sought or received benefits.

No information was provided to us, nor obvious to us from the application papers, to suggest that the Property was especially suitable for the Respondent, due to its location or nature.

10. No motion was made for expenses.

Findings in Fact

11. On or about 7 December 2023 the Applicant let the Property as a Private Residential Tenancy to the Respondent under a lease with commencement on 10 December 2023 ("the Tenancy").
12. In terms of clause 7 of the Tenancy Agreement, the Respondent required to pay rent of £1,400 a month in advance on the 10th day of each month.
13. On 12 March 2024, the Applicant drafted a Notice to Leave in correct form addressed to the Respondent, providing the Respondent with notice, amongst other matters, that he was in rent arrears for a period of three months.
14. Three months of rent amounts to £4,200.
15. Arrears as at the date of the Notice to Leave were actually four months of rent, being £5,400.
16. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior to 13 April 2024.
17. The Applicant served a copy of the Notice to Leave on the Respondent by email on 12 March 2024.

18. Clause 3 of the Tenancy Agreement permits service of notices by email to the Respondent at the email address provided by him.
19. The Applicant raised proceedings on 15 April 2024 for an order for eviction with the Tribunal, under Rule 109, relying on Ground 12 of Schedule 3 Part 1 of the 2016 Act.
20. Arrears as at the date of lodging the application were £7,000.
21. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon Glasgow City Council by the Applicant on 8 May 2024.
22. Emails complying with the pre-action protocols were issued to the Respondent by the Applicant on 26 January, 21 February, and 2 March 2024.
23. As of 10 October 2024, the Respondent remained in arrears of rent in the amount of £14,000 which is equivalent of 10 months of rent.
24. As of the time of the CMD, the Respondent was further liable for rent of £1,400 due on 10 October 2024.
25. The Respondent does not claim to have paid any amount of the arrears of £14,000 remaining as at 10 October 2024 nor the rent of £1,400 due on that date.
26. The sum of arrears remaining as of 10 October 2024 is neither wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, other than any referable to an act or omission of the Respondent.
27. The Respondent has no known dependents living with him at the Property.
28. The Property is not specially adapted for the use of the Respondent nor is its location specifically suitable for the Respondent's needs.
29. Intimation of the date and time of the CMD was given to the Respondent by Sheriff Officer on 4 September 2024.

Reasons for Decision

30. The application was in terms of rule 109, being an order for eviction from a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been correctly drafted and served upon the Respondent.
31. Ground 12 of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:
 - (1) *...the tenant has been in rent arrears for three or more consecutive months. ...*
 - (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.*

32. The arrears information provided at the CMD clearly showed that Ground 12 was satisfied in regard to the length of arrears and amount outstanding. There is nothing to suggest that the Respondent's failure to pay is related to an issue with benefits. Ground 12 is satisfied subject to paragraph 3(b) regarding reasonableness.
33. We require, in terms of the Act as currently amended, to consider the reasonableness of the application even in regard to significant and persistent arrears. We were satisfied that the Applicant's reasons for seeking eviction were reasonable given the amount and duration of the arrears. The Respondent has never paid anything and it is difficult to avoid the conclusion that the Respondent has been acting in bad faith regarding the Tenancy from the outset. The Respondent did not appear or provide submissions in regard to any issue regarding reasonableness and we are satisfied that it is reasonable to evict on the basis of the information before us.
34. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time under Ground 12.

Decision

35. In all the circumstances, we grant an order against the Respondent for eviction from the Property under section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* further to ground 12 of Schedule 3 of that Act.

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.

Joel Conn

10 October 2024

Legal Member/Chair

Date