



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/24/0685

Re: Property at 66 Drumpellier Ave, Baillieston, Glasgow, G69 7DW (“the Property”)

Parties:

Ms Claire Pagani, 9 Bredisholm Drive, Baillieston, Glasgow, G69 7HZ (“the Applicant”)

Ms Gillian Watt, 66 Drumpellier Ave, Baillieston, Glasgow, G69 7DW (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Gordon Laurie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order

Background

1. By application to the Tribunal the Applicant sought an eviction order against the Respondent in respect of the Property under Rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules of Procedure”) and section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant relied upon ground 12 of Schedule 3 of the 2016 Act. In support of the application the Applicant provided the following documentation:-
 - (i) Private Residential Tenancy Agreement between the parties dated 12 August 2023;
 - (ii) Notice to Leave dated 24 November 2023 citing ground 12, together with proof of service on the Respondent by email on that same date;

- (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Glasgow City Council together with proof of service by email; and
 - (iv) Rent Statement.
2. By Notice of Acceptance of Application a Legal Member of the Tribunal with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. The application was therefore referred to a Case Management Discussion on 28 October 2024. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondent by Sheriff Officers in accordance with Rule 17(2) of the Rules of Procedure. Both parties were invited to make written representations in advance of the Case Management Discussion.
 3. No representations were received from either party in advance of the Case Management Discussion.

Case Management Discussion

4. The Case Management Discussion took place on 28 October 2024 by teleconference. The Applicant was personally present. The Respondent was not in attendance. The Tribunal noted that she had received proper notification of the Case Management Discussion in terms of Rule 17(2) of the Rules of Procedure and therefore determined to proceed with the Case Management Discussion in her absence.
5. The Tribunal went on to explain the purpose of the Case Management Discussion to the Applicant and asked her to explain the background to the application and the order she was seeking from the Tribunal. For the avoidance of doubt the following is a summary of what was discussed and does not constitute a verbatim account of the proceedings.
6. The Applicant explained that she had offered the tenancy to the Respondent as she felt sorry for her. The Respondent had advised her that she was homeless and was desperate for a tenancy in the area where her children went to school. Before the tenancy was signed the Applicant had a conversation with the Respondent about affordability and in particular the payment of the shortfall between the rent and universal credit. The Respondent had assured her that the Applicant would receive direct payments of the housing element of universal credit and the Respondent would make up the difference from payments she was receiving from her children's fathers by way of child support.
7. The Applicant explained that she had waited some time after the tenancy commenced however no payments were forthcoming from the Respondent, nor by way of universal credit. The Applicant had ended upon contacting Glasgow City Council herself. The Council advised her that they had been paying the Respondent universal credit with the housing element. However the Respondent had not arranged for the payments to be directed to the Applicant. She was spending the money that was due for the rent. The Applicant confirmed that she

had then arranged for the payments to be made directly to her from the Respondent's entitlement. These payments commenced in November 2023 at the rate of £750 per month towards the rent with an additional payment of £36.87 towards the arrears. The Applicant had received these payments each month, with the exception of February 2024 when only £750 was received, until April 2024. The Applicant confirmed that since May 2024, following the national uplift of universal credit payments, she had received payments of £970 towards the rent, with the additional £36.87 to arrears. Payments were received every four weeks. The Applicant confirmed that the arrears were now approximately £5200. Whilst the rent was now being paid, with a small amount going towards the arrears, the sum due was significant and would take a long period of time to be repaid at the current rate. The Applicant confirmed that she had not increased the rent since the commencement of the tenancy.

8. The Applicant was asked about her compliance with the rent arrears pre-action protocol. She confirmed that she had discussed the arrears with the Respondent on numerous occasions. The Respondent had repeatedly advised her that the money was coming from universal credit, and that she was able to pay the shortfall. The Respondent had never indicated that she was financially struggling in any way. The Applicant felt that the Respondent was stringing her along. The Applicant had asked the Respondent to pay the shortfall whilst the universal credit was being processed, as the Respondent had indicated she would have no difficulty with this, however no payments were forthcoming. The Respondent had not been honest about her ability or intention to make payments. Latterly the Applicant had met with the Respondent to discuss the notice to leave. The Respondent had said she intended on seeking legal advice. The Applicant had told her that was a good idea. The Applicant had then met again with the Respondent at the property following a reported emergency repair. The Respondent had said she was embarrassed and sorry about the situation, and would start paying money when her benefits were paid. The Respondent admitted that she had spent the money previously received from universal credit. The Applicant reiterated that the Respondent had never told her that she was in financial difficulty, therefore it was difficult to identify what support to put in place.
9. In response to questions from the Tribunal the Applicant confirmed that she had originally included ground 5 in the Notice to Leave, as she thought her former partner would move into the property following his return from Australia. However she had ultimately decided to proceed on the basis of rent arrears only. She was not sure on what her intentions were regarding the property if an eviction order were to be granted. She had been in discussions with the local Empty Homes partnership and Homes for Good to see if the property could be used for supporting vulnerable people. She was due to meet with an officer following the outcome of the Tribunal to discuss options. The Applicant advised that she was a social worker and after the stress of the current situation she was keen to ensure that there was some kind of guarantee in place so that she would not have to worry about rent. The arrears had caused her financial difficulties. She had a mortgage on the property and paid around £470 per month to cover this. On top of that she had to pay tax, as well as insurance, and the costs of any repairs or maintenance. The Applicant confirmed that she had continued to

maintain the property during the Respondent's tenancy and had paid for various repairs to be carried out.

10. The Applicant confirmed that she had a small portfolio of rental properties, with four other lets. Two of them were being used to house asylum seekers. She had bought the property in 2014 with the intention of living in it with her children following her separation from her partner. She had stayed for a while, before deciding to rent it out. She had a bad experience with the first tenant who had incurred several thousand pounds of arrears and destroyed the property, which led to a previous application to the Tribunal.
11. The Applicant was asked about the Respondent's circumstances. The Respondent was believed to be in her forties. She had initially told the Applicant that she had four children, then three. The Applicant had subsequently visited the property following a reported repair and it appeared that only two children were living there, one of college age and another of primary school age. The Applicant confirmed that the property was a three bedroom house. The Applicant was not aware of any health issues or any particular vulnerabilities on the part of the Respondent. The Respondent had initially told her that she was off work with a bad back and receiving employment support allowance, however she was intending on returning to work. The Applicant did not think that was true as the Respondent didn't seem to be working, and did not appear to have a bad back when the Applicant met with her.
12. The Tribunal adjourned to deliberate, at which point the Applicant left the call, before resuming the Case Management Discussion and confirming its decision.

Relevant Legislation

13. The legislation the Tribunal must apply in its determination of the application are the following provisions of the Private Housing Tenancies (Scotland) Act 2016:-

1 - Meaning of private residential tenancy

1) A tenancy is a private residential tenancy where—

(a) the tenancy is one under which a property is let to an individual ("the tenant") as a separate dwelling,

(b) the tenant occupies the property (or any part of it) as the tenant's only or principal home, and

(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

(2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

51 First-tier Tribunal's power to issue an eviction order

(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.

52 Applications for eviction orders and consideration of them

(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—

(a) subsection (3), or

(b) any of sections 54 to 56 (but see subsection (4)).

(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.

(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—

(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or

(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

54 Restriction on applying during the notice period

(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.

(2) The relevant period in relation to a notice to leave—

(a) begins on the day the tenant receives the notice to leave from the landlord, and

(b) in the case of a notice served before 3 October 2020 expires on the day falling—

(i) 28 days after it begins if subsection (3) applies,

(ii) three months after it begins if subsection (3A) applies,

(iii) six months after it begins if neither subsection (3) nor (3A) applies.

(c) in the case of a notice served on or after 3 October 2020, expires on the day falling—

(i) 28 days after it begins if subsection (3B) applies,

(ii) three months after it begins if subsection (3C) applies,

(iii) six months after it begins if neither subsection (3B) nor (3C) applies

(3) This subsection applies if the only eviction ground stated in the notice to leave is that the tenant is not occupying the let property as the tenant's home. [ground 10]

(3A) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the tenant has a relevant conviction, [ground 13]

(iv) that the tenant has engaged in relevant anti-social behaviour, [ground 14]

(v) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour, [ground 15]

(vi) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(vii) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, [ground 17] or

(b) the only eviction grounds stated in the notice to leave are—

(i) the eviction ground mentioned in subsection (3), and

(ii) an eviction ground, or grounds, mentioned in paragraph (a)

(3B) This subsection applies if the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(a) that the tenant is not occupying the let property as the tenant's home, [ground 10]

(b) that the tenant has a relevant conviction, [ground 13]

(c) that the tenant has engaged in relevant anti-social behaviour, or [ground 14]

(d) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour. [ground 15]

(3C) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(iv) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or [ground 17]

(b) the only eviction grounds stated in the notice to leave are—

(i) an eviction ground, or grounds, mentioned in subsection (3B), and

(ii) an eviction ground, or grounds, mentioned in paragraph (a).

62 Meaning of notice to leave and stated eviction ground

(1) References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,

(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.

(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.

Schedule 3, Part 12

(1) It is an eviction ground that 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 subparagraph (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.

Findings in Fact

14. The parties entered into a Private Residential Tenancy Agreement dated 12 August 2023.
15. The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
16. In terms of Clause 7 of the said Tenancy Agreement the Respondent undertook to make payment of rent at the rate of £1000 per calendar month.
17. On 24 November 2023 the Applicant delivered a Notice to Leave to the Respondent by email.
18. The Notice to Leave included ground 12 of Schedule 3 of the 2016 Act and confirmed that proceedings would not be raised any earlier than 25 December 2023.
19. The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
20. As at the date of service of the Notice to Leave arrears in the sum of £3837.79 were outstanding.
21. As at the date of the Case Management Discussion arrears in the sum of approximately £5200 were outstanding.

22. The Respondent has failed to make any payments herself to the rent account since the tenancy commenced on 12 August 2023.
23. The Respondent is in receipt of universal credit with a housing element. The Applicant receives direct payments in the sum of £1006.87 every four weeks.
24. At that rate the arrears will take approximately five years to be repaid.
25. The Respondent previously received universal credit, with a housing element. The Respondent failed to pay the housing element to the rent, and failed to arrange for payments to be made directly to the Applicant.
26. The Respondent failed to make payments to cover the shortfall between the rent and the housing element of universal credit, despite advising the Applicant on numerous occasions that she would do so.
27. The Applicant has made efforts to engage the Respondent regarding the rent arrears and has encouraged her to seek legal advice. The Respondent has not disclosed any financial difficulties to the Applicant that would prevent her from making payment of the rent due.
28. The arrears are not due to any failure or delay in payment of a relevant benefit.
29. The Respondent is believed to reside in the property with two children.
30. The Applicant has a mortgage over the property. The Applicant has suffered financial detriment as a result of the rent arrears. The Applicant has continued to carry out repairs and maintenance to the property throughout the tenancy.

Reasons for Decision

31. The Tribunal was satisfied that it had sufficient information upon which to make a decision at the Case Management Discussion and that to do so would not be prejudicial to the parties. The Respondent had been given the opportunity to attend the Case Management Discussion, or make written representations, and had chosen not to do so.
32. The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicants intention to rely upon ground 12 of Schedule 3 of the 2016 Act. The Tribunal was satisfied that the Notice to Leave complied with the provisions of section 62 of the 2016 Act and therefore that application could be entertained.
33. The Tribunal therefore considered whether ground 12 of Schedule 3 of the 2016 Act had been met.
34. The Tribunal accepted, based on the rent statement submitted by the Applicant and her submissions at the Case Management Discussion, that arrears of £3837.79 were outstanding when the Notice to Leave was served. The Tribunal also accepted that the arrears had increased to approximately £5200 as at the date of the Case Management Discussion. Whilst the Tribunal did not have a

complete updated rent statement before it, the Tribunal found the Applicant to be credible in her submissions in relation to the sum due and there was nothing before the Tribunal to contradict her evidence in this regard. The Tribunal was therefore satisfied that for three or more consecutive months the Respondent had been in arrears of rent as at the date of sending the Notice to Leave and the date of the Case Management Discussion.

35. The Tribunal then considered the question of reasonableness. The Tribunal found the Applicant to be straightforward and open in her submissions. She gave no reason for the Tribunal to doubt her and the Tribunal therefore accepted her submissions as fact.
36. The Tribunal therefore accepted that the Respondent had been in receipt of universal credit, but had chosen to spend the housing element instead of arranging for payments to be made to the Applicant, resulting in arrears accruing. The Tribunal further accepted that the Respondent had repeatedly assured the Applicant about her ability to make payments but had failed to pay anything to the rent account. Whilst the Tribunal noted that the Applicant was now receiving payments to cover the rent and make a small contribution to the arrears, ultimately the arrears had increased to a significant sum. This appeared to the Tribunal to be a situation that was entirely unavoidable had the Respondent made payments as promised. The Applicant was now carrying a large balance of arrears, and the Tribunal accepted that she had suffered financially as a result.
37. The Tribunal believed that the Applicant had made repeated attempts to engage with the Respondent regarding the arrears, and had been misled as to the Respondent's financial position. Whilst the Tribunal noted that there appeared to be two dependents residing with the Respondent, the Tribunal was also aware that the local authority would have an obligation to assist the Respondent with rehousing in the event of an eviction order being granted.
38. The Tribunal therefore gave significant weight to the fact that the arrears were significant, the Respondent had previously had the means to pay the rent by way of her universal entitlement but had spent the money for other purposes, and there appeared no realistic prospect of her making any offers to the Applicant to pay additional sums to ensure the arrears were repaid within a reasonable period of time. The Respondent had not made any representations, nor had she attended the Case Management Discussion, and the Tribunal was therefore reliant upon the submissions from the Applicant in this regard.
39. Finally, with regard to paragraph (4) of ground 12, the Tribunal was satisfied, that the arrears were not due, in whole or in part, to any delay in the payment of universal credit. The Respondent had an ongoing entitlement to universal credit and the Applicant was receiving direct payments to the rent account. There was no suggestion that any backdated payment was due, and the Respondent had admitted to the Applicant that she had spent the previous funds received. The Tribunal also considered that the steps taken by the Applicant to assist the Respondent in sustaining the tenancy were sufficient to ensure compliance with the rent arrears pre-action protocol in the particular circumstances of this case.

40. Accordingly, taking the above factors into account as relevant to an assessment of reasonableness in this case, the Tribunal ultimately concluded that ground 12 had been met and it would be reasonable to make an eviction order.
41. The decision of the Tribunal was unanimous.

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.

Ruth O'Hare

28 October 2024

Legal Member/Chair

Date