



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of Rule 17(4) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) in respect of an application under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the Rules

Chamber Ref: FTS/HPC/EV/24/0568

Re: Property at 232 Castle Gait, Paisley, PA1 2DW (“the Property”)

Parties:

Mr Scott Gallagher, 40 Allander Road, Bearsden, Glasgow, G61 1LY (“the Applicant”) per his agents, Martin & Co Paisley, 21 Underwood Road, Paisley, Renfrewshire PA3 1TH (“the Applicant’s Agents”)

Miss Lauren Fadian, 232 Castle Gait, Paisley, PA1 2DW (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory ground had not been established and so dismissed the Application.

Background

1. By application received on 6 March 2024, (“the Application”), the Applicant’s Agents applied to the Tribunal for an Order for eviction and possession of the Property based on Grounds 12 of Schedule 3 to the 2016 Act.
2. The Application comprised the following: i) copy Notice to Leave in terms of Grounds 12 of Schedule 3 to the Act; ii) copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to Renfrewshire Council being the relevant local authority; iii) copy rent statement showing payments made by the Respondent to the Applicant from 4 March 2020 to 5 February 2024 showing rent of £1,935.00 due to 5 February 2024; iv) Copy Rent Increase Notices; v)

Copy private residential tenancy agreement; vi) Record of Events being a note of interaction between the Applicant's Agents and the Respondent to 5 February 2024.

3. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (the "CMD") was fixed for 4 July 2024 at 10.00 am by telephone.

CMD

4. The CMD took place on 4 July 2024 at 10.00 am by telephone. The Applicant was not present and was represented by Mrs. Turnbull of the Applicant's Agents. Miss Fadian, the Respondent, was present and was unrepresented. Miss Fadian stated that she was extremely embarrassed at having fallen into rent arrears.
5. The outcome of the CMD was that the Application was continued to a Hearing of evidence in respect of:
 - i) Satisfaction of PARs. To what extent has the Applicant complied with PARs;
 - ii) Rent due. What is the explanation for the opening negative balance and what is the full record of payments made by the Respondent;
 - iii) Reasonableness. What facts and circumstances do the Parties wish the Tribunal to take into account in reaching a decision on reasonableness? What is the financial hardship effect on the Applicant as a result of irregular rent payments?
6. The Tribunal issued the following Direction:
 - "1. The Applicant is required to submit documentary evidence in respect of:*
 - i) An updated statement showing all rent, tenancy deposits and fees due, paid and owing by the Respondent from the date on which the Respondent first made the payment to the Applicant's Agents;*
 - ii) Information on any payment plans entered into with the Respondent;*
 - iii) Details of the Applicant's rental property portfolio, including the Property, showing monthly secured lending commitments;*
 - iv) The individual circumstances of the Applicant with regard to the effect that the Respondent's failure to pay rent regularly has on him and*
 - v) Any other matters which the Applicant considers the Tribunal should have regard to in reaching a decision on reasonableness in respect of the eviction application.*
 - 2. The Respondent is required to submit documentary evidence in respect of:*
 - vi) The individual circumstances of the Respondent with regard to the effect that an eviction order might have on her;*
 - vi) Information her employment;*

- vii) *Information on her financial outgoings and her ability to meet the monthly rent commitment and*
- viii) *Any other matters which the Respondent considers the Tribunal should have regard to in reaching a decision on reasonableness in respect of the eviction application.*

The said documentation should be lodged with the Chamber no later than close of business on 14 days before the date of the Hearing to be intimated to the Parties.”

7. The Applicant's Agents, on his behalf, complied with the Direction to a great extent. The Respondent did not comply with the Direction to any extent.

Hearing

8. The Hearing took place on 12 December 2024 at 10.00 am by telephone. The Applicant was not present and was represented by Mr. Quaradeghini of the Applicant's Agents. Miss Fadian, the Respondent, was not present and was not represented.
9. Mr. Quaradeghini advised the Tribunal that the Applicant, Mr. Gallagher, was not available to attend the Hearing and, as he is not confident about appearing, wished to be represented.
10. The Tribunal noted that, in addition to the Application being raised in terms of Ground 12, it is an eviction ground that the tenant has been in rent arrears for three or more consecutive months, the Applicant's Agents, on behalf of Mr. Gallagher, wished *“to ask the Tribunal if we can adding “Ground 10” (no longer occupying the let property as her only or principal home) to the application relying on section 52(5)(b) of the 2016 Act and to seek an eviction order on that basis.”*

Ground 10 and Section 52(5)

11. The Tribunal asked Mr. Quaradeghini to set out what steps had been taken to evidence this Ground. Mr. Quaradeghini confirmed that the Applicant's Agents, on behalf of Mr. Gallagher, were relying only on the emails submitted in response to the Direction. He stated that, as Miss Fadian had not written to dispute the content of them, the Tribunal should treat the facts as accepted by her.
12. The emails relied on are (i) email dated 26 November 2024 issued by Mrs. Turnbull of the Applicant's Agents to Miss Fadian; (ii) email dated 27 November 2024 issued by Mr. Quaradeghini to Miss Fadian and (iii) email dated 27 November 2024 issued by Mrs. Turnbull to the Tribunal as a covering email to the Direction compliance submission.

13. The relevant part of the email dated 26 November 2024 from Mrs. Turnbull to Miss Fadian summarises a meeting between them as: *“due to personal circumstances you have had to give up work and now you are currently receiving universal credit/housing benefit. • The first payment for the universal credit/housing benefit is to be received by you on the 5/12/2024, once received the rent outstanding of £485.00 for November will be paid. • However you are unable to confirm when December’s rent will be paid and will advise us on this in due course. • You are currently seeking other employment. • You are no longer staying in the property and are now staying with your boyfriend • Instead your mother is residing in the property until she gets a Council home, which you say should be within the next couple of weeks. • Once your mother has moved out of the property it is then your intention to end the tenancy.”* This email asks for proof of identity of Miss Fadian’s mother.
14. The relevant part of the email dated 27 November 2024 from Mr. Quaradeghini to Miss Fadian summarises a telephone call between them *“You have confirmed all of the points in our email below except that you have not “moved out” of the property, you are allowing your mother, who is currently homeless and awaiting council housing, to live at the flat. As it is only a 1 bedroom flat you are spending most nights at your partners home.”* The email below referred to is the email dated 26 November 2024 from Mrs. Turnbull to Miss Fadian.
15. Neither of the emails of 26 and 27 November 2024, indicate that a request in terms of Section 52(5) to include Ground 10 is contemplated. Neither specifically suggest that Miss Fadian no longer treats the Property as her principal home. By asking for proof of identity of Miss Fadian’s mother, the email of 26 November 2024 suggests that permission for her mother to reside might be being considered. Reference to payment of housing benefit, suggests that Miss Fadian considers herself the tenant of the Property and that the tenancy is continuing.
16. The covering email dated 27 November 2024 to the Tribunal states that the Applicant’s Agents had contacted the tenant’s grandmother as guarantor for the tenancy on 26 November 2024 and were advised that the guarantor *“thought that the tenant was no longer at the property, but that the tenant’s mother, the guarantor’s daughter, was now living in the property.”* The email went on to state that Miss Fadian called the Applicant’s Agents and *“confirmed this verbally”*. There is nothing specific in these statements to indicate that the living arrangements are permanent.
17. The covering email dated 27 November 2024 to the Tribunal states *“Whilst the tenancy is in effect we have no problem with the tenant’s mother being there as a guest but this is more like a replacement tenant.”* The email provides no

detail as to why and how the status of “guest” has changed to that of a “*replacement tenant*” or why this assertion supports Ground 10.

18. Mr. Quaradeghini confirmed that a Sheriff Officer Trace Report had not been obtained and that affidavits have not been obtained from either the guarantor in respect of her knowledge Miss Fadian’s whereabouts or from Mrs. Turnbull in respect of the conversations between her and Miss Fadian and her and the guarantor.
19. Mr. Quaradeghini confirmed that the covering email dated 27 November 2024 to the Tribunal which makes the request for adding Ground 10 was not notified to Miss Fadian.
20. Ground 10 of Schedule 3 to the Act states “(1) *It is an eviction ground that the tenant is not occupying the let property as the tenant's home. (2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if ...the let property is not being occupied as the only or principal home of ...the tenant*”
21. Section 52 (5) of the Act states: “*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.*”
22. Section 52 (5) of the Act is a discretionary power of the Tribunal. In exercising a discretion the Tribunal is bound by Rule 2 of the Rules to “deal with the proceedings justly.” Dealing with the proceedings justly means that the rules of fairness and natural justice must be applied at all times.
23. The Tribunal had regard to Rule 109 of the Rules which sets out the documentation which must accompany an application for an eviction order. These include “evidence showing that the eviction ground or grounds has been met”. The Tribunal took the view that it is appropriate to apply this requirement to the Applicant’s request to include Ground 10.
24. In exercising its discretion in terms of Section 52 (5) of the Act the Tribunal had regard to the information before it to substantiate granting permission to include Ground 10 as an eviction Ground.
25. The email summaries of the conversations between the Applicant’s Agents and Miss Fadian do not support the proposition that the Property is not being occupied as Miss Fadian’s only or principal home. The phrases “*Once your mother has moved out of the property it is then your intention to end the tenancy*” and “*You have confirmed all of the points in our email below except that you have not “moved out” of the property*” show that there is no admission or acceptance on the part of Miss Fadian that she has taken up permanent and

principal residence elsewhere. She has applied for housing benefit for the rent for the Property. She clearly considers the Property to be her home.

26. The Tribunal's view of the information before it is that it does not evidence Ground 10 to any extent. The information is no more than evidence that Miss Fadian is temporarily residing elsewhere from time to time.
27. The Tribunal then had regard to fair notice to Miss Fadian. It is a well-established rule of law that parties to proceedings must be given fair notice of the claim which they are required to answer. In this case, no notice has been given. Accordingly, it is manifestly unfair for the Tribunal to proceed with exercising its discretion in favour of the Applicant, Mr. Gallagher.
28. Therefore, the Tribunal does not grant permission to include Ground 10 in the Application.
29. The Tribunal then considered Ground 12.

Ground 12

30. With regard to the rent account, Mr. Quaradeghini confirmed that the rent due currently stands at £480.00 for the month to 30 November 2024 and £485.00 for the month to 31 December 2024. He accepted that rent had been paid since the CMD and that the rent account had been £5.00 in credit from the date of the CMD until the November rent fell due.
31. With regard to the statement and productions lodged in compliance with the Direction, Mr. Quaradeghini confirmed that the Respondent, Miss Fadian, had advised Mrs. Turnbull of the Applicant's Agents by telephone that she had lost her job, is claiming Universal Credit and is awaiting payment of housing costs as part of that benefit. The information noted by Mrs. Turnbull was that a housing benefit payment was due to be paid to Miss Fadian around 5 December 2024. Mr. Quaradeghini confirmed that the neither Miss Fadian nor the DWP had paid this sum to the Applicant's Agents.

Findings in Fact

32. From the Application and the CMD, the Tribunal made the following findings in fact: -
- i) There is a private residential tenancy of the Property between the Parties commencing on 4 March 2020;
 - ii) The current monthly rent is £485.00;
 - iii) There are rent arrears of £480.00, being the rent due on 4 November 2024 less a credit balance of £5.00, for the month to 30 November 2024;
 - iv) Rent of £485.00 for the current month to 31 December 2024 is unpaid;

- v) The rent account is not in arrears of three consecutive months.

Issue for the Tribunal

33. The issue for the Tribunal was whether or not it should grant an Order for eviction in terms of Ground 12 of Schedule 3 to the Act as set out in the Application. Ground 12 states: “*12(1)It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.*”

Decision and Reasons for Decision

34. Having found that the Respondent has not been in rent arrears for three or more consecutive months, the Tribunal found that the eviction Ground is not met and so does not apply.

35. Accordingly, the Tribunal refused the Application and did not grant an Order.

36. This Decision is 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.

Karen Moore
Legal Member/Chair

12 December 2024.
Date