

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**

Chamber Ref: FTS/HPC/EV/23/4053

Re: Property at 49 Burns Road, Glasgow, G66 2NS (“the Property”)

Parties:

**Mr Christopher Hughes, 75 Lochalsh Crescent, Milton of Campsie, Glasgow,
G66 8EY (“the Applicant”)**

**Mr John Webb, Mrs Sara Webb, 49 Burns Road, Glasgow, G66 2NS; 49 Burns
Road, Glasgow, G66 2NS (“the Respondent”)**

Tribunal Members:

Virgil Crawford (Legal Member) and Melanie Booth (Ordinary Member)

Decision (in absence of the Respondent)

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

BACKGROUND

1. By lease dated 3rd February 2016, the Applicant let the Property to the Respondents. A notice in terms of s32 of the Housing (Scotland) act 1988 (“the 1988 Act”) was served upon the Respondents. The lease is, accordingly, a short, assured tenancy in terms of the 1988 Act.
2. Rent payable is at the rate of £675.00 per calendar month.
3. The Respondents fell into arrears of rent. The Applicant’s letting agents corresponded with the Respondents in relation to the rent arrears in accordance with the pre-action protocol.
4. A notice to quit and a notice in terms of s33 of the 1988 act were subsequently served upon the Respondents.

5. The Applicant presented two separate applications to the Tribunal, one seeking an order for eviction (EV/23/4053) and one seeking an order for payment of rent arrears (CV/23/4055).
6. A Case Management Discussion was assigned for each case to be held by teleconference on 22nd March 2024. Those Case Management Discussions were postponed, in advance, at the request of the Respondents. Further Case Management Discussions were assigned for 12th July 2024.
7. Two separate applications to postpone the Case Management Discussions on 12th July 2024 were presented on behalf of the Respondents. Both were refused by the Tribunal. The first request referred to the non availability of the chosen representative on the required date. The second related to health concerns relating to the second Respondent.

THE CASE MANAGEMENT DISCUSSIONS

8. The Case Management Discussions proceeded on 12th July 2024 by way of teleconference. The Applicant participated personally and was represented by Miss K O'Neil of Coda Estates Ltd. The first named Respondent, Mr J Webb, was unable to attend due to work commitments. The second named Respondent, Mrs S Webb participated personally. Both Respondents were represented by Mr R Bradley of East Dunbartonshire CAB.
9. In advance of the Case Management Discussions, the Applicant's representative submitted an updated rent statement. As at the date of the Case Management Discussion the rent outstanding was said to be £3,307.00.
10. The Applicant's representative moved the Tribunal to grant both a payment order and an order for eviction.
11. In relation to the eviction order, that was opposed by Mr Bradley on behalf of the Respondents. Mr Bradley advised the following: -
 - The arrears accumulated due to a series of unfortunate circumstances affecting the Respondents. In particular, there was the ill health of the father of the Second Respondent, who resided in England. Mrs Webb required to attend with him regularly. That affected her ability to work and her income and, consequently, the ability of the Respondents to make payment of rent.
 - Their 13-year-old daughter was experiencing significant difficulties at school. She required to be removed from school as a result. That caused difficulties within the family unit.
 - The Respondents' 13-year-old daughter is autistic which raises issues in relation to her needs.
 - Mr Webb admitted he had a gambling addiction in the past which affected the family finances. He has now obtained support for this addiction and it is no longer an issue for him.
 - Mrs Webb has been working as a taxi driver. She and her husband both had an income from which they would be in a position to make a payment of rent on an ongoing basis and payments towards arrears.

- The Respondents had hoped to make an offer of payment of rent on an ongoing basis and an amount of £80.00 per week to reduce arrears. That offer, however, could not be confirmed at this stage due to very recent health issues affecting Mrs Webb.
 - Mrs Webb has recently had health problems. It is suspected that she suffered a mini stroke a number of days ago. Medical enquiries are ongoing and she is due to undergo an MRI scan in the near future. It is not known at this stage whether she will be able to continue to work and, as a result, it is not known what the family income will be.
 - If Mrs Webb is unable to work, she may be entitled to benefits. Whether she is entitled to those will need to be ascertained, if she is unable to continue working, and the level of benefits paid will require to be ascertained.
12. Having regard to the matters advanced on behalf of the Respondents, it was asserted that it was not reasonable for the Tribunal to grant an eviction order at the Case Management Discussion. Miss O'Neil, on behalf of the Applicant, intimated that, while she sympathised with the position of the Respondents, her client's position is that there have been significant rent arrears for a long period of time and the Applicant is keen to have a decision in relation to the cases.
13. Having regard to the matters raised by the Respondents, in particular the suggestion that it is not reasonable for the Tribunal to grant an order for eviction, the Tribunal concluded that it had no alternative but to fix a hearing to determine that matter.
14. After discussing matters with Parties, it was agreed that it would be appropriate to continue the payment order application to a hearing on the same date also.
15. Parties were made aware that witnesses may be called on their behalf at the hearings assigned. Any list of witnesses or additional documentation or productions Parties would wish to rely on should be lodged with the tribunal in advance of the hearing.
16. While not issuing any formal direction, the Tribunal did advise Parties that it would be of benefit for the Parties, if so advised, to provide information and documentation and to address the Tribunal at the hearings in relation to the following: -
- An updated rent statement.
 - Updated and detailed medical information in relation to the second named Respondent if her health is being relied upon in support of a reasonableness argument.
 - If appropriate, information in relation to any benefits being received by the Respondents in the event Mrs Webb is unable to continue to work.
 - Medical information, in relation to the Respondents' daughter if her medical condition is being relied upon in support of an argument in relation to reasonableness.

- Information, if available, in relation to the first named Respondent's gambling issues and any information available to confirm this has been addressed.
17. Miss O'Neil enquired in relation to the potential for ongoing issues in relation to rent payments and the possibility that arrears may arise due to a possible delay in Mrs Webb obtaining benefits if they are applied for. The Tribunal pointed out that it cannot provide any information in relation to that. The factual position will require to be assessed at the hearings to be assigned.
18. The tribunal identified 4th October 2024 at 10:00am as a date and time which was suitable to parties for a hearing to be assigned.

THE HEARINGS

19. The Applicant was represented at the hearing by Miss K. O'Neill of Coda Estates Limited. The Respondents were represented by Mr R Heath from East Dumbartonshire CAB.
20. At the hearing it was noted by Parties that both hearings had been fixed following the case management discussions, given the information provided by the Respondents previously:
- explaining why arrears of rent had arisen,
 - indicating that the various issues which had arisen previously were not likely to be an ongoing problem
 - and an assurance having been given that rent would be paid on an ongoing basis with £80 per week being paid towards the arrears.

Rent Arrears

21. Prior to the hearings, an updated rent statement was provided to the Tribunal. This confirmed that, as at 3rd October 2024, the arrears had increased to £4,552.00. That amount, however, included the monthly rent due for October which was, of course, payable in advance. As at the date of the hearing, however, it was accepted by the Respondents that the arrears of rent amounted to not less than £3,877.00. In the circumstances, in the period between the case management discussions on 12th July 2024 and the hearing on 4th August 2024, rather than the rent arrears having decreased, they have increased by £570.00.
22. In relation to the payment action, there was now no opposition to a payment order being granted in the amount of £3,877.00. In the circumstances, the Tribunal granted that order.
23. The Tribunal considered whether a time to pay direction should be made. Having regard to the long history of arrears, previous assurances given that a payment plan would be adhered to, to reduce the arrears, and the assurance given to the Tribunal on 12th July that payment would be made at the rate of £80.00 per week to reduce arrears, the Tribunal concluded that it was not appropriate to make a time to pay direction.

Eviction

24. In relation to an order for eviction, this was still opposed by the Respondents.

Mr Heath advised the Tribunal of the following:-

- Since the case management discussions on 12th July 2024 the Mrs Webb's father had passed away. He sadly passed away on 20th August 2024. Mrs Webb, as a result, required to be in Warrington caring for her extended family and supporting her mother.
- Mrs Webb was aware that she had not been taking care of personal matters properly during this time.
- Mrs Webb had suffered a mini stroke. This had stopped her from driving. While it was stated at the case management discussions that it was unknown if she would be able to drive again and therefore earn money as a taxi driver, she was now able to drive. Due to the passing of her father, however, she had been "up and down to England" which meant that she was unable to earn money, despite her ability to drive.
- Mrs Webb is now getting back to work. She was hoping to secure a school contract as part of her taxi driving business. If she gets a school contract, she would be happy to make payment of all income from that to the letting agents to make payment of ongoing rent and the arrears.
- It was accepted on behalf of Mrs Webb, however, that the suggestion that she would obtain a contract with the local authority was speculative. Separately, it was accepted that if she did secure such a contract, the income from it would vary depending upon her availability to actually undertake the work.
- In the event that Mrs Webb did secure such a contract and was receiving payments, the payment would require to be made directly to her by the local authority. It would not be possible for the payment to be made by the local authority direct to the letting agents on behalf of the Applicant.
- The Respondents have a daughter who is 14 years old. She suffers from autism. She is being home school. It would be detrimental to the interests of the Respondent's daughter for an eviction order to be granted.
- The Respondents have been in contact with the local authority in relation to securing alternative accommodation. There appears to be a shortage of accommodation.
- In relation to temporary accommodation, that was very restricted and there was likely to be a 6 to 8 week waiting period before the same could be allocated.

25. On behalf of the Applicant, Miss O'Neill advised the Tribunal of the following:-

- They have attempted to engage with and assist the Respondents in connection with the arrears of rent. They previously applied to have rent paid direct on the basis they understood the Respondents were in receipt of universal credit. That attempt to secure direct payment failed. They had, in fact, attempted that on more than one occasion, most recently at the end of August 2024. It would appear that benefits are not in payment to allow that.

- The Respondents have previously made promises of payment and suggested they would adhere to payment plans but such plans have never been adhered to. As indicated, the rent has continually increased for a significant period of time, including since the case management discussions on 12th July 2024.

FINDINGS IN FACT

26. The Tribunal found the following facts to be established:-

- a) By lease dated 3rd February 2016 the Applicant let the Property to the Respondents. A notice in terms of s32 of the 1988 Act was served on the Respondents. The lease is, accordingly, a short assured tenancy.
- b) Rent is payable at a rate of £675.00 per calendar month.
- c) The Respondents fell into arrears of rent. The Respondents have been in arrears of rent continuously since August 2022.
- d) As at 4th October 2024, arrears of rent amounted to not less than £3,877.00.
- e) A sum of not less than £3,877.00 is due, resting and owing by the Respondents to the Applicants.
- f) The Applicant has complied with the pre-action protocol.
- g) The Respondents have previously entered into payment plans with the Applicant but those payment plans have not been adhered to.
- h) The Respondents, at the case management discussions on 12th July 2024, advised the Tribunal that rent would be paid on an ongoing basis with £80.00 per week being paid towards arrears. That assurance was not complied with.
- i) Rent arrears increased in the period between the case management discussions on 12th July 2024 and the hearings on 4th October 2024.
- j) A Notice to Quit and a Notice in terms of s33 of the 1988 Act were served upon the Respondents.
- k) A Notice in terms of s11 of the Homelessness Etc (Scotland) Act 2003 was intimated to the local authority.

REASONS FOR DECISION

Payment order

27. In relation to a payment order, the arrears of rent were admitted by the Respondents. The Respondents did not object to the granting of a payment order.

Eviction Order

28. In relation to an order for eviction, while the Respondents opposed an eviction, suggesting it was not reasonable for an eviction order to be granted, the Tribunal was faced with a situation where arrears of rent have existed continuously for a period of 2 years and have been increasing.

29. The Respondents have previously entered into payment plans with the Applicant to reduce arrears. Those payment plans have never been adhered to. The Respondents advised the Tribunal on 12th July 2024 that rent would be paid on an ongoing basis with £80.00 per week being paid towards

arrears. That assurance given to the Tribunal was not met by the Respondents. Rent arrears increased during that period. In the circumstances the Tribunal could have no confidence that rent would be paid on an ongoing basis or that the arrears would be reduced if an eviction order was not granted.

30. While the Second Named Respondent suggested that she was hopeful of securing a school contract in her self employed taxi business, and she was willing to devote the full income from that contract to rental payments, the suggestion that such a contract would be granted to her was no more than speculation. The income from it would not be known and, in any event, even if such a contract was awarded to her, the local authority would require to make payment direct to the Second Named Respondent and there could be no assurance thereafter that payment would be made to the Applicant. The history of failed payment plans and increasing arrears, again, gave the Tribunal no confidence that any reliance could be placed upon this potential school contract to resolve matters in the future.

31. While the Respondents made reference at the case management discussion and at the hearing to a variety of family related matters, the Tribunal did not consider that any of the issues raised were of such a significance as to make it unreasonable to grant an order for eviction when set against the long standing history of rent arrears, the long history of rent arrears increasing and the previous failures to comply with promises of payment of rent and arrears.

32. In all the circumstances, the Tribunal consider that it was reasonable that an order for eviction be granted.

DECISION

The Tribunal granted an order against the Respondents for possession of the Property under section 33 of the Housing (Scotland) Act 1988.

Order not to be executed prior to 12 noon on 31st January 2025.

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.

Virgil Crawford

27th December 2024

Legal Member/Chair

Date