



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

Chamber Ref: FTS/HPC/EV/24/0767

Property at 112 Victoria Street, Glasgow, G72 0EF (“the Property”)

Parties:

Mr Marco Jaconelli, 23 Inchkeith, East Kilbride, Glasgow, G74 2JZ (“the Applicant”)

Ms Margaret Murphy, 112 Victoria Street, Glasgow, G72 0EF; Ms Nicola Rogan, 41 Dean Crescent, Hamilton, ML3 8JH (“the Respondents”)

Tribunal Members:

Josephine Bonnar (Legal Member) and David Wilson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted against the Respondents in favour of the Applicant.

Background

1. The Applicant seeks an eviction order in terms of Section 51 and Ground 12 of schedule 3 of the 2016 Act. A tenancy agreement, Notice to leave, section 11 notice and rent statement were lodged with the applicant.
2. A copy of the application was served on the Respondents at the property by Sheriff Officer. The parties were notified that a case management discussion (“CMD”) would take place by telephone conference call on 31 July 2024 at 2pm. Prior to the CMD the Applicant lodged submissions and an updated rent statement, although these were not received until 29 July 2024.
3. The CMD took place on 31 July 2024 at 2pm. The Applicant was represented by Mr Sheridan, solicitor. The Respondents did not participate and were not represented. Mr Sheridan told the Tribunal that there had been no recent

contact from the Respondents. He said that the Applicant spoke to them a while ago and was told that they did not intend to make any further payments of rent.

4. Following a short adjournment to allow Mr Sheridan to obtain further information from the Applicant in relation to the reasonableness test, he advised the Tribunal that the second Respondent, Ms Rogan, moved out of the property about 2 years ago following breakdown in the Respondents' relationship. The first Respondent continued to reside there with her 19 year old son. They were both understood to be in work but have indicated that no further rent will be paid.
5. The Tribunal noted that the application was served on the second Respondent at the property. However, as she was not living there, there had not been valid service of the application. The Tribunal determined that the CMD should be continued to another date for service on the second Respondent at her new address or by advertisement on the Tribunal website if this could not be obtained.
6. In response to a direction the Applicant provided a new address for the second Respondent and a copy of the application was served on her by Sheriff officer. All parties were notified that a further CMD would take place on 14 January 2025 at 10am.
7. The CMD took place on 14 January 2025. The Applicant was represented by Mr Sheridan. The Respondents both participated, the first Respondent being represented and supported by her friend Ms Rankin. Prior to the CMD the Applicant submitted an updated rent statement showing a balance outstanding of £10,735

Summary of Discussion at CMD

8. Ms Rogan told the Tribunal that she has not lived at the property since 2021. The Applicant was notified, and a new sole tenancy agreement should have been arranged. She confirmed that she did not oppose the eviction order.
9. Ms Rankin and Ms Murphy told the Tribunal that Ms Murphy cannot afford the rent for the property on her own. She has had absences from work due to mental health issues. Both confirmed that the eviction order is not opposed for this reason. In response to questions from the Tribunal Ms Murphy confirmed that the sum of £10,735 is outstanding. In relation to finding alternative accommodation the Tribunal was told that an application to the Local Authority has been made. Although unwilling to tell the Tribunal where she will reside in the short term, Ms Murphy said that she would have somewhere to stay, possibly with her mum, and did not require a delay in enforcement of the eviction order as she just wanted the matter to be over.

10. Mr Sheriden told the Tribunal that the Applicant has experienced some difficulty as a result of the substantial rent arrears, as he still has to meet the mortgage payments for the property.

Findings in Fact

11. The Applicant is the owner and landlord of the property.

12. The Respondents are the tenants of the property in terms of a private residential tenancy agreement.

13. The Respondents are due to pay rent at the rate of £595 per month.

14. The Respondents have been in arrears of rent since December 2019. No payments have been made to the rent account since August 2023.

15. The Respondents currently owe the sum of £10,735 in unpaid rent.

16. The Applicant served a Notice to leave on the Respondent on 5 October 2023.

17. The Applicant has issued information to the Respondents in compliance with the Rent Arrears Pre action Protocol.

18. The Second Respondent has not resided at the property since 2021 and does not oppose the eviction order.

19. The First Respondent is unable to meet the rent payments for the property. She does not oppose the eviction order.

20. The First Respondent expects to be able to find alternative accommodation if the order is granted.

21. The Applicant has a mortgage over the property.

Reasons for Decision

22. The application was submitted with a Notice to Leave dated 5 October 2023, together with a copy email which establishes that the Notice was sent to the Respondents on that date. The Notice states that an application to the Tribunal is to be made on ground 12, rent arrears over three consecutive months.

23. The application to the Tribunal was made after expiry of the notice period. The Tribunal is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a Section 11 Notice with evidence that it was sent to the relevant Local Authority. The Tribunal is

therefore satisfied that the Applicant has complied with Section 56 of the 2016 Act.

24. Section 51(1) of the 2016 Act states, “The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.”
25. Ground 12 of Schedule 3 (as amended by the Coronavirus (Recovery and Reform (Scotland) Act 2022) states “(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 in 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.”
26. Sub-Paragraph (4) states, “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 Minister in regulations.” Relevant benefits are defined in sub-paragraph (5) and include housing benefit and universal credit. The Pre Action-Requirements Regulations include the provision of clear information relating to the terms of the tenancy agreement, the level of the arrears, the tenant’s rights in relation to eviction proceedings and how the tenant can access information and advice.
27. From the documents submitted and the information provided at the CMD, the Tribunal is satisfied that the Respondents currently owe the sum of £10,735 and that they have been in arrears of rent for three or more consecutive months, both at the date of service of the Notice to leave and the CMD. Ground 12 is therefore established.
28. The Tribunal proceeded to consider whether it would be reasonable to grant the order and noted the following: -
 - (a) The Tribunal is satisfied that the Applicant has complied with the Rent Arrears Pre-Action Protocol. The Applicant submitted a letter which contains the information required in terms of the protocol.
 - (b) The Tribunal is also satisfied that there is no evidence that the arrears are attributable to a delay or failure in the payment of a relevant benefit. The tenancy was a joint tenancy, and the First respondent has struggled to meet the rent payments since the joint tenant moved out. This is due in part to mental health issues which have resulted in absences from work.
 - (c) The arrears are substantial, and the Respondents have made no rental payments since August 2023.

(d) The Respondents do not oppose the order. The Second Respondent has her own accommodation elsewhere. The first Respondent told the Tribunal that she is unable to sustain the tenancy and meet the rent payments on her own. She expects to find alternative accommodation if the order is granted.

(e) The rent arrears are causing financial difficulty to the Applicant as he has to meet the mortgage payments for the property.

29. The Tribunal concludes that the Applicant has complied with the requirements of the 2016 Act that ground 12 has been established. For the reasons outlined in paragraph 28, the Tribunal is also satisfied that it would be reasonable to grant the order for eviction.

Decision

30. The Tribunal determines that an eviction order should be granted against the Respondent.

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.

Josephine Bonnar

Josephine Bonnar, Legal Member

14 January 2025