

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/24/3586

Re: Property at 20 Summerfield Cottages, Glasgow, G14 0RB (“the Property”)

Parties:

Mr Szymon Czaja, 34 Craggan Drive, Glasgow, G14 0EW (“the Applicant”)

Ms Zainab Alkandari, 20 Summerfield Cottages, Glasgow, G14 0RB (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Angus Lamont (Ordinary Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for eviction should be granted.

Background

1. On 6th August 2024 the Applicant lodged an Application with the Tribunal under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondent from the property under Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.
2. Lodged with the application were: -
 - i. Copy Private Residential Tenancy Agreement showing a commencement date of 2nd May 2024 and a rent of £4500 per quarter;
 - ii. Copy Notice to Leave dated 2nd July 2024;
 - iii. Copy email dated 2nd July 2024 to the Respondent serving the Notice to Leave;
 - iv. Section 11 Notice and proof of service;
 - v. Email from potential purchasers indicating interest in the property.
3. The Application was served on the Respondent by Sheriff Officers on 19th December 2024.

4. On 21st January 2025 the Respondent's solicitor sent an email to the Tribunal confirming that the Respondent would not be defending the eviction order, seeking a delay in the enforcement of the order in terms of Rule 16A(d), and outlining the Respondent's circumstances.
5. On 23rd January 2025 the Applicant's solicitor lodged an Inventory of Productions containing some of the Applicant's bank statements, his HMRC Self Assessment statement, some information regarding the mortgage over his properties, some WhatsApp messages between the parties, some photographs of the property and a copy of his medical prescription.
6. On 24th January 2025 the Applicant's solicitor lodged a Written Submission together with copy decision in case UT/AP/23/0018.
7. Late on 29th January 2025 the Respondent's solicitor lodged a further Written Submission and an Inventory of Productions extending to 92 pages, containing information about the Respondent's health, expenditure, immigration status, universal credit status and payments and child care payments, part of the decision in the case of Reid -v- Redfern [2019] SC DU 41, the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 and the United Nations Convention on the Rights of the Child.

Case Management Discussion

8. The Case Management Discussion ("CMD") took place by teleconference. The Applicant represented himself. He said that he could not afford to pay his solicitor to represent him at the CMD. The Respondent was represented by Miss Fidelo of the Legal Services Agency.
9. The Chairperson explained the Tribunal's overriding objective in terms of Rule 2, and the purposes of a CMD in terms of Rule 17
10. The Chairperson confirmed with the parties that the Applicant was seeking an order for eviction, the Respondent was not opposing the order being granted and the respondent was seeking a delay of three months in the execution of the order in terms of Rule 16A(d).
11. The Chairperson took the Applicant through the Written Submissions lodged on his behalf and he confirmed that they were accurate. He also confirmed that the current arrears were £9000, and that the Respondent had made no payment since the initial payment made when she moved in. He confirmed that he needed to sell the property to get back on his feet financially, and that he was concerned about disrepair and the costs involved. He said that he had already offered to agree to an extension of one month if the Respondent proved that the property was in good condition. She had not done so. He said that the situation was having a poor effect on his health. He was not sleeping at night

and was experiencing panic attacks. He was also faced with possible redundancy.

12. The Chairperson turned to Miss Fidelo. Miss Fidelo asked that the Written Submission and documents lodged the previous day be accepted although very late. The Applicant had no real objection and the Tribunal took the view that the documents would assist in being able to make a decision, and allowed them.
13. Miss Fidelo adopted the position in the written Submissions lodged on 21st January 2025. She said that the respondent had been engaging with the local authority for some time. She had been told that they could not assist her until an order was granted by the Tribunal. She had been unable to get any concrete information about the type of property that might be available. Her case worker had told her to seek as long a delay as possible.
14. Miss Fidelo said that the Respondent was worried about effect homelessness would have on her children. They were asylum seekers and had fled persecution. They had experienced upheaval on several occasions.
15. Miss Fidelo said that the respondent accepted that the decision being sought today was consequential to the eviction, which the Respondent did not oppose, and that she was keen that matters be dealt with today rather than seek a hearing.
16. Miss Fidelo said that the Respondent accepted that the arrears were high, and she was asking for the delay in the knowledge that the arrears would continue to increase, but she said that the Respondent was committed to paying £850 per month in the meantime, which was the housing element of her Universal Credit award. She accepted nothing had been paid to date and she could not confirm how long Universal Credit had been in payment. She accepted that this sum was less than the Applicant's monthly mortgage payment for the property. She also said that the Respondent was keen to enter in to an arrangement about repaying the arrears once she was in settled accommodation as any civil debt could affect immigration status.
17. Miss Fidelo said that she accepted that the Applicant had difficulties both financially and with mental health but submitted that they should be balanced against the Respondent's own financial and mental health difficulties.
18. In relation to the case of Reid -v- Redfern [2019] SC DU 41 Miss Fidelo said that she thought Sheriff Jamieson's comments might be helpful to the Tribunal in relation to applying Article 3.1 of the Convention. She said that the 2024 Act meant that the Convention applied to the Tribunal, although she conceded that it did not apply to the Applicant as a landlord. She also referred to Article 27 of the Convention in relation to the child's right to an adequate standard of living.
19. The Chairperson asked the applicant if he wished to accept the Respondent's offer to pay £850 per month in the meantime if execution of the order was

delayed for three months. He said that he did not, he had no confidence that the Respondent would pay.

20. The Tribunal adjourned for 30 minutes to consider their decision.

Findings in Fact

- a. The parties entered into a Private Residential Tenancy Agreement in respect of the property;
- b. The tenancy commenced on 2nd May 2024;
- c. The rent was £4500 per quarter;
- d. A Notice To Leave, dated 2nd July 2024, was served timeously and correctly;
- e. A section 11 notice was served on the local authority;
- f. The Application was served on the Respondent by Sheriff Officer on 19th December 2024;
- g. The Applicant intends to sell or market for sale the property within three months of the Respondent vacating;
- h. The Respondent does not oppose the granting of the order;
- i. The respondent currently owes £9000 in rent arrears, which will increase to £13500 within the next week;
- j. The respondent has not made any payment since the initial quarter was paid at the beginning of the tenancy;
- k. The Applicant's monthly mortgage payment for the property is £1283.36;
- l. The Applicant owns other properties which are subject to mortgages;
- m. The Applicant has an outstanding tax bill;
- n. The Applicant has a party who is interested in purchasing the property;
- o. A sale will help the Applicant's financial position;
- p. The Applicant's wife and four children moved back to Poland in March 2024;
- q. The Applicant wishes to join them there once his financial matters are resolved;
- r. The Applicant's physical wellbeing has been affected by the situation, he is having difficulty sleeping and is stressed;
- s. The Respondent is a single parent with children aged 4 and 6;
- t. The Respondent and her children are Kuwaiti nationals with refugee status in the UK for five years from January 2024;
- u. The Respondent and the children have suffered disruption due to having to flee to the UK;
- v. The Respondent's mental health is poor and she has anxiety;
- w. The Respondent is in full time education, works part time and receives Universal Credit with a housing element of £850, Scottish Child Payment, student loan and earnings;
- x. The Housing element of Universal Credit has not been paid to the Applicant;
- y. The Respondent has child care costs;
- z. The Respondent's ex husband paid the first quarter's rent;
- aa. The respondent's husband has returned to Kuwait and made it clear in an email of 17th June 2024 that he would be making no further payments;

Reasons for Decision

21. The Respondent instructed her solicitor that she was not opposing the Order for Eviction being granted.
22. The Respondent instructed her solicitor to seek a delay in the execution of the order for a period of three months in terms of Rule 16A(d). This was the only issue which the Tribunal were being asked to decide.
23. The Applicant's solicitor, in her Written Submission of 24th January 2025 made reference to the decision of Sheriff Collins in case UT/AP/23/0018. She said that " At paragraph 12, the UT states that the Tribunal (FTS) must be clear whether postponement is a matter going to the reasonableness of granting the order or a matter consequential to an order which it has already decided reasonable to grant. In my submission, the latter applies in this case. The Respondent is not challenging reasonableness of the present application. Therefore, it is submitted the question before the Tribunal is whether to delay enforcement, as a consequential matter. Such a determination must be made having consideration to the facts of the case". The Respondent's solicitor agreed with this approach. The reasonableness of granting an order in this case was not a matter before the Tribunal.
24. The Tribunal considered all the documents before it, and what had been submitted by the parties and their solicitors orally, carefully. The Tribunal balanced each party's circumstances against the other and made the decision not to delay the execution of the order. The reasons for this decision are threefold.
25. Firstly, the Tribunal noted all that had been said by the Respondent's solicitor about alternative housing and what might be available. There was nothing before the Tribunal to provide any reassurance or guarantee that delaying the execution of the order would assist the Respondent to be allocated the housing she would like. The documentation lodged, in particular the paragraphs from Glasgow City Council's website headed "Glasgow's Housing Emergency" laid out the position fairly bleakly.
26. Secondly, the Tribunal considered the position of the Respondent's children. The Tribunal did have some sympathy, and took in to account that Article 3.1 of the Convention says that the best interests of the children should be a primary consideration and that the 2024 Act says that it is unlawful for the Tribunal to act in a way which is not compatible with the UNCRC requirements. However, Article 3.1 refers to "a primary consideration" and not "the primary consideration". The Tribunal had no evidence before it to suggest that the position of the children would be different, or better, in three months' time.
27. Thirdly, the Tribunal were concerned about the high level of arrears and the fact that these would only increase over the three month period. The Respondent had made no attempt to make any payments since May 2024

despite Universal Credit with a housing element being in payment. It was not equitable to expect the Applicant to continue to provide accommodation without payment.

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.

A.Kelly

30.01.25

Legal Member/Chair

Date