



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/24/2343

Re: Property at 2380 Paisley Road West, Glasgow, G52 3QJ (“the Property”)

Parties:

Mrs Angela Mullin, 20 Southway, Harrow, HA2 6EP (“the Applicant”)

Mr Omayr Haider, 2380 Paisley Road West, Glasgow, G52 3QJ (“the First Respondent”)

Mrs Hanfa Razaq, 2380 Paisley Road West, Glasgow, G52 3QJ (“the Second Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Mr G Laurie (Ordinary Member)

Decision (in absence of the Second Respondent)

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

Background

1. This is a Rule 109 application received on 21st May 2024. The Applicant is seeking an eviction order under Ground 12. The Applicant lodged a copy of a private residential tenancy agreement between the parties in respect of the Property, which tenancy commenced on 7th September 2023, at a monthly rent of £900. The Applicant lodged a rent statement showing arrears in the sum of £2500, copy Notice to Leave with evidence of service, copy section 11 notice with evidence of service, and pre-action requirement correspondence.
2. Service of the application and notification of a forthcoming Case Management Discussion was served upon the Respondents on 16th September 2024 by Sheriff Officers.
3. A Case Management Discussion (“CMD”) took place by telephone conference on 17th October 2024. Neither party was in attendance. The Applicant was represented by Ms Smith, Lettings Manager, Scottish Property Centre. The

First Respondent had emailed the Tribunal on the date of the CMD stating he could not be present. The Tribunal considered the terms of Rule 29. The Tribunal determined that the requirements of Rule 17(2) had been satisfied, and it was appropriate to proceed with the application in the absence of the Respondents.

4. Ms Smith said the arrears began in January 2024. The Respondents had failed to respond to attempts to put a payment plan in place. Their payments were erratic, causing difficulty for the Applicant, who has to pay a mortgage on the Property. Ms Smith said the rent account was cleared on 26th September 2024. The monthly rent for October, in the sum of £900, became due on 7th October and it was still outstanding. Mr Haider had called Ms Smith at 1.45 on the day of the CMD and stated that he would make payment of this sum by Monday 21st October 2024. Ms Smith said both Respondents had been unwell in the past. Mr Haider was now working again, and he informed Ms Smith that Mrs Razaq was unwell.
5. The Tribunal adjourned to consider matters. The Tribunal considered the ground of eviction was met; however, it was not persuaded as matters stood that it would be reasonable to grant an eviction order, given that the arrears balance had been cleared, and the balance outstanding was only one month's rent. The Tribunal decided to continue matters to a further CMD to monitor the situation, given that the ground of eviction was met, and some rent remained outstanding. The Respondents were advised in the CMD note to ensure that all payment of rent was made on the due date, and that failure to maintain rental payments, and failure to attend the further CMD could result in an eviction order being granted against them. The Respondents were advised that they may wish to take legal or housing advice on their situation.
6. Parties were notified on 8th February 2025 of a CMD to take place on 19th March 2025.
7. By email dated 18th March 2025, the Applicant representative lodged an updated rent statement showing arrears due in the sum of £3900.

The Case Management Discussion

8. A CMD took place by telephone conference on 19th March 2025. The Applicant was not in attendance and was represented by Ms Smith. The First Respondent was in attendance. The Second Respondent was not in attendance. The First Respondent said the Second Respondent had moved out of the Property and did not intend to join the call.
9. The Tribunal considered the terms of Rule 29. The Tribunal determined that the requirements of Rule 17(2) had been satisfied, and it was appropriate to proceed with the application in the absence of the Second Respondent.

10. The First Respondent said the Respondents are in the process of divorcing. Both have moved out of the Property, but the First Respondent continues to use the Property for storage of larger items, as he has nowhere to store them, and he has not had time to address this due to his work. He would hope to have them removed within two to three weeks. The First Respondent is sofa-surfing at present and intends to move in with his parents. He is self-employed.
11. The First Respondent said the situation between the Respondents had resulted in difficulties in paying the rent, as the Second Respondent was refusing to pay her share of the rent. The First Respondent said he hopes to have discussion with the Applicant representative regarding clearing his share of the arrears and hopes to enter into a payment plan. It was his position that an eviction order was not necessary, as he will be out of the Property in the next two to three weeks. The First Respondent confirmed there are no children in the Property.
12. Ms Smith said the Applicant would wish to have the order granted. The arrears are now £3900. There has been no contact from the Respondents in the past four months. It would not be reasonable to expect the Applicant to wait in good faith for the First Respondent to move his belongings from the Property. The Applicant has now been made redundant. She is under extreme financial strain. The Property is subject to a mortgage, which should be covered by the rent. The Applicant had been in the habit of saving a percentage of the rental income for repairs and maintenance of the Property but this has not been possible. Ms Smith said if the Property is vacated early, there will be no need to execute the eviction order.

Findings in Fact and Law

13.
 - (i) Parties entered into a private residential tenancy agreement in respect of the Property which commenced on 7th September 2023, at a monthly rent of £900.
 - (ii) The Applicant has served a Notice to Leave upon the Respondents.
 - (iii) The Respondents have accrued rent arrears.
 - (iv) The Respondents have been in rent arrears for three or more consecutive months.
 - (v) The Respondents being in rent arrears is not as a result of a delay or failure in the payment of a relevant benefit.
 - (vi) The Applicant has complied with the pre-action protocol.
 - (vii) It is reasonable to grant an eviction order.

Reasons for Decision

14. Ground 12 of Schedule 3 of the Act provides that it is an eviction ground if the tenant has been in rent arrears for three or more consecutive months. The Tribunal may find that this applies if for three or more consecutive months the tenant has been in rent arrears and the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order. The Tribunal is satisfied that Ground 12 has been established.
15. In deciding whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenant's being in arrears of rent over that period is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit. There was no evidence before the Tribunal that the Respondents were in rent arrears as a result of a delay or failure in the payment of a relevant benefit.
16. In deciding whether it is reasonable to issue an eviction order, the Tribunal is to consider the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations. The Applicant has complied with the pre-action protocol by sending letters to the Respondents.
17. In considering whether it was reasonable to grant the eviction order, the Tribunal considered the circumstances of both parties.
18. The Respondents are no longer residing in the Property. The Property is being used for storage of large items. Despite making attempts to clear the balance prior to the last CMD, the arrears have now risen to £3900. The Respondents have not contacted the Applicant representative to explain their situation. They have made no payment towards the rent since a lump sum payment of £1500 on 12th November 2024. They have not entered into any discussions about clearing the arrears. The Respondents have not shown good faith in their dealings with the Applicant.
19. The Applicant has made reasonable endeavours to assist the Respondents to rectify the situation, by complying with the pre-action protocol and issuing the necessary information on several occasions. The Applicant is entitled to rent lawfully due in terms of the tenancy agreement. The Applicant is now in financial difficulties and the lack of any payment towards rent and arrears is compounding her difficulties. The Applicant cannot rely on the word of the Respondents that the Property will be vacated in two or three weeks, given the lack of good faith shown by the Respondents to date. The Tribunal had no representations from the Second Respondent to corroborate the account given by the First Respondent. The Tribunal considered there was a real risk that one or both Respondents would decide to stay in the Property, or that the First Respondent would delay in moving his belongings out of the Property.
20. In all the circumstances, the Tribunal considered it was reasonable to grant the order sought.

Decision

21. An eviction order in respect of the Property is granted. The order is not to be executed prior to 12 noon on 21st April 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.

Helen Forbes

Legal Member

— 19th March 2025