



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/24/0745

Re: Property at Flat 1/2, 130 Novar Drive, Glasgow, G12 9SY (“the Property”)

Parties:

Mrs Edith Whyte, Clockburn Cottage, Fintry, Stirlingshire, G63 0YH (“the Applicant”)

Ms Deborah MacKenzie, Flat 1/2, 130 Novar Drive, Glasgow, G12 9SY (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member) and Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for eviction and recovery of possession be granted.

Background

1. By application received on 15 February 2024 (“the Application”), the Applicant’s Agents applied to the Tribunal for an Order for eviction and possession of the Property based on Ground 12 of Schedule 3 to the 2016 Act.

2. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (the “**CMD**”) was fixed for 1 August 2024 at 11.30 by telephone conference. Prior to the CMD, both the Applicant and the Applicant’s Agents submitted written submissions.

3. The CMD took place on 1 August 2024 at 11.30 by telephone. The Applicant was present along with her husband as a supporter in terms of Rule 11 of the Rules and was represented by Ms. K .McMillan of the Applicant’s Agents. The Respondent,

was not present and was represented by Ms. N. Finnegan of the Respondent's Agents who, on behalf of the Respondent, opposed the Application. The CMD was adjourned to a Hearing and a Direction was issued to the Parties. The date for the Hearing was fixed as 9 December 2024 by telephone conference call.

4. The Respondent's Agents complied with the Direction and submitted a written note of opposition to the Application, to which the Applicant responded. The Applicant complied further and in part with the Direction and lodged a bundle of productions on 27 November 2024. Neither the Respondent's Agents nor the Respondent complied further with the Direction.

5. By email received by the Tribunal on 5 December 2024, the Respondent's Agents withdrew from acting on her behalf.

6. The Hearing took place on 9 December 2024 at 10.00. The Applicant was present and was represented by Ms. K .McMillan of the Applicant's Agents. The Applicant had two witnesses. The Respondent, was not present and was not represented. As the Respondent's Agents had recently withdrawn from acting on her behalf, the Tribunal could not be certain that the Respondent had received all or any of the Applicant's submissions. The Tribunal accordingly decided to adjourn the Hearing to a later date and issued Directions to the Respondent requiring her to submit (by 21 December 2024) documentary evidence in respect of:

- 1) Her entitlement to state benefits for housing costs from the entry date to the Property, being 1 September 2023, to the date of compliance with this Direction;
- 2) Her personal circumstances with regard to the effect that an eviction order might have on her;
- 3) Information on any alternative accommodation available to her and attempts made by her to secure alternative accommodation;
- 4) 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; and
- 5) A list of witnesses, if any, who will give evidence on her behalf.

7. The Applicant's agents lodged an updated rent ledger on 6 March 2025.

8. No further correspondence was received from the Respondent.

Hearing

9. The case then called for Hearing by conference call on 26 March 2025 at 10am. The Applicant was present along with her husband as a supporter in terms of Rule 11 of the Rules and was represented herself. The Respondent opposed the Application.

10. The Tribunal heard evidence from the Respondent, Ms McMillan of the Applicant's Letting Agents and the Applicant.

Summary of Relevant Evidence

11. The Applicant had lodged an impact statement, written submissions, response to the Respondent's written submissions and then read out a statement to the Tribunal.

In summary her evidence, corroborated by Ms McMillan, was:

- (a) The Respondent had been persistently late and in arrears for the majority of her tenancy. This was supported by the rent statements lodged covering the period from 1 December 2020 to date.
- (b) The Respondent had only started to address the arrears once eviction proceedings were initiated.
- (c) As at the date of the Hearing the Respondent was around £1200 in arrears.
- (d) The Respondent had failed to comply with the Tribunal's Direction of 9 December 2024 and had not produced any of the required information. In the absence of benefit information as directed the Applicant could not be satisfied that the Respondent was in receipt of benefits and would be able to afford the rent going forward.
- (e) The Respondent frequently ignored correspondence from the Applicant's Letting Agents to the extent that the Applicant now had to instruct Sheriff Officers' to serve correspondence on her. In particular, the Applicant had ignored correspondence relating to gas inspections over the last two years or refused access or postponed access. The Respondent had only permitted entry when the gas boiler broke down.
- (f) The Respondent frequently over the tenancy failed to respond to requests for inspection or, when agreed, cancelled or postponed to the extent that the Applicant and the Letting Agents felt that they were being prevented from fulfilling their obligations.
- (g) The Respondent frequently used the excuse of ill health, hospitalisation or surgery as a reason for not agreeing to or responding to inspection requests.
- (h) The Applicant has 6 rental Properties (including this one) Flat 1/2, 130 Novar Drive, Glasgow G12 9SY; Flat 2/2, 119 Novar Drive, Glasgow G12 9SZ; 2 Balmoral Place, Edinburgh EH3 5JA; 54C Anselm Road, London SW6 1LJ; 48 Ongar Road, London SW6 1SJ; 49A Chesson Road, London SW14 9QR.
- (i) The Applicant is responsible for the maintenance and repair of all of the Properties.
- (j) The Property requires urgent repairs and the Factor has requested £10,000 from the Applicant immediately and it is anticipated the cost of repairs will mean that the Applicant will have to pay a further £10,000 in respect of the repairs to the Property.
- (k) The Applicant regularly suffers from tachycardia, lack of sleep and loss of appetite. The stress of the situation regarding this Property is impacting her health and wellbeing adversely.

12. The Respondent's evidence was:

- (a) Her Housing Benefit had been stopped in April 2022 due to untrue allegations made by the Applicant that she was living with and/or sub-letting the Property to

another Party. This issue had now been resolved but this had led to some of the arrears.

(b) The current level of arrears was around £1,200 and she would be able to clear the arrears from her own funds and a backdated benefit payment shortly. She would receive £600 per month in respect of the Housing Costs and pay the balance from her additional income from Adult Disability Payment and ESA. As such, she could pay the rent going forward.

(c) The Respondent suffered from ill health, was disabled and had the assistance of a carer. She had been in hospital for the last 3 weeks.

(d) She did not want to move from the Property. Her friends, carers and support network were all nearby.

(e) The Respondent disputed that she had denied or obstructed access for inspections and/or repairs to the Property. She had requested requests for access to be in writing and these had not been forthcoming. She had only refused or postponed access when ill, in hospital or where the works were potentially detrimental to her health.

Observations on the Evidence

13. The Tribunal did not find the Respondent to be credible or reliable. She had failed to comply with the Direction of the Tribunal issued on 9 December 2024. She had ample opportunity to provide the required paperwork to support her submissions on reasonableness and had not done so. The fact she had been in hospital for 3 weeks prior to the Hearing did not constitute a reasonable excuse.

14. The Respondent provided no evidence of benefits, her entitlements and the amounts of payments to be made going forward. These ought to have been readily available to the Respondent if her asserted position was true.

15. The Respondent produced no documentary evidence to support her personal circumstances and the impact an eviction would have upon her.

16. The Respondent's explanation as to how the arrears had accrued over time due to the Applicant having made untrue allegations did not hold weight. Arrears had been accrued in the years prior to and after that. Indeed, the Respondent was currently by her own admission £1,200 in arrears.

17. The Respondent's lack of response and/or engagement with the Tribunal, failure to comply with the Tribunal Direction all appeared to corroborate the Applicant's (and Ms McMillan's) evidence of their experiences of the Respondent.

17. Both Parties were afforded the opportunity to ask questions of the witnesses and make submissions.

Findings in Fact

17. Having considered the oral and documentary evidence of the Parties, in so far as material, the Tribunal made the following findings in fact:

- (i) The Parties let the Property under a tenancy agreement commencing 1 September 2018;
- (ii) The Respondent had frequently been in rental arrears as set out in the Statement of Rental Arrears dated 6 March 2025 covering the period from 1 April 2022;
- (iii) The Respondent had frequently been in rental arrears over the period 1 December 2020 to March 2022 as set out in the Statements of Account produced by the Applicant and attached to an email of 22 November 2024;
- (iv) The Respondent was in arrears of rent in the sum of £3,520.46 as at the date of the service of the Notice to Leave on her (being 12 January 2024 by Sheriff Officer);
- (v) The Respondent had been in arrears of rent for more than 3 consecutive months at the date of service of the Notice to Leave;
- (vi) The Respondent was in arrears of rent in the sum of £1,200 as at the date of the Hearing;
- (vii) The Respondent had failed to comply with the Tribunal's Direction of 9 December 2024 and had not produced any of the required information. In the absence of benefit information as directed the Applicant could not be satisfied that the Respondent was in receipt of benefits and would be able to afford the rent going forward;
- (viii) The Respondent frequently ignored correspondence from the Applicant's Letting Agents to the extent that the Applicant now had to instruct Sheriff Officers' to serve correspondence on her. In particular, the Applicant had ignored correspondence relating to gas inspections over the last two years or refused access or postponed access. The Respondent had only permitted entry when the gas boiler broke down;
- (ix) The Respondent frequently over the tenancy failed to respond to requests for inspection or, when agreed, cancelled or postponed to the extent that the Applicant and the Letting Agents felt that they were being prevented from fulfilling their obligations;
- (x) The Respondent frequently used the excuse of ill health, hospitalisation or surgery as a reason for not agreeing to or responding to inspection/repair requests. No evidence of her medical conditions or hospital admissions were provided
- (xi) The Applicant has 6 rental Properties (including this one) Flat 1/2, 130 Novar Drive, Glasgow G12 9SY; Flat 2/2, 119 Novar Drive, Glasgow G12 9SZ; 2 Balmoral Place, Edinburgh EH3 5JA; 54C Anselm Road, London SW6 1LJ; 48 Ongar Road, London SW6 1SJ; 49A Chesson Road, London SW14 9QR;
- (xii) The Applicant is responsible for the maintenance and repair of all of the Properties;
- (xiii) The Property requires urgent repairs and the Factor has requested £10,000 from the Applicant immediately and it is anticipated the cost of repairs will mean that the Applicant will have to pay a further £10,000 in respect of the repairs to the Property;
- (xiv) The Applicant regularly suffers from tachycardia, lack of sleep and loss of appetite. The stress of the situation regarding this Property is impacting her health and wellbeing adversely.
- (xv) The current monthly rent for the Property is £824;
- (xvi) The Respondent lives in the Property on her own with support from friends and carers;
- (xvii) Pre Action Protocol letters were issued to the Respondent on 1 February 2023, 12 April 2023 and 22 November 2023;

(xviii) Section 11 Notification was served on the local authority on 12 February 2024 by email.

Decision and Reasons

18. The Tribunal had regard to Ground 12 of Schedule 3 to the Act which provides:

Rent arrears

12(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2)

(3) The First-tier Tribunal may find that the ground named by 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.

19. The Tribunal were satisfied that Ground 12 had been established and that it was reasonable to grant the order sought.

20. In reaching its decision on reasonableness the Tribunal found that the fact the Respondent had frequently been in arrears over the last 5 years of the tenancy, was currently in arrears and was unable to produce evidence of her ability to regularly meet future payments of rent on the Property to be of significance.

21. The Tribunal also took into account the Respondent's lack of co-operation with the Applicant and her Letting Agent through the course of the tenancy and the personal and financial impact this was having on the Applicant.

22. The Tribunal could not be satisfied on the evidence provided that the arrears were in any part due to a delay or failure to make payment of a relevant benefit.

23. The Tribunal were satisfied that the Applicant had complied with the pre-action protocols.

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.



Legal Member/Chair

Date: 26 March 2025