

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 Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations”)

Chamber Ref: FTS/HPC/EV/23/0094

Re: Property at 66A Broomlands Street, Paisley, PA1 2NL (“the Property”)

Parties:

Mr Balbir Singh, 40 Chapelton Crescent, Alloway, KA7 4TZ (“the Applicant”)

Mr Gregor Hill, 66A Broomlands Street, Paisley, PA1 2NL (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Gordon Laurie (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application be refused.

Background

1. The application submitted on 10 January 2023 (as amended) sought an eviction order against the Respondent on the grounds of rent arrears over more than 3 consecutive months (Ground 12 of the Private Housing (Tenancies)(Scotland) Act 2016). Supporting documentation was submitted. Following initial procedure, the Tribunal accepted the application on 24 August 2023, together with a conjoined application for payment of rent arrears (reference FTS/HPC/CV/23/0095). Both applications proceeded together and previous Case Management Discussions (“CMDs”) took place on 26 October 2023, 30 January 2024, 23 April 2024 and 30 August 2024. By the CMD on 23 April 2024, the rent arrears had been reduced from the original amount of £5,250 to £670 and both applications were adjourned until 30 August 2024 to allow a further opportunity for the rent arrears to be cleared. The rent arrears were cleared by the CMD on 30 August 2024, when the application for payment of the rent arrears was accordingly refused by the Tribunal.

Case Management Discussion – 30 August 2024

2. The CMD in respect of this application took place by telephone conference call on 30 August 2024 at 10am and was attended again by Mrs Jacqueline McLelland, Manager and Ms Daryl Harper, Assistant Manager, both of Castle Residential who were representing the Applicant. The Respondent did not attend and, again, no written representations had been lodged by the Respondent prior to the CMD. Nor had any further correspondence been lodged on behalf of the Applicant, although the Tribunal had instructed at the previous CMD that the Tribunal be kept advised.
3. Mrs McLelland advised the Tribunal that the rent arrears had been completely cleared by the Respondent, although this had only been done the previous week, not around May 2024 as had been anticipated at the previous CMD. Mrs McLelland confirmed that this had always been the pattern, where the Respondent only makes contact/payment in the run-up to this Tribunal application calling again. Mrs McLelland confirmed that she had advised the relevant local authority/Housing Association that the rent arrears had now been cleared but had not yet heard anything further in response regarding the Respondent's housing application. They did not know at that stage how much longer the Respondent would be in occupation or what would happen with future rent payments. In the circumstances, the Applicant's instructions were that an eviction order still be sought. Mrs McLelland understood that an eviction order may also assist with the Respondent's application for social housing.
4. There was some further discussion regarding the background to this case and Mrs McLelland confirmed that, although the rent arrears were now cleared, the Applicant still wished to sell the Property, given his own personal circumstances and wish no longer to be a landlord, which had been further affected by the circumstances and stresses caused by this case. The Legal Member advised of the difficulties for the Tribunal being satisfied that it is reasonable to grant an eviction order based on rent arrears where those arrears had now been cleared.
5. The Tribunal decided to adjourn this application one final time, given the background circumstances and the procedure to date and confirmed that a formal Direction would be issued to parties requesting that the Tribunal be kept updated meantime. It was explained that the Tribunal was not satisfied that it was appropriate to grant an order at the CMD and that, unless there were any changes in circumstances by the next CMD, it may well be that an eviction order would be refused. The Legal Member stated that, if matters did not resolve soon, the Applicant/his representatives may wish to consider seeking legal advice as to his available options.
6. The outcome of the CMD was therefore that a further CMD would be fixed, to allow the Tribunal to be updated as to further developments meantime, for the Applicant to consider his position in respect of this application and for potential resolution.

7. Following the CMD, a CMD Note detailing the discussions which had taken place was issued to parties, together with a Direction, in the following terms:-

*“1. The **Applicant** is required to lodge any documentation to substantiate his position in relation to the eviction application, in particular, in support of the eviction ground being relied upon (rent arrears over three consecutive months); to include:-*

- An up-to-date rent statement*
 - Whether the Respondent has vacated the Property or confirmed his intention to do so*
 - Any communications from the Respondent or any social housing provider confirming that alternative accommodation has been, or will be offered, to the Respondent and the timescale/likely timescale for that.*
- 2. If he wishes to do so, the **Respondent** is required to lodge any written representations or any documentation confirming his own circumstances, his position in respect of this eviction application or his future intentions in respect of this tenancy and the timescale/likely timescale for that.*

*The documentation referred to in paragraphs 1 and 2 above should be lodged with the Tribunal Administration **as soon as possible** but no later than **14 days** prior to the further Case Management Discussion to be fixed in respect of this application.*

Reason for Direction

The Tribunal requires to be satisfied as to the reasonableness or otherwise of granting an eviction order in respect of this application with regard to the factual background, including the fact that there are no longer any rent arrears, and all relevant circumstances, including the current circumstances of both parties.”

8. A further CMD was scheduled to take place on 13 January 2025 but was postponed by the Tribunal, at the request of the Applicant. Parties were thereafter notified on 6 February 2025 of the fresh date scheduled for the CMD, Which was 10 March 2025.
9. There was no response from the Respondent to the Direction. On 25 February 2025, the Applicant’s representative emailed the Tribunal advising that the Respondent had fallen into arrears again with rent payments and that they would be seeking an eviction order at the CMD scheduled for 10 March 2024 on behalf of the Applicant. On 5 March 2025, the Applicant’s representative emailed the Tribunal again, attaching a copy of an updated Rent Statement and details of further correspondence they had sent to the Respondent during February and March 2025 in respect of the further rent arrears.

Case Management Discussion – 10 March 2025

10. The CMD took place by telephone conference call on 10 March 2025 at 10am and was attended again by Mrs Jacqueline McLelland, Manager and Ms Daryl Harper, Assistant Manager, both of Castle Residential who were representing the Applicant. The Respondent again did not attend.
11. Following introductions and introductory comments by the Legal Member, reference was made to the background to this application and the further documentation lodged recently on behalf of the Applicant. It had been noted by the Tribunal, from the updated rent statement produced that, following the previous CMD on 30 August 2025, there had been full rent payments made of £450 for the months of September, October, November and December 2024, but no payments made since. Three further months of rent arrears were now owing for January, February and March 2025, totalling £1,350.
12. Mrs McLelland confirmed that the Applicant was seeking an eviction order today. She advised the Tribunal of the up to date circumstances. There had been no communication whatsoever from the Respondent regarding the rent arrears issue. However, he had raised a maintenance issue with Castle Residential in January 2025 regarding the boiler as he had been without heating or hot water over a weekend. He notified this issue on the Monday and Ms McLelland confirmed that the matter was rectified very quickly by the Applicant who had a contractor replace the boiler a few days later, having been advised that it needed replaced. Mrs McLelland has been out at the Property numerous times over the past few months regarding the rent falling into arrears again, including around six times over the past weekend. Although the house was definitely occupied on many of these occasions, the Respondent did not answer the door to her and they have received no explanation for the non-payment. However, they did then receive a further payment from the Respondent of £600 via internet banking, which has now reduced the amount of outstanding arrears to £750. The Respondent is definitely still residing at the Property, together with his partner and they now have a baby. Mrs McLelland has not heard anything further from the relevant local authority regarding the Respondent's housing application which was discussed previously. She tried to contact the local authority last week for an update, but the person dealing with the matter was on holiday and has still not got back to her. She understands that the Respondent and his partner wished to re-locate to the Greenock area as his partner has family there but does not know if or when they intend to do this. It may be that this will only happen if an eviction order is granted by the Tribunal. She thinks that the Respondent is working as he had secured a new job a while ago. She does not know if there are any benefits in payment or awaited by the Respondent. Mrs McLelland confirmed that they have followed the 'pre-action protocol' throughout this matter, by issuing communications to the Respondent regarding the rent arrears and signposting him to support available if he is experiencing financial difficulties, etc. Reference was made to the list of emails sent to the Respondent during February and March 2025 which was lodged with the Tribunal recently on behalf of the Applicant.

13. Mrs McLelland confirmed that the Applicant still wishes an eviction order granted and she considers it is now reasonable for the Tribunal to do so, given the lengthy background, the fact that there are arrears again and the Respondent's lack of engagement with them or the Tribunal. She stated that the Applicant is in his late sixties or seventies and that he has re-located to the Ayrshire area to be nearer his daughter, following his wife passing away. The Applicant is retired, does not let out any other properties that she is aware of and definitely intends to sell the Property as soon as possible as he just wants rid of it now. He has become increasingly anxious and upset about the situation with the Respondent and finds the ongoing matter very stressful. The Respondent's rent payments are sporadic and the Applicant never knows if rent is going to be paid or not. The lack of communication from the Respondent makes matters even worse. Ms McLelland considers that the Applicant has always been patient and reasonable with the Respondent, as have Castle Residential. She mentioned that they have even previously offered the Respondent an alternative private let property from their portfolio in place of this Property, perhaps with a lower monthly rent.
14. The Tribunal Members adjourned to discuss this application in private and, on re-convening, the Legal Member confirmed that the Tribunal did not consider it reasonable, in the circumstances, to grant the eviction order sought under Ground 12 and that the application was accordingly refused. It was confirmed that the Tribunal's detailed decision would follow in writing. Mrs McLelland and Ms Harper were thanked for their attendance today and at previous CMDs.

Findings in Fact

1. The Applicant is the owner and landlord of the Property, the former joint owner (the Applicant's late wife) having died on 16 August 2022.
2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy which commenced on 7 August 2020.
3. The rent in terms of the tenancy was £450 per calendar month.
4. Rent arrears started to accrue in December 2021 and amounted to £4,150 when this application was lodged and £5,250 when the conjoined payment application was subsequently amended in September 2023.
5. During the course of this application, the arrears have reduced and had been reduced to zero by the time of the previous CMD on 30 August 2024.
6. Following the CMD on 30 August 2024, the ongoing rental payments were made for the months of September to December 2024 inclusive.
7. Rent payments were then missed in January, February and March 2025 and arrears amounting to £1,350 had accrued by 5 March 2025.

8. A payment of £600 was made by the Respondent a day or two before the CMD, reducing the outstanding balance of rent arrears to £750.
9. No explanation has been provided by the Respondent, who has failed to engage with the Applicant's letting agent in respect of the rent arrears.
10. The Respondent has not engaged in the Tribunal process, submitted any representations or attended any of the CMDs.
11. The Respondent currently remains in occupation of the Property.
12. The Respondent is understood by the Applicant's letting agent to reside at the Property with his partner and their baby, to be in employment and to have made application to a local authority for housing.
13. The pre-action protocol was duly carried out on behalf of the Applicant by his letting agents who have issued numerous communications to the Respondent and visited the Property on many occasions to seek to engage with him.
14. A Notice to Leave dated 28 July 2022 referring to Ground 12 of Schedule 3 to the 2016 Act, was served on the Respondent by email on that same date, in accordance with the terms of the tenancy agreement, at which point there had been rental arrears owing for in excess of 3 consecutive months.
15. The date specified in the Notice to Leave as the end of the notice period was 29 August 2022.
16. The Tribunal Application was received by the Tribunal on 10 January 2023.
17. The Applicant is retired, no longer wishes to be a landlord and wishes to sell the Property.
18. The rent arrears situation and the lack of engagement from the Respondent has caused anxiety and upset to the Applicant.

Reasons for Decision

1. The Respondent did not lodge written representations nor attend the CMD, or any of the previous CMDs. Despite the terms of the Tribunal's Direction dated 30 August 2024, requesting that he state his position in respect of this application to the Tribunal, he did not do so. However, the Tribunal were of the view that, having continued to occupy the Property and having cleared the significant rent arrears which had accrued and had exceeded £5,000 at one point, the Respondent presumably wished to retain possession.
2. The Tribunal was satisfied that the Notice to Leave was in correct form, served by appropriate means and gave the requisite period of notice; that these Tribunal proceedings were thereafter brought timeously, after the date specified

in the Notice to Leave; all in accordance with the terms of the tenancy agreement and the relevant provisions of the 2016 Act.

3. The Tribunal was also satisfied from the information contained in the application and supporting documentation, together with the oral submissions made at the CMD on behalf of the Applicant that all aspects of Ground 12 of Schedule 3 to the 2016 Act, as amended, had been met, all as set out below (other than the requirement in Ground 12(3)(b) that it is reasonable to grant the eviction order):-

“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.

(4)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 Ministers in regulations.

(5)For the purposes of this paragraph—

(a)references to a relevant benefit are to—

(i)a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971),

(ii)a payment on account awarded under regulation 91 of those Regulations,

(iii)universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,

(iv)sums payable by virtue of section 73 of the Education (Scotland) Act 1980,

(b)references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.

(6)Regulations under sub-paragraph (4)(b) may make provision about—

(a)information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),

(b)steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,

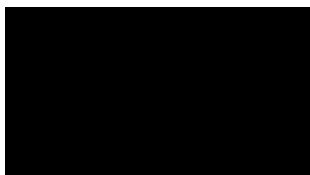
(c)such other matters as the Scottish Ministers consider appropriate.”

4. When Notice to Leave was served, there had been rent arrears for in excess of three consecutive months. Significant rent arrears were owing, which had risen to over £5,000 by September 2023. However, even before the first CMD in October 2023, the Respondent had begun to make payments to reduce the arrears, which were further reduced as the proceedings went on, eventually reducing to nil by the CMD which took place in August 2024. At that CMD, the conjoined payment application in respect of the arrears was refused. Although the Applicant had initially been amenable to continuing the eviction application in view of the reducing arrears, his position at later CMDs changed and his agent sought an eviction order on his behalf, explaining that he now wished to sell the Property and stop being a landlord. The Tribunal was satisfied that this was in part due to the Applicant's own personal circumstances but also due to the deteriorating relationship with the Respondent. The Respondent appeared to have stopped engaging with the Applicant's letting agents altogether in respect of the rent arrears and payments towards the arrears were erratic. The Tribunal accepted the position of the Applicant's agent that the Respondent seemed to make more payments just before the application was due to be considered again by the Tribunal. The Tribunal also accepted that the length of time the rent account was in arrears and that the ongoing uncertainty in respect of further payments being made was causing upset and anxiety to the Applicant, who was elderly and retired, such that he no longer wished to be a landlord at all. At the previous CMD on 30 August 2024, the Tribunal had agreed to continue the eviction application for a final time as it appeared that the Respondent, having cleared the arrears to zero, was seeking social housing elsewhere, the Applicant's agent had been in contact with the relevant local authority and it appeared that the situation may resolve.
5. Although the rent account subsequently fell into arrears again, with three months' rent not being paid in January, February and March 2025, again, further payment was made by the Respondent just before the CMD which reduced the outstanding arrears to £750, or approximately one and a half months' rent. The Tribunal considered that this was the most significant factor in terms of their reasonableness considerations and that the relatively low level of rent arrears still owing outweighed the various factors put forward on behalf of the Applicant. The sole ground for eviction being relied upon here was Ground 12, a rent arrears ground and, in the current circumstances, the Tribunal was therefore not satisfied that it was reasonable to grant the eviction order sought. Most of the rent arrears have now been cleared by the Respondent and the detriment to the Applicant's finances reduced. To that extent, this eviction application has served its original purpose. The Tribunal's view is that a fresh eviction application under a different ground would be required, should the Applicant maintain his wish to recover the Property in order to sell it.

6. The Tribunal recognises that the Respondent's lack of engagement and inconsistency in making his rental payments is frustrating to the Applicant and his letting agents. It is hoped that the Respondent will clear the remainder of the arrears in the near future, make the ongoing rental payments due and that his communication and engagement with the Applicant's letting agents will improve.
7. The decision of the Tribunal was unanimous.

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

10 March 2025
Date