



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 (“the 2016 Act”) and 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/24/3273

Re: Property at Flat 0/1 48 Kerrycroy Avenue, Toryglen, Glasgow, G42 0BH (“the Property”)

Parties:

Mrs Karen McLaughlin, 24 Newhouse Road, Toryglen, Glasgow, G42 0EB (“the Applicant”)

Ms Marion Davidson, Flat 0/1 48 Kerrycroy Avenue, Toryglen, Glasgow, G42 0BH (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Mary Lyden (Ordinary Member)

Decision (in absence of the Respondent)

Background

1. By application received on 18 July 2024, the Applicant applied to the Tribunal for an order for recovery of possession of the property in terms of Grounds 12 (rent arrears over 3 consecutive months of Schedule 3 to the 2016 Act. Supporting documentation was submitted in respect of the application, including a copy of the Notice to Leave/proof of service of same, the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003, a Rent Statement and evidence regarding the ‘pre-action protocol’.
2. Following initial procedure, on 31 October 2024, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. A Case Management Discussion (“CMD”) was fixed for 25 April 2025. The application and details of the CMD fixed were served on the Respondent by

Sheriff Officer on 10 March 2025. In terms of said notification, the Respondent was given an opportunity to lodge written representations by 28 March 2025. No representations were lodged prior to the CMD.

Case Management Discussion

4. The CMD took place by telephone conference call on 25 April 2025 at 2pm. It was attended by the Applicant, Mrs Karen McLaughlin. The Respondent did not attend. The Tribunal delayed the commencement of the CMD to allow an opportunity for the Respondent to join late but she did not do so.
5. Following introductions and introductory remarks by the Legal Member, there was discussion regarding the eviction application and the Tribunal members asked Mrs McLaughlin a number of questions. She provided the Tribunal with detailed background information in support of her application.
6. Mrs McLaughlin explained that she had purchased the Property in 2021 when her husband had passed away. Her idea was to rent it out to bring in some monthly income to support her until she received her pension. However, it has caused her nothing but hassle due to all the rent arrears which is why she decided to sell it last year. She explained that the Respondent was already living in the Property before she bought it but that she and the Respondent signed up to a new tenancy in 2021 so the Respondent has been her tenant since then. The rent payable is £600 per calendar month and the Applicant has never increased the rent. She did not take a deposit and she also paid for furniture for the Respondent as the previous owner removed all their furniture when they sold the Property to the Applicant. The Respondent's payments towards rent were always erratic. Rent would be paid for a while, but then payments would be missed or would be short. The Respondent was in receipt of benefits but would not agree to the Applicant receiving the benefits payments direct. By the time notice was served in July last year, the arrears amounted to almost £8,000 and the payments which had been due for April, May and June 2024 had been missed altogether. Mrs McLaughlin confirmed that the rent arrears now amount to £6,753 and also that the rent is now being paid regularly at the rate of £600 per month. Mrs McLaughlin thinks that the Respondent only began to pay once she knew the case was going to Tribunal. Mrs McLaughlin has now lodged a payment application with the Tribunal in relation to the rent arrears but this was fairly recent. She had thought the updated rent statement she had submitted in relation to that application would also be available to this Tribunal but the Legal member explained that this was not the case.
7. Mrs McLaughlin stated that she has not heard anything directly from the Respondent since around August last year. She issued emails to her previously regarding the rent arrears and there was discussion regarding a payment plan being entered into, but the Respondent did not stick to that. Mrs McLaughlin stated that her understanding from the Respondent was that she still lived in Barra most of the time, where her husband and two younger children lived. The previous owner of the Property had also been from Barra. However, the Respondent's eldest child, a son, had a place at a local football academy and

this was the reason that the Respondent needed a tenancy in Glasgow. Mrs McLaughlin suspects that the Respondent is still mostly in Barra and just lets her son reside in the Property on his own now, although she said that the Respondent had never admitted to this. She has only actually met the Respondent once. She thinks the son must now be about 18. Mrs McLaughlin lives close to the Property herself and thinks it is still occupied, although she commented that the garden is now looking neglected, which it did not before. Mrs McLaughlin confirmed that she actually put the Property on the market last year as she was so fed up with the rent arrears situation. The Respondent allowed some viewing to take place but a prospective sale of the Property then fell through because she refused to leave. This cost the Applicant more money in selling fees and solicitors fees, on top of the arrears. The Estate Agent who accessed the Property last year in relation to the proposed sale had reported that it was maintained in good order but no-one has been in recently. Mrs McLaughlin confirmed that she still intended to sell the Property as soon as she could, but, on her Estate Agent's advice, is waiting until it is definitely vacant before putting it on the market again.

8. The Tribunal adjourned to consider the application and, on re-convening, confirmed that the Tribunal was satisfied that the ground for eviction was met and also that it was reasonable to grant the order in all of the circumstances. There was some brief discussion regarding the issuing of the decision documentation to parties and the applicable appeal period and procedure thereafter. Mrs McLaughlin was thanked for her attendance at the CMD.

Findings in Fact

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy which commenced on 3 December 2021.
3. The rent due in respect of the tenancy was £600 per calendar month.
4. There was a background of erratic payments and rent arrears amounting to almost £8,000 had accrued by the time notice was served in July 2024.
5. No rent payments had been made since March 2024 when notice was served, although rent payments have resumed since notice was served.
6. The current arrears amount to £6,753.
7. The Applicant has sought to engage with the Respondent throughout concerning the rent arrears and issued communications to her in terms of the 'pre-action protocol'.
8. The Respondent failed to enter into a payment arrangement in respect of the arrears and has not engaged with the Applicant since in or around August 2024.

9. A Notice to Leave in proper form and giving the requisite period of notice was served on the Respondent by email on 1 July 2024.
10. The date specified in the Notice to Leave as the earliest date an eviction application could be lodged with the Tribunal was specified as 1 August 2024.
11. The Tribunal Application was submitted on 18 July 2024.
12. The Respondent, or a member of her family, is understood by the Applicant to remain in occupation.
13. The Respondent has been called upon to make payment of the rental arrears or enter into a satisfactory payment arrangement but has failed to do so.
14. The Respondent has been in arrears of rent for three or more consecutive months.
15. There is no indication that the arrears have arisen wholly or partly as a result of a failure or delay in the payment of relevant benefits.
16. The Respondent did not submit any representations nor attend the CMD.

Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation and to the oral representations made at the CMD by the Applicant.
2. The Tribunal found that the application was in order, that a Notice to Leave in proper form and giving the correct period of notice had been served on the Respondent and that the application was made timeously to the Tribunal, all in terms of the tenancy agreement and the relevant provisions of the 2016 Act. It was noted by the Tribunal that, although the correct notice period had been stated in the Notice to Leave, the application had been submitted to the Tribunal before the notice period had expired. However, the application was not first considered by a Legal Member of the Tribunal until 19 August 2024, when further information had been requested from the Applicant, by which time the notice period had expired and the application was subsequently formally accepted on 31 October 2024 on that basis. It was apparent from the correspondence submitted by the Applicant during the initial application process and her responses to the Tribunal's questions that she was not an experienced landlord and had simply been trying to progress with her application as soon as possible, given the substantial rent arrears and her wish to sell the Property quickly. The Tribunal determined that it was reasonable, in all the circumstances, for the application to have been accepted, and that it should continue to be entertained, despite initially having been lodged with the Tribunal slightly early. There had been no prejudice to the Respondent as she

had been given sufficient notice in terms of the Notice to Leave. The Tribunal determined this having regard to the terms of Section 52(4) of the 2016 Act which allows the Tribunal to entertain an application submitted early where it *“considers it reasonable to do so”*.

3. The Tribunal considered the ground of eviction relied upon in this application, namely Ground 12 and was satisfied that all requisite elements of that ground had been met. The Tribunal was satisfied that there had been continuous rent arrears for well in excess of the period of three consecutive months required in terms of Ground 12 prior to the Notice to Leave being served. Arrears had amounted to almost £8,000 when notice was served and currently still total in or around £6,753.
4. As to reasonableness, all the factors mentioned above satisfied the Tribunal that it was also reasonable to grant an order in these circumstances and to do so at this stage. The Respondent had not entered into the Tribunal process and the Tribunal therefore had no material before it either to contradict the Applicant's position nor to advance any reasonableness arguments on behalf of the Respondent. The Tribunal accordingly determined that an order for recovery of possession of the Property could properly be granted at the CMD as, in the circumstances, there was no need for an Evidential Hearing.

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.

Nicola Weir

Legal Member/Chair

25 April 2025
Date