



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations”)

Chamber Ref: FTS/HPC/CV/24/2646

Re: Property at 1/1, 17 Dyke Street, Baillieston, Glasgow, G69 6DZ (“the Property”)

Parties:

David MacGregor, Flat 3/1, 35 Montague Street, Glasgow, G4 9HU (“the Applicant”)

Mr Ross Carrie, 1/1, 17 Dyke Street, Baillieston, Glasgow, G69 6DZ (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Elaine Munroe (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment by the Respondent in the sum of £2,475 should be made in favour of the Applicant.

Background

1. By application lodged on 10 June 2024, the Applicant applied to the Tribunal for an order for payment against the Respondent. The application sought the sum of £3,325 in respect of rent arrears and interest thereon from the date of citation at the rate of 8%. Supporting documentation was submitted in respect of the application, including a copy of the tenancy agreement and a Rent Statement.
2. An application for an eviction order based on the rent arrears was lodged at the same time as this application, was conjoined and proceeded through the

Tribunal process together, until the adjourned Evidential Hearing on 29 April 2025, when the payment order was granted in the sum of £2,475. The eviction application was adjourned on 29 April 2025 to a further Evidential Hearing.

- 2 Following initial procedure, on 2 July 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 in respect of both applications.
- 3 Notification of the applications and details of the CMD fixed for 19 November 2024 was served on the Respondent by way of Sheriff Officer on 14 October 2024. In terms of said notification, the Respondent was requested to lodge any written representations by 1 November 2024. No written representations were lodged prior to the CMD.
- 4 On 7 November 2024, the Applicant's representative emailed further supporting documentation to the Tribunal, including copies of the pre-action protocol letters sent to the Respondent and an updated Rent Statement showing an increased balance of rent arrears owing of £4,750. This was circulated to the Respondent. On 18 November 2024, a further email was received from the Applicant's representative, attaching a further updated Rent Statement, showing an arrears balance now reduced to £3,975. This was circulated to the Respondent by post so was unlikely to be received by him before the CMD on the morning of 19 November 2024.

Case Management Discussion

- 5 The CMD took place by telephone conference call on 19 November 2024 at 10am and was attended by the Applicant's representative, Ms Emily McFadyen of Mellicks solicitors on behalf of the Applicant and by the Respondent, Mr Ross Carrie. After noting details of the parties' respective positions in respect of both applications, the Tribunal continued both applications to an Evidential Hearing in order that the Tribunal could be presented with further evidence and submissions in support of the parties' respective positions and to enable the Tribunal to determine the reasonableness or otherwise of granting an eviction order. As to the payment application, the Tribunal considered that it would be beneficial to allow parties to further negotiate a possible payment arrangement and to allow a further period for further payments to be monitored. Detailed CMD Notes were issued to the parties, together with a Direction, requiring the lodging of certain documentation at least 14 days prior to the Evidential Hearing. Parties were notified of the details of the Evidential Hearing by email on 13 January 2025.
- 6 On 3 February 2025, the Applicant's representative lodged an updated Rent Statement, which was circulated to the Respondent. The Respondent did not comply with the Direction and did not contact the Tribunal prior to the Evidential Hearing on 10 February 2025.

Evidential Hearing – 10 February 2025

7. An Evidential Hearing took place by telephone conference call on 10 February 2025, attended by the Applicant, Mr David MacGregor and by his representative, Ms Emily McFadyen of Mellicks solicitors. The Respondent did not attend.
8. There was discussion regarding the up-to-date position with regard to the rent arrears and it was confirmed on behalf of the Applicant that he was still seeking both a payment and an eviction order. Detailed submissions were made on behalf of the Applicant by Ms McFadyen in support of his position, including in respect of the issue of the reasonableness of an eviction order in the circumstances, and Mr MacGregor himself addressed the Tribunal. Both Ms McFadyen and Mr MacGregor answered questions from the Tribunal. It was noted that, although the Respondent had not complied with the Direction and lodged the documentation that the Tribunal had sought, nor attended the hearing today or sought a postponement, he had made further payments towards the rent arrears at the rate he had proposed at the CMD (£300 per month), in addition to paying the ongoing rental payments due. The rent arrears which had been reduced from £4,750 to £3,975 before the CMD had been further reduced to £3,375. It appeared from the updated rent statement lodged that the Respondent was making the rental payments of £475 around the start of each month, with the £300 payments around the sixteenth of each month. The most recent payment made was £475 on 3 February 2025.
9. The Applicant's position was clear. Orders were sought on the basis of the remaining high level of rent arrears; the length of time the rent arrears had been in existence; the fact that no rent payments were made at all for a seven month period during 2024; that the Respondent had not engaged with the Applicant or explained his position over a lengthy period; that the first contact made by the Respondent when he offered this payment plan was the day before the CMD; and that there has been no further contact from the Respondent since the CMD in November, either with the Applicant or the Tribunal. The particular concerns for the Applicant are that he is still paying a mortgage over this Property, the ongoing uncertainty about the Respondent's circumstances and further payments being made, and that the Respondent has not substantiated his position in any way or demonstrated that the payments which have recently been made are sustainable.
10. Following summing up by Ms McFadyen, the Tribunal adjourned to discuss the applications in detail. On re-convening, the Legal Member explained that the Tribunal had decided not to grant orders today and instead, to adjourn both applications to a further Evidential Hearing a few months hence, to allow a further period of monitoring of payments made by the Respondent and also to seek again the required documentation from the Respondent. It was explained that this decision was particularly due to the further reduction in the rent arrears owing, that the Respondent had been making the further payments that he had said he would at the CMD, and that, if payments were to continue at this rate, the arrears should be cleared within ten/eleven months. It was confirmed that the Tribunal would issue a fresh Direction, requiring the documentation sought

from the Respondent to be lodged as soon as possible and that the Tribunal would consider the issue of reasonableness afresh at the next hearing, in light of the updated payment and rent arrears situation at that time. Mr MacGregor and Ms McFadyen were thanked for their attendance and participation at the hearing.

11. Following the Evidential Hearing, detailed Hearing Notes were issued to the parties, together with a Direction, requiring the lodging of certain documentation at least 7 days prior to the Evidential Hearing. Parties were subsequently notified of the details of the adjourned Evidential Hearing, scheduled to take place on 29 April 2025 at 10am.
12. On 22 April 2025, the Applicant's representative lodged an updated Rent Statement, in accordance with the Tribunal's Direction. On 28 April 2025, the Applicant's representative lodged a further updated Rent Statement, explaining that further payments had since been made by the Respondent. The Respondent again did not comply with the Tribunal's Direction and did not contact the Tribunal prior to the adjourned Evidential Hearing on 29 April 2025.

Further Evidential Hearing – 29 April 2025

1. The adjourned Evidential Hearing took place by telephone conference call on 29 April 2025 at 10am and was attended by the Applicant, Mr David MacGregor and by his representative, Ms Emily McFadyen of Mellicks solicitors. There was also an observer present who did not participate in the hearing in any way. Again, the Tribunal delayed the commencement of the hearing for 5 minutes but the Respondent did not attend.
2. There was discussion regarding the up-to-date position with regard to the rent arrears and it was confirmed on behalf of the Applicant that he was still seeking both a payment and an eviction order. Detailed submissions were made on behalf of the Applicant by Ms McFadyen in support of his position, including in respect of the issue of the reasonableness of an eviction order in the circumstances, and Mr MacGregor himself addressed the Tribunal. Both Ms McFadyen and Mr MacGregor answered questions from the Tribunal. It was noted that, although the Respondent had not complied with the Direction and lodged the documentation that the Tribunal had sought, nor attended the hearing today nor sought a postponement, he had made further payments towards the rent arrears at the rate he had proposed at the CMD (£300 per month), in addition to paying the ongoing rental payments due. The rent arrears which had been reduced from their highest level of £4,750 to £3,975 just before the CMD and to £3,375 by the previous hearing on 10 February 2025, had now been further reduced to £2,475. The Tribunal noted from the updated rent statements lodged that the Respondent had not stuck exactly to the previous pattern of payments (£475 around the start of each month, with the £300 payments around the middle of each month) in that he had not made any payment at the start of March or April 2025, although had then made the missed payments up on 18 March 2025 when he had paid £775 and on 27 April 2025 when he had paid £775, plus the £475 due at the start of May 2025.

3. The Applicant's position was the same as previously stated in paragraph 9 above. In addition, Ms McFadyen mentioned the Inner House case of *City of Glasgow Council v Erhaiganoma [1993]* in support of her contention that, where a prima facie case for reasonableness had been made out, it is not for the Tribunal to construct a reasonableness case for the Respondent, in the absence of the Respondent doing so. She stressed the Respondent's continuing non-compliance with the Tribunal in respect of procedural requirements, compared to the Applicant who has fully complied throughout. She stated that it is about the fairness of the proceedings. Given the extensive procedural history, the Applicant would now like a line drawn under matters. It is clear to the Applicant that the Respondent is only making payments to coincide with the Tribunal proceedings and has not substantiated either his income/financial situation, nor his health/medical issues. His engagement has been minimal and last-minute throughout. He has now failed to attend twice for Evidential Hearings and the Applicant was opposed to the eviction application being further continued to monitor ongoing payments. Ms McFadyen stated that, although the Respondent has not contacted the Tribunal, he did recently contact Mr MacGregor, on 27 April 2025, when he sent him twenty messages. Mr MacGregor had not heard from the Respondent prior to this since 14 September 2024. The Respondent was very apologetic. He touched on his health issues and stated that he had not looked at the documentation from the "court stuff", meaning the documentation from the Tribunal. Ms McFadyen stated that there is a pattern of behaviour from the Respondent. He accepts the debt and, in her view, the Tribunal cannot assume he is opposing eviction as he has not confirmed his position to the Tribunal, despite being directed too. In all the circumstances, she asked the Tribunal to find it reasonable to grant the orders sought.
4. Mr MacGregor stated that this matter has been going on for some time and that the worry involved has made him reconsider being a landlord. There is a large outstanding amount of arrears. This is the only property he lets out and there is a mortgage over it. He may end up selling the property but he has to recover possession and then re-group and re-coup. He stated that the unpredictability of his tenant takes its toll on him mentally and that this should be taken into account. Mr MacGregor confirmed that the Respondent had contacted him around 7pm on Sunday evening, 27 April and sent him twenty messages in the space of a few minutes. He apologised for the stress and trouble he had caused and said he was assessed as unfit to work in November and is still looking for help with his mental health. He said that he knew he was late with his April payments but that he was putting payments through. The Respondent said that he had not looked at any of the paperwork but Mr MacGregor thinks he is obviously aware of the dates coming up, etc and this can be seen from when he makes contact or payments. Mr MacGregor stated that he had not been in the flat since last year when it was in quite a state and he thinks the Respondent was clearly not managing. He managed to get the various checks carried out last year too. Other than that, his contact was only through messages or occasionally, Mr MacGregor would go round to the property and knock the door and speak to the Respondent outside the door, rather than going inside.

5. The Tribunal adjourned to discuss both applications in detail. On re-convening, the Legal Member explained that, although the Tribunal had decided to further adjourn the eviction application to allow a further period of monitoring of the payments being made by the Respondent, the Tribunal was satisfied that it was appropriate to grant the payment order today in respect of the current outstanding balance of £2,475. It was explained that this would hopefully encourage the Respondent to maintain the payments he had been making towards the arrears regularly until the debt is cleared and to provide some reassurance to the Applicant in this regard. Ms McFadyen was asked to make submissions in respect of the interest sought at the rate of 8% from the date of citation and stated that this was a reflection of the judicial rate and her firm's practice to seek interest at that rate from the date of citation. She stated that this was, however, a matter for the Tribunal. The Legal Member confirmed that the Tribunal had discussed the matter of interest and, having regard to current bank base rates, would apply interest at 4% from the date of the order. Mr MacGregor and Ms McFadyen were thanked for their attendance at the hearing today.

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 commencing on 18 October 2021.
3. The rent in terms of the tenancy was £475 per calendar month.
4. Payments became erratic from around June 2023 and arrears accrued steadily from around August 2023.
5. The rent account has continuously been in arrears since August 2023.
6. No rent payments were received for a 9-month period from January until September 2024 inclusive, when the arrears had reached £4750.
7. This application was lodged during this period, in June 2024, when arrears amounted to £3,325.
8. Since October 2024, the Respondent has been making payments amounting to £775 per month, being the ongoing rental payment of £475 plus £300 towards the rent arrears.
9. The rent arrears have reduced and currently amount to £2,475.
10. Prior to October 2024, the Respondent had been called upon to make payment of the rent arrears or enter into and maintain a satisfactory payment arrangement but had failed to do so.

11. The Respondent attended the CMD, admitted the level of rent arrears and put forward a payment proposal which he has since adhered to.
12. The Respondent provided an explanation for the rent arrears at the CMD but has since failed to substantiate same, comply with Tribunal Directions or further engage in the Tribunal process.
13. The Respondent did not attend the Evidential Hearings on 10 February 2025 and 29 April 2025.
14. The amount due and owing to the Applicant in respect of rent arrears is £2,475.

Reasons for Decision

1. The Tribunal gave careful consideration to the background papers including the application and supporting documentation and the oral representations made by the Respondent at the CMD, the Applicant's agent at the CMD and Evidential Hearings and by the Applicant at the Evidential Hearings.
2. The Tribunal considered that there was no material before it to contradict the information from the Applicant in respect of the rent arrears and therefore no requirement to continue the application to a further Evidential Hearing. The Tribunal had regard to the terms of the tenancy agreement, the rent statements and the additional information provided orally by parties, as detailed above. The Tribunal was satisfied that, although the arrears had been substantially reduced since their highest point, the sum of £2,475 was still currently owing by the Respondent in respect of rent incurred by him during the tenancy.
3. The Tribunal concluded that, in the circumstances, an order in the sum of £2,475 sought could properly be made at the further Evidential Hearing today.
4. Having considered the interest sought in terms of the application, the Applicant's representatives submissions in this regard and current bank base rates, the Tribunal determined that it was appropriate to add interest at the rate of 4% from the date of the order.

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.

N.Weir

29 April 2025

Legal Member/Chair

Date