



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act)

Chamber Ref: FTS/HPC/EV/20/0112

Re: Property at 1R, Mitchell Road, Seafar, G67 1AF (“the Property”)

Parties:

Khanna Homes Ltd, Radleigh House, 1 Golf Road, Glasgow, G76 7HU (“the Applicant”)

Ms Janie Scott, 1R, Mitchell Road, Seafar, G67 1AF (“the Respondent”)

Tribunal Members:

Susan Christie (Legal Member) and Elizabeth Dickson (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 eviction be granted in favour of the Applicant against the Respondent.

Background

- 1 The Application under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”) was made by the Applicant, received by the Tribunal on or around 14 January 2020.
- 2 A Notice of Acceptance of Application made under Rule 9 of the Rules is dated 28 January 2020.
- 3 The Application seeks recovery of possession of the Property under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (‘the Act’) and Ground 12 to Schedule 3 to the Act.
- 4 Written responses were due to be submitted by the Respondent by 27 February 2020. None were lodged.
- 5 A Case Management Discussion (CMD) took place on 11 March 2020 at 2p.m. within Glasgow Tribunals Centre, Room 111, 20 York Street, Glasgow, G2 8GT in the absence of the Respondent. The Applicant stated that the arrears had increased. All attempts at contact with the Respondent to resolve the arrears had failed. The Respondent had help with rent payments in the

past by way of Housing Benefit or similar. The Applicant had made enquiries about such payments and had a letter which he could produce to the Tribunal to clarify what he had been told more recently. He sought an eviction order. The Tribunal required sight of the Notice submitted to the relevant local authority under section 11(3) of the Homelessness etc. (Scotland) Act 2003 and evidence of service. Some documents had been produced but the date of intimation was not obvious. The issues to be determined were

- Has section 56 of the Act been satisfied?
- Can an Order be granted under section 51 of the Act based on Ground 12?

- 6 The matter was scheduled to proceed to a Hearing on 8 April 2020. A Direction was issued to the Parties.
- 7 On 17 March 2020, the Applicant submitted documentation and a response to answer the first issue and documentation was submitted to provide the Tribunal with clarification of the Universal Credit position relating to the Respondent.
- 8 By Order of Postponement dated 19 March 2020 as part of the measures required to manage the Covid 19 outbreak, the Hearing scheduled for 8 April 2020 was postponed. A Hearing fixed for 9 July 2020 was also postponed for the same reason and re- assigned for 26 August 2020. The Tribunal wrote to both parties by letter dated 4th August to notify them of the proposed hearing. Both Parties participated by conference call then. The Respondent explained that she was not fully prepared as she had not received the letter of 4 August 2020 from the Tribunal directly and instead received a copy from the Applicant. She explained that her door had been damaged in the intervening period. The Applicant confirmed he had sent the letter to her through What's App. There had been a change in circumstances in addition. There had been a dialogue between them and since May 2020, Universal Credit had been paid directly to him to cover the base rent with a very small apportionment towards the arrears. Discussions were needed to ascertain if a formalised payment plan could be entered into to resolve the arrears. He wished to emphasise that seeking eviction was the last resort. He would be willing to give more time for the arrears to be considered and an arrangement sought and would be willing to support the tenant. The Respondent confirmed that her rent was now being paid directly and that there was a prospect of discussions. The Tribunal after a brief adjournment agreed to adjourn the hearing to a later date, having regard to the possible flaw in service/intimation and the prospect of at least the issues being focussed between the Parties. It was made clear to the Parties that if an agreement was not reached then the Tribunal would require to make a decision on the application at the next date assigned. A further Direction was issued to ensure the paperwork was updated and that the Tribunal be advised if the matter had resolved by agreement, or not.
- 9 A Hearing was scheduled for 28 October 2020 but then adjourned at the Applicant's request, there being no objections noted.
- 10 The Hearing was then scheduled for today's date. Intimation was made of the date assigned by letter dated 3 November 2020. The Respondent's copy was

noted as having been signed for on 4 November 2020 as it had been sent by tracked mail.

- 11 On 18 November 2020, the Applicant submitted a fresh rent statement, showing the rent due and the payments received. The Tribunal was also advised that the Respondent had offered to pay £50 per week towards the arrears which was done for 3 weeks then it stopped.

The Hearing- 9 December 2020

- 12 The Hearing today proceeded in the Respondent's absence as the Tribunal was satisfied intimation had been made on the Respondent timeously and had been signed for. Furthermore, the applicant confirmed that he had also emailed a copy of the notification to the tenant which she had acknowledged. In addition, the start time of the Hearing had been delayed allowing the Respondent the opportunity to participate.
- 13 The Applicant explained his position today. He had given the Respondent the opportunity to put the arrears right but unfortunately that is not what had happened, and he felt that any benefit gained had regressed and there was now no meaningful communication between them. No further payments had been made, the Respondent had not kept up the weekly payments. The bulk of the payments which had been made were from the Housing Allowance element of Universal Credit. Those payments had ended in October and when he had made enquiry when the November payment had not come into the account, he was told that the Respondent no longer had a live claim for Universal Credit. No further payments had been received directly from the Respondent. The unpaid rent balance as at today's date is £5,229.75. Given the level of arrears he was now struggling to meet the mortgage payments and the only option was to seek eviction.
- 14 A brief adjournment took place to allow the Tribunal to consider the application. The Tribunal then returned and made a decision and intimated this verbally to the applicant.

Findings in Fact

- I. The Parties entered into a Private Residential Tenancy Agreement (PRTA) with a start date of 1 September 2019.
- II. The rent due under the PRTA is £695 per calendar month payable in advance.
- III. A Notice to Leave dated 10 December 2019 was sent to the Respondent by e mail on the same date, communication to be by e mail in line with the PRTA.
- IV. The Notice to Leave relies on Ground 12 of Schedule 3 of the Act. It is in the correct format. It gave the end of the notice period as 10 January 2020. It states the rent arrears to be £1430.
- V. A Notice was submitted to the relevant local authority under section 11(3) of the Homelessness etc. (Scotland) Act 2003.
- VI. The rent outstanding as at today is £5,229.75.
- VII. The rent arrears sum owed is greater than one month's rent as at today.
- VIII. The Respondent has been in arrears of rent for a continuous period, up to and including today, of three or more consecutive months.

- IX. The arrears of rent is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

Reasons for Decision and Decision

15 The Act states that the First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in Schedule 3 applies. The Applicant relies on Ground 12 of Schedule 3 to the Act. Ground 12 states:

Rent arrears

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

(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—

(a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant—

(i) is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day, and

(ii) has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, and

(b) the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

(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 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.

(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.

- 16 A valid Notice to Leave dated 10 December 2019 was served by the Applicant on the Respondent on the same date. It relies on the Ground of rent arrears over three consecutive months and contains a list of the tent due (and the rent paid) in Part 3, with an amount owing and due at that time of £1430.
- 17 The rent outstanding as at today is £5,229.75.
- 18 The Tribunal finds that the tenant is in rent arrears of an amount greater than one month's rent as at today and she has been in rent arrears for a continuous period of three or more consecutive months.
- 19 The Tribunal is satisfied that the rent arrears is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit today. The Tribunal noted that there had been a relevant benefit in payment but that ended in October 2020 and since then no payments had been made to the rent account. The Applicant had been advised on enquiry that the Respondent did not have a live claim for Universal Payment thereafter. The Tribunal had no information from the Respondent as she had not participated or provided any update to the Tribunal.
- 20 A Notice was submitted to the relevant local authority under section 11(3) of the Homelessness etc. (Scotland) Act 2003. Section 56 of the Act been satisfied.
- 21 The Tribunal is satisfied that the eviction Ground 12 relied upon is met.
- 22 The Tribunal has no discretion as the Notice to Leave in this application was served prior to the Coronavirus (Scotland) 2020 Act coming into force and the temporary modifications made to the Act.
- 23 The Tribunal determined that the order for eviction sought by the Applicant be granted. The decision of the Tribunal is unanimous.
- 24 An Order for possession is granted.

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.



Susan Christie
Legal Member/Chair

9 December 2020
Date