



**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')**

**Chamber Ref: FTS/HPC/EV/19/0574**

**Re: Property at 0/2 32 Bankhall Street, Glasgow, G42 8JR ("the Property")**

**Parties:**

**Mr Adrian Foulds, 33 Ormonde Avenue, Glasgow, G44 3QY ("the Applicant")**

**Ms Selina Paulson, 0/2 32 Bankhall Street, Glasgow, G42 8JR ("the Respondent")**

**Tribunal Members:**

**Sarah O'Neill (Legal Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for recovery of possession should be granted in favour of the applicant.**

**Background**

An application was received on 25 February 2019 under rule 109 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 ('the 2017 rules') seeking recovery of the property under Ground 12 as set out in Schedule 3 of the 2016 Act.

The application included: the tenancy agreement between the parties; a copy of the Notice to Leave required under section 50(1) (a) of the 2016 Act dated 11 January 2019, together with proof of sending by recorded delivery and proof of delivery dated 12 January 2019; and a rent statement dated 7 February 2019, showing the rent due as at that date to be £1300.

A case management discussion (CMD) was held on 23 April 2019. The applicant and Ms Mo Daniels, the respondent's representative, were in attendance. Ms Daniels asked for a short adjournment on behalf of the respondent, who was unable

to attend, as she had recently started a new job and had been unable to secure time off work. The tribunal adjourned the CMD until 22 May 2019, to allow the respondent to attend personally.

### **The case management discussion**

The postponed case management discussion was held on 22 May 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. The applicant was present and represented himself. The respondent was not present, but was represented by Ms Mo Daniels. Ms Daniels explained that the respondent was unwell and was unable to attend due to health problems, having recently been discharged from hospital. She had brought with her a letter from the respondent, in which the respondent said that she was happy for the CMD to go ahead without her presence as long as the eviction process had been served and filed correctly by the landlord in accordance with the law.

The letter stated that she had been admitted to hospital on 26 April, and Ms Daniels produced paperwork from the hospital which confirmed this. The letter said that she was currently recuperating at home, that her mobility was currently restricted; and she had been advised by her doctor to stay at home for a further 3-4 weeks. She said that she had made a new offer of repayment to the landlord of £200 per month towards the arrears, and had asked for her sister, who was living with her, to be added to the tenancy agreement.

Ms Daniels said that the respondent had only been in her new job for 12 days before she was taken ill, and was currently receiving statutory sick pay from her employer. Prior to starting the job, she had been in receipt of universal credit, but had not received the housing element due to a difficulty with her tenancy agreement.

The applicant produced an email dated 1 May 2019, which he had sent to the respondent, asking her to provide further details as to the difficulties which she had with her tenancy agreement in relation to universal credit. He said he had received no response. He said that he did not wish to add the applicant's sister to the tenancy agreement, as the property was small and had only one bedroom, and he believed it was only suitable for one person or a couple. He believed her sister had been living in the flat since summer 2018.

He also produced an updated rent statement dated 7 May 2019, together with proof of delivery to the respondent dated 10 May 2019. This showed that the applicant had been in rent arrears continuously since August 2018. No rent had been paid at all between January and March 2019. Two payments of £200 each had been paid on 15 April and 30 April 2019. The outstanding arrears as at 30 April 2019 were £1700.

The applicant asked the tribunal to grant an order for recovery of possession. He said that the respondent had agreed to repayment plans previously, but had not kept to these.

Ms Daniels said that the respondent admitted that she owed the £1700 arrears. She said that the respondent was not seeking to postpone matters further.

## Findings in Fact

The tribunal made the following findings in fact:

- The applicant is the owner of the property.
- There was a private residential tenancy in place between the applicant and the respondent. The tenancy commenced on 5 December 2017.
- The monthly rent payable in terms of the current tenancy agreement was £400 per month.
- As the only eviction ground stated in the notice to leave was ground 12, the relevant period was 28 days in terms of section 54(2) (b) of the 2016 Act. The notice to leave was dated 11 January 2019, and had been received by the respondent on 12 January 2019. The notice stated that an application for an eviction order would not be submitted to the tribunal before 14 February 2019.
- The respondent owed rent arrears of £1700 as at the date of the CMD, and had been in rent arrears continuously since August 2018.

## Reasons for Decision

The tribunal was satisfied that the notice to leave had been validly served on the respondent in terms of the 2016 Act.

Ground 12 as set out in Schedule 3 of the 2016 Act states:

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

The tribunal is satisfied on the evidence before it that the requirements for ground 12 are established. The respondent accepted that she owed £1700 in rent arrears, and

it was clear from the rent statement that she had been in continuous arrears for longer than three consecutive months.

The tribunal then considered whether the respondent's arrears of rent were wholly or partly a consequence of a delay or failure in the payment of a universal benefit, in terms of ground 12 (2) (b). The paperwork which Ms Daniels provided to the tribunal at the CMD indicated that the respondent had been in receipt of universal credit between December 2018 and March 2019, prior to starting her job. There was no evidence from this that there had been any delay or failure in the payment of her benefits. While the respondent said that there had been difficulties with the housing element due to difficulties with her tenancy agreement, there was no further evidence before the tribunal about this, and Ms Daniels could provide no further information about this. She indicated that the respondent did not wish to argue that the arrears had been due to difficulties with universal credit.

The tribunal also noted that the respondent has been in arrears both prior to the time when she appeared to have been in receipt of universal credit and after this time. On the basis of the evidence before it, the tribunal was satisfied that the arrears were not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

The tribunal is therefore required to grant an order for possession under section 51 and ground 12 in Schedule 3 of the 2016 Act.

### **Decision**

The tribunal grants an order in favour of the applicant against the respondent for recovery of possession of the property.

### **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.**

**Sarah O'Neill**

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Legal Member/Chair

22/5/19  
\_\_\_\_\_  
Date