

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 Section 51 and Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/EV/19/3740

Re: Property at Flat 2/2, 41 Balcurvie Road, Glasgow, G34 9QL (“the Property”)

Parties:

Mrs Kim Campbell, 29 Mary Slessor Wynd, Glasgow, G73 5RJ (“the Applicant”)

Mrs Simone Wolda, Contempo Property, Mirren Court, 139 Springfield Park, Johnston, PA5 8JT (“the Applicant’s Representative”)

Mr Michael Warburton, Flat 2/2, 41 Balcurvie Road, Glasgow, G34 9QL (“the Respondent”)

Tribunal Members:

Susanne L. M. Tanner Q.C. (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) was satisfied that Ground 12 in Schedule 3, Part 3 to the 2016 Act was established by the Applicant, in that on the day the tribunal considered the application for an eviction on its merits the Respondent was in rent arrears greater than one months’ rent and had been in arrears of rent for a continuous period of more than three consecutive months up to and including that day; that rent arrears were not wholly or partly a consequence of a delay or failure in payment of a relevant benefit or universal credit; and made an order for eviction in terms of Section 51 of the 2016 Act.

Reasons

1. Procedural Background

- 1.1. The Applicant's Representative made an application to the tribunal on 21 November 2019 in terms of 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 (Rules of Procedure) Regulations 2017 ("the 2017 Rules").
- 1.2. The Applicant seeks the Respondent's eviction from the Property in terms of Section 51 of the 2016 Act under Ground 12 of Schedule 3 to the 1988 Act.
- 1.3. The Applicant lodged with the Application:
 - 1.3.1. Copy Private Residential Tenancy dated 22 December 2017;
 - 1.3.2. A copy rent statement dated 10 October 2019;
 - 1.3.3. A Notice to Leave dated 11 October 2019;
 - 1.3.4. Section 11 notice sent to the local authority;
- 1.4. On 25 November 2019 the Application was considered by a legal member acting under the delegated powers of the President. The tribunal requested further information from the Applicant by 2 December 2019 to enable the application to be considered further, namely: (i) Evidence that the notice to leave was given to the Respondent as required under Section 52(3) of the 2016 Act; and (ii) evidence that the notice to the local authority under section 56(1) of the 2016 Act has been served on the local authority.
- 1.5. On 28 November 2019 the Applicant provided (i) proof of service of the Notice to leave by email on 11 October 2019 to the Respondent's email address in the PRT agreement; and (ii) proof of service of the Section 11 Notice.
- 1.6. On 3 December 2019, the tribunal's administration obtained the title sheet for the Property (GLA711111) which shows that the Applicant is the registered proprietor.
- 1.7. On 11 December 2019, the Application was accepted for determination by a tribunal. Both parties were notified by letters dated 24 December 2019 of the date, time and place of Case Management Discussion ("CMD") in relation to the Application on 28 January 2020 at 1000h in Glasgow Tribunals Centre, Room 108, 20 York Street, Glasgow. The Respondent was invited to make written

representations in response to the Application by 14 January 2020. All parties were advised that they were required to attend the CMD. The parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application which may involve making or refusing an eviction order. The parties were also advised that if they do not attend the CMD this will not stop a decision or order being made if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair.

1.8. The Application documents and notification of CMD were served on the Applicant by Sheriff Officers on 30 December 2019.

1.9. The Respondent did not submit any representations or make any contact with the tribunal.

2. CMD: 28 January 2020 at 1000h at Glasgow Tribunals Centre, 20 York Street, Glasgow, G2 8GT

2.1. The Applicant, Mrs Campbell, attended the CMD with Mrs Simone Wolda from the Applicant's Representative.

2.2. The Respondent, Mr Warburton, did not attend the CMD and made no contact with the tribunal's administration or venue. The tribunal waited until 10.20h to commence the CMD. The CMD commenced in the absence of the Respondent in terms of Rule 29 of the 2017 Rules.

2.3. The tribunal Chair explained the purpose of the CMD in terms of Rule 17 of the 2017 rules, namely to explore how the parties' dispute may be most efficiently resolved.

2.4. Applicant's Representative's submissions

2.4.1. Ms Wolda referred to the Private Residential Tenancy agreement between the parties (with a guarantor) which provided for rent to be paid at the rate of £395.00 per calendar month on 24th of each month. The start date of the tenancy was 24 December 2017.

2.5. Respondent's late arrival at CMD

2.5.1. At 1025h the Respondent arrived at the tribunal centre. The Respondent apologised for being late, stating that he had been working overnight until 0800h and had gone home for a cup of tea. He had then had difficulties

finding the tribunal centre and finding a parking space. The tribunal chair again explained the purpose of the CMD for the benefit of the Respondent.

2.6. Applicant's Representative's submissions continued

2.6.1. Ms Wolda lodged an updated rent statement to 24 January 2020 (R1). Referring to the statement she showed the rent due over the period of the tenancy and the payments made by the Respondent. The rent arrears at the time of service of the Notice to Leave were £1904.00, which is in excess of three months' rent arrears. The rent arrears at the date of the CMD on 28 January 2020 are £3084.00.

2.6.2. Ms Wolda lodged a document with a What's App thread of conversations with her husband Stefan Wolda, a Director at the Applicant's Representative and the Respondent (R2). She also lodged logs of a selection of phone calls between the Applicant's Representative and the Respondent (R3). She stated that despite repeated assurances from the Respondent about payment of the arrears as well as ongoing rent, for the most part he had not adhered to his agreement to make payments, the only payments being the ones shown on the rental statement. She referred to the guarantor named on the PRT agreement and stated that there had been communication with them. She stated that the guarantor has not made any payments on his behalf and has made it quite clear that they do not intend to make any payments.

2.6.3. She stated on 15 November 2019, she had an in-depth telephone conversation with the Respondent (recorded on R3) about the situation, which included a discussion about paying arrears and rent as well as the possibility of him applying for benefits. She stated that he told her that he was waiting for compensation and was hoping that he would start to be able to pay some money to bring down the arrears to appease the tribunal as he knew that an application for eviction was being made. She stated that, in fact, since the call on 15 November 2019 the only payment has been £76 and nothing has been paid on 24 Nov, 24 December and 24 January.

2.6.4. She asked the tribunal to make an eviction order on the basis that the current arrears balance is £3084.00 which is at least one month's rent and that he has been in continuous arrears for over three months. She stated that a valid Notice to Leave had been sent and submitted that the tribunal should issue an eviction order today on the basis that the test in ground 12 has been met.

2.6.5. Separately, the Applicant stated that she has completed a Form F to submit to claim the rent arrears and that she intended to submit it to the tribunal's offices today. The tribunal chair advised the Applicant that the Application would be processed in the normal way by the tribunal's administration and then considered by the President or a legal member with delegated powers to consider whether the mandatory requirements for lodging have been met.

2.7. Respondent's submissions

2.7.1. The Respondent stated that he does not have a representative he had taken advice from someone at Govanhill Law Centre after he received the Application and that they had advised him that they cannot take the case because there is not a defence. He stated that they had advised him to attend the CMD to listen to what was being said.

2.7.2. The tribunal chair asked whether he disputed any of the figures on the rent arrears statement. The Respondent accepted that all of the figures are correct including the present arrears balance of £3084.00 and the fact that he has been in arrears of rent for over three consecutive months.

2.7.3. He stated that he has no defence but that he had matters he wished to raise. He stated that he had studied accountancy at West of Scotland University but could not get a job in accountancy. He stated that he is fighting to make ends meet. He stated that in 2017 he went back to University to do a Masters. The University gave him a bursary which he used to pay his house rent. He stated that he wants to work in accountancy but that at the moment he is working as a carer via an agency, having previously worked as a labourer via an agency. He had a period of time out of work for two months due to an injury to one of his hands. He stated that he had spoken to Stefan at the Letting Agency, admitted the arrears but requested more time to pay those.

2.7.4. He stated that he is not in a position to pay off the rent arrears but that he could do so in three months were he permitted time to do so.

2.7.5. He stated that the guarantor is a friend and that he has not spoken to her about the eviction application or the rent arrears.

2.7.6. He asked the tribunal not to make the eviction order. The tribunal chair took some time to explain the Ground under which eviction was being sought and the requirements which had to be met by the Applicant.

2.8. Applicant's Representative's Response

2.9. Mrs Wolda stated that her husband had gone to see the Respondent at the Property last week and that the Respondent had stated that he did not know how he would pay the rent let alone the arrears.

2.10. The Applicant did not wish to continue the matter to allow any further time for payment, given the failures to clear the balance to date, and wished the tribunal to consider making an order for eviction today.

3. The tribunal makes the following findings-in-fact:

3.1. There is a Private Residential Tenancy between the Applicant and the Respondent for the Property dated 22 December 2017.

3.2. The start date for the tenancy was 24 December 2017.

3.3. The rent payable is £395.00 per calendar month payable monthly in advance on the date of entry and thereafter on or before 24th of each month.

3.4. The rent has remained at £395.00 per calendar month from 24 December 2017 to 24 January 2020.

3.5. The Notice to Leave which was served on the Respondent includes notice that the ground upon which eviction is sought is Ground 12 of Schedule 3 of the 2016 Act.

3.6. At the time of service of the Notice to Leave there had been rent arrears for at least three months and the rent arrears as at 10 October 2019 were £1904.00 which is in excess of one month's rent.

3.7. As at 28 January there have been rent arrears over a period in excess of three months.

3.8. As at 28 January there are rent arrears of £3084.00, which is in excess of one month's rent.

3.9. The rent arrears are not a consequence of delay or failure in payment to the Respondent of relevant benefits.

4. Reasons

4.1. Because the tribunal was satisfied that there were at least one month's rent arrears as at the date of the CMD on 28 January 2020 and that there had been arrears for a continuous period of three months up to the date of the CMD, the

tribunal had to find that Ground 12 applied. The tribunal therefore issued an eviction order in terms of Section 51 of the 2016 Act.

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.

28 January 2020

**Susanne L. M. Tanner Q.C.
Legal Member/Chair**