



**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**

**Chamber Ref: FTS/HPC/EV/23/0325**

**Re: Property at Flat 0/1, 109 Bowman Street, Glasgow, G42 8LE (“the Property”)**

**Parties:**

**Sultan Mahmood, 15 Park Manor Avenue, Glasgow, G53 7ZD (“the Applicant”)**

**Rozalia Teglas, Flat 0/1, 109 Bowman Street, Glasgow, G42 8LE (“the Respondent”)**

**Tribunal Members:**

**Joel Conn (Legal Member) and Gerard Darroch (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted against the Respondent.**

**Background**

1. This is an application by the Applicant for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”). The PRT in question was by the Applicant to the Respondent commencing on 12 December 2019.
2. The application was dated 31 January 2023 and lodged with the Tribunal on 2 February 2023. This makes the application subject to the *Cost of Living (Tenant Protection) (Scotland) Act 2022*, but as Ground 12A was relied upon (as shall be referred to further below) no additional considerations under the 2022 Act arose.
3. The application relied upon a Notice to Leave dated 8 November 2022 (though it seems to have been post-dated) in terms of section 50 of the *Private Housing (Tenancies) (Scotland) Act 2016*, intimated upon the Respondent by “recorded delivery” on 7 November 2022 and signed for on 9 November 2022. (The Tenancy Agreement made no specific nomination as to methods of service in

clause 4, and thus a plain reading was that all methods of service, including recorded delivery post, were accepted by the parties.) The Notice relied upon Ground 12A of Schedule 3 Part 1 of the 2016 Act, being that “You have substantial rent arrears (equivalent to 6 months’ worth of rent)”. In regard to Ground 12A, the body of the notice referred to arrears of “currently £4,950, representing 9 months worth of arrears” (*sic*). The application papers also provided rent statements showing these arrears (being missed payments from 12 December 2021 to 12 September 2022, less a single payment of £550 on 14 January 2022); as well as a further four months of arrears, taking the arrears at the time of raising of application to £7,150. The rent stated in the Tenancy Agreement lodged was £550 a month, meaning the arrears as at the date of the Notice to Leave was 9 months of arrears and 13 months by the date of the application. The Notice intimated that an application to the Tribunal would not be made before 9 December 2022.

4. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon Glasgow City Council on 27 January 2023 was provided with the application. Evidence of the Applicant’s agent providing pre-action protocol information to the Respondent by letter on 25 January 2023 was further provided in the application papers.

### **The Hearing**

5. The matter called for a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 11 May 2023 at 10:00. We were addressed by the Applicant’s solicitor, Joanna Hogg of Stodarts. The Applicant’s son was also on the call but spoke only briefly to clarify information on the size of the Property. The Respondent did not attend but was represented by Lyndsey McBride, Welfare Rights/ Legal Caseworker, Govanhill Law Centre.
6. On 19 April 2023, the Applicant lodged an Inventory including a further updated rent statement, showing the arrears now to be £10,450 (as no further payments had been made since the payment of 14 January 2022). This was accompanied by a motion to amend the sum sought in a conjoined application for an order for arrears (CV/23/0327).
7. Shortly prior to the CMD written submissions and photographs were lodged by the Respondent’s agent. The Applicant then lodged two further Inventories and written submissions addressing some of the matters raised. The submissions addressed issues that crossed both this application and the CV application.
8. At the CMD, the Applicant’s agent confirmed that the application for eviction was still insisted upon on the basis of the arrears of £10,450. The Respondent’s agent accepted that no payments had been made since January 2022 and, in line with her written submissions, gave the following explanation:
  - a. The Respondent had always paid rent in cash at the office of the Applicant’s then letting agent (GPS).
  - b. There had been wants of repairs at the Property all in the kitchen/ living room (exposed pipes in the kitchen area; a hole in the floor in the kitchen

area; and general poor condition of the kitchen and the flooring in the room).  
In regard to these:

- i. There was a photograph lodged of pipes, and a disconnected pipe, but the Respondent's agent was not aware of the details of the issues. The Respondent did regard the pipes as a Repairing Standards issue, and not merely cosmetic.
  - ii. There was a photograph lodged of a hole in the floor, but the Respondent's agent was not aware of the details of the problem.
  - iii. The Respondent did regard the condition of the room as a Repairing Standards issue, and not merely cosmetic. In regard to flooring, she knew that there was a vermin issue in the area, and filling up any holes and gaps could mitigate against this.
  - iv. There had been a carpet replaced in a bedroom, but the Respondent's agent did not have information as to this being a want of repair, so did not include it in the defence.
- c. In November 2021, the Respondent had asked the Applicant's letting agents to address the repairs issues.
  - d. Someone from GPS attended at the Property at some point between November 2021 and February 2022. No work was done.
  - e. In February 2022, the Respondent attended at GPS's office again and asked about the works. She said that the letting agent was "very rude" to her, told her that they would no longer accept payments of rent from her, and that they would not do the repairs.
  - f. She returned to GPS's office on a number of occasions thereafter, asking for the work to be done and for payment details, but received no further information.
  - g. She received a Notice to Leave (which was not then advanced) which sought to bring the Tenancy to the end on the basis of a family member needing to move into the Property.
  - h. Due to the Applicant not carrying out the work, she instructed the work herself and incurred around £3,500 in costs which she intended to set off against rent.
  - i. In March 2023, she was provided with new bank details to pay the Applicant direct. She had not yet made any payments however.
  - j. The Respondent did not hold funds to pay the historic rent unpaid since February 2022. The Respondent had offered to repay the arrears by £200/month (which would take a number of years to clear) but the Applicant had not accepted this.
  - k. The Respondent's failure to pay was not due to any financial or benefits issue.
  - l. The Respondent had not initially retained rent due to the repairs issues, though did now wish to set off the costs incurred against rent.
9. The Applicant's agent disputed much of the above:
- a. The Respondent had paid rent in cash at the office of the Applicant's then letting agent (GPS). Payment by bank transfer had been requested of her but she had not set this up.
  - b. There had been persistent issues with late payment of rent. (The rent statements lodged showed irregular payments for times in late 2019 and during 2020.)

- c. The Respondent did attend at GPS's office in February 2022 (with her partner) but it was the Respondent who was rude to the letting agents, saying "so what if she pays late", and that she was now not going to pay rent, before walking out.
  - d. There was no mention to the Respondent that payment details were changing and, conversely, demand letters were issued to the Respondent by GPS on 12 March, 15 April and 13 July 2022 all asking her to make contact to arrange payment of arrears.
  - e. Following the issuing to the Respondent of the pre-action requirement letter by Stodarts on 25 January 2023, the Respondent called to speak with the Applicant's agent on two occasions. One of these calls was a call from the Respondent, with the assistance of a friend "David" as interpreter, on 7 February 2023.
  - f. It was in one of the calls to Stodarts that the Applicant first received mention from the Respondent of any repairs issues. During this call, the Respondent said she had incurred around £2,000 on repairs work. The Applicant's agent stressed that the Respondent had moved into the Property in 2019, so even on her own submissions, she made no mention of any wants of repair for two years.
  - g. It was in one of the calls to Stodarts that, for the first time, alternative payments details were provided, being the Applicant's own bank account. (The Applicant's agent did not appear to dispute that this occurred during March 2023 as the Respondent's agent submitted.)
  - h. Following the meeting in February 2022, inspection visits to the Property had ceased due to the Respondent's behaviour towards the letting agents (though what was meant by this "behaviour" was not made clear to us, nor was it clear whether the letting agents claimed to have scheduled visits and been refused entry).
  - i. The Applicant accepted that a previous Notice to Leave did seek to bring the Tenancy to the end on the basis of a family member needing to move into the Property. An application for eviction was lodged in regard to that Notice but refused due to insufficient documentation being lodged.
  - j. No payments had been made to the Landlord's bank details since March 2023.
  - k. The Respondent's offer of payment against the arrears was not acceptable but, in any case, due to the Respondent's conduct and payment history, the Applicant sought eviction notwithstanding any payment plans that may be made.
  - l. No information on why the works were necessary, nor the full nature of the work, had ever been received, and the Applicant reserved his position on whether he was liable for the repairs at all.
10. In reply to the Applicant's submissions, the Respondent's agent stated that she wished a continuation to take further instructions as she had been unaware of any calls between the Respondent and Stodarts, and further needed to take instructions on the demand letters of March to July 2022. The Respondent's agent stated that there was a language difficulty in taking instructions, and she would need to arrange an interpreter and a further meeting to take instructions from the Respondent in greater detail. In regard to the criticisms of the vouching for the work, she said that she had asked for vouching but the Respondent had

said it had been “cash in hand” work, such as to a friend who laid flooring (who was pictured in one of the photographs laying new flooring); that no receipts or invoices were retained; and all payments were through bank accounts that she and her partner no longer had open.

11. In regard to matters on which parties were agreed, or did not materially disagree:
  - a. The Respondent lived at the Property with her partner and children. (The Respondent’s agent understood that there were four children aged 3, 11, 13 and 17.)
  - b. The Property is a two-bedroom ground floor tenement flat.
  - c. There was no special adaptation of the Property, nor any reason for the Property being especially suitable for the Respondent.
  
12. We pressed the Respondent’s agent to confirm that it was accepted that arrears were currently £10,450, subject to any valid deduction for repairs. She confirmed this was the case. She thus further accepted that, even with the full deduction sought, arrears were in excess of 12 months of arrears and that the Respondent was not in a position to make payment of those arrears immediately. Further, it was accepted that, apart from the £3,500, the Respondent claimed to have withheld payment only due to a lack of payment details but that she had now held payment details for the Applicant himself (and had since March 2023) without making any payment. On that last point, the Respondent’s agent said that she thought the Respondent still lacked an understanding why she was no longer to pay the letting agent and she hoped that a further discussion with her may result in payments being made, and perhaps an improved payment proposal. The Respondent’s agent accepted, however, that any improved payment proposal would still be a monthly payment against arrears which could take years to repay the current arrears. The Respondent’s agent thus accepted that – subject to the £3,500 claim on repairs – there were arrears and that they exceeded 12 months, and so Ground 12A was made out, subject to any question of reasonableness. As for reasonableness, the main reasonableness argument was that there was an extended period where payments were refused, that this was why arrears had developed, and that payment proposals were now being made to clear the arrears.
  
13. In regard to further procedure, the Applicant sought eviction but, if there was a continuation, it should be to a continued case management discussion as the only material issue for clarification was whether the Respondent accepted that the demand letters of March to July 2022 were issued and that did not require probation. The Respondent sought a continuation to a continued case management discussion to take instructions.
  
14. No motion was made for expenses.

### **Findings in Fact**

15. On 12 December 2019 the Applicant let the Property as a Private Residential Tenancy to the Respondent under a lease with commencement on 12 December 2019 (“the Tenancy”).

16. In terms of clause 8 of the Tenancy Agreement, the Respondent required to pay rent of £550 a month in advance on the 12<sup>th</sup> day of each month.
17. On or about 7 November 2022, the Applicant's agent drafted a Notice to Leave in correct form addressed to the Respondent, providing the Respondent with notice, amongst other matters, that she was in rent arrears for a period in excess of six months and detailing arrears at that date of £4,950.
18. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior to 9 December 2022.
19. The Applicant's agent served a copy of the Notice to Leave on the Respondent by "recorded delivery" post on 8 November 2022.
20. The Applicant raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 12A of Schedule 3 Part 1 of the 2016 Act.
21. As at the date of the Notice to Leave, there were nine months of rent arrears.
22. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon Glasgow City Council on the Applicant's behalf on 27 January 2023.
23. The Applicant's agent provided the Respondent with suitable pre-action protocol information by letter on 25 January 2023.
24. As of 11 May 2023, the Respondent remained in arrears of rent in the amount of £10,450 which is equivalent of nineteen months of rent.
25. The Respondent does not claim to have paid any amount of the arrears of £10,450 remaining as at 11 May 2023 but does seek to prove (in conjoined proceedings) that she is entitled to apply £3,500 of repairs costs against outstanding arrears.
26. The sum of arrears remaining as of 11 May 2023 is neither wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, other than any referable to an act or omission of the Respondent.
27. The Respondent has held payment details to pay arrears to the Applicant or his agents since at least in or around March 2023 but has not made any payment of rent since 14 January 2022.
28. On 5 April 2023, the Tribunal intimated to the Respondent the date and time of the CMD of 20 March 2023 by Sheriff Officer.
29. The Respondent resides at the Property with her partner and children.

30. The Property is not specially adapted with the use of the Respondent or any dependent.
31. The Property is a two-bedroom ground floor tenement flat. Its nature or location is not especially suitable to the Respondent for accessing any source of support or care.

### **Reasons for Decision**

32. We declined to delay consideration of the application for the Respondent to take instructions on the demand letters. Even if, after taking instructions, the Respondent was to maintain her position that she was told not to pay to GPS, and was only told in March 2023 to pay to the Applicant direct, she has not made any such payment. Thus, there would remain substantial arrears which need considered. In the absence of any suggestion that the arrears can be cleared in full in early course, a further delay to consider historic administrative questions, such as to where payment had been directed to be made, is not merited in an eviction application. We did not discern any other issue on which the disputed facts required evidence before we made a decision. Taking the Respondent's position at its highest, we were satisfied that a decision could be made at the CMD.
33. The application was in terms of rule 109, being an order for eviction from a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been correctly drafted and served upon the Respondent.
34. Ground 12A of the said Schedule applies if:
  - (1) *It is an eviction ground that the tenant has substantial rent arrears.*
  - (2) *The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—*
    - (a) *the tenant has accrued rent arrears under the tenancy in respect of one or more periods,*
    - (b) *the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy when notice to leave is given to the tenant on this ground in accordance with section 52(3), and*
    - (c) *the Tribunal is satisfied that it is reasonable to issue an eviction order.*
  - (3) *In deciding under sub-paragraph (2) whether it is reasonable to issue an eviction order, the Tribunal is to consider—*
    - (a) *whether the tenant being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit,*
    - (b) *the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers under paragraph 12(4)(b) (and continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022).*

(4) *For the purpose of this paragraph—*

*(a) references to a relevant benefit are to—*

*(i) a rent allowance or rent rebate under the Housing Benefit Regulations 2006 (S.I. 2006/213),*

*(ii) a payment on account awarded under regulation 93 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.*

35. We were satisfied that there was evidence of the pre-action protocol being complied with. The arrears information provided at the CMD clearly showed that Ground 12A was satisfied in regard to the length of arrears and amount outstanding. The Respondent's agent accepted that that Respondent's failure to pay was not related to an issue with benefits. Even providing full credit for the alleged repairs (on which claim we reserve our view, as it continues to be considered in the conjoined application), there were substantial arrears equivalent to over 12 months. Ground 12A was thus satisfied, subject to a consideration of reasonableness, and the Respondent's agent properly conceded this point.
36. In considering the reasonableness of the application, even in regard to such substantial arrears, we were satisfied that the Applicant's reasons for seeking eviction were reasonable given the amount and duration of the arrears. Even if the Respondent was entirely correct in her version of events (on which we formally reserve our view), it does not excuse continued failure to pay now that she accepts she has payment details. The Respondent has, for her own reasons, not retained money to pay rent and now seeks to reschedule payments over a protracted period of time. This may be the basis for a Time to Pay motion in the conjoined case but it is only relevant in this application as to reasonableness. We do not think it is reasonable given the length of time suggested for payment of the arrears.
37. The Respondent's agent did not make any submissions on reasonableness regarding the Respondent's home circumstances though we have considered them ourselves. We are naturally reticent to see a family evicted but with such substantial arrears, and no likelihood of payment in early course, we do regard it as reasonable to grant eviction.
38. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time under Ground 12A.

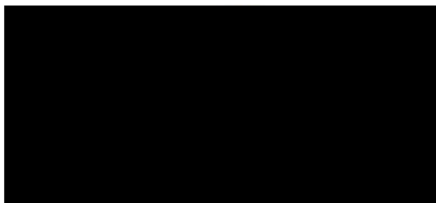


## Decision

39. In all the circumstances, we grant an order against the Respondent for eviction from the Property under section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* further to ground 12A of Schedule 3 of that 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.



11 May 2023

Legal Member/Chair

Date