



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

Chamber Ref: FTS/HPC/EV/22/4121

Re: Property at 71 Fotheringay Road, Pollokshields, Glasgow, G41 4LQ (“the Property”)

Parties:

Mrs June Wilkinson, 1 Maidstone Close, Leigh, Lancashire, WN7 5TE (“the Applicant”)

Mr Naweed Nasir, 71 Fotheringay Road, Pollokshields, Glasgow, G41 4LQ (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Frances Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for an eviction order should be refused.

Background

1. The Applicant seeks an eviction order in terms of Section 51 of the 2016 Act. A tenancy agreement, Notice to leave with Royal Mail track and trace report and rent statement were lodged in support of the application.
2. A copy of the application was served on the Respondent by Sheriff Officer. Both parties were notified that a case management discussion (“CMD”) would take place by telephone conference call on 27 March 2023 at 2pm.
3. The Respondent requested a postponement of the CMD, stating that he could not use a screen because of a problem with his eye. He indicated that he was awaiting treatment. A letter from his doctor was lodged in support of the request.

This stated that he is awaiting a procedure but will have permanently reduced vision in his left eye. However, he has good vision in his right eye. The Tribunal noted that the CMD was taking place by conference call and refused the request. Two days before the date of the CMD both parties sent emails to the Tribunal stating that the Respondent had repaid the arrears and that the rent account is now up to date.

4. The CMD took place at 2pm on 27 March 2023. Both parties participated.

The CMD

5. Mrs Wilkinson told the Tribunal that she is still seeking an eviction order due to the length of time that the Respondent was in arrears. The Tribunal noted that the rent account had not been updated prior to the CMD. Ms Wilkinson said that the instalment due on 1 November 2022 had not been paid. On 12 December 2022, the November and December payments were made. This reduced the arrears to £2350. The January 2023 instalment was paid on 13 January and the February instalment on 28 February. The March payment and the remaining arrears were paid on Saturday 25 March 2023. Mr Nasir confirmed that this information is accurate, as is the rent statement lodged with the application which the Legal Member summarised for him, noting that he had told the Tribunal that he could not comment on the application paperwork due to his eye condition.
6. In response to questions from the Tribunal, Mrs Wilkinson told the Tribunal that she believes that an eviction order is reasonable. The rent account had been in arrears for a long time and last year several payments in a row were missed. She had sent letters to the Respondent but he had never replied. Even though the account is now up to date, she is concerned that further arrears will accrue. She stated that the Respondent has never paid his rent on time. The property was previously managed by a letting agent. When she decided to manage it herself she made it clear to Mr Nasir that the rent had to be paid on time at the beginning of the month, as specified in the tenancy agreement. The erratic payments and the arrears have caused her anxiety. She has ongoing maintenance costs at the property and recently put in a new bathroom. The lack of rental income makes this difficult. However, she does not have a mortgage over the property and works full time, so the arrears have not resulted in financial hardship. This is her only rental property.
7. Mr Nasir told the Tribunal that he had hoped that repaying the arrears would have brought the eviction application to an end. He stated that he has gone through some difficult times since the start of the pandemic. He suffered three close family bereavements in a short period of time and is currently struggling because of his eye condition. In response to questions about his income, Mr Nasir said that he owns two coffee shops and gets royalties from his licensed coffee brand. His business does not always do well, and his income fluctuates. He resides at the property, which has three bedrooms, with his wife and 4 children all aged 15. His wife does not work outside the home and looks after

the family full time. One of the children is disabled and requires a ground floor home. The children attend a local school which is within walking distance. He is willing to set up a direct debit for the future, although the first of the month does not always suit as his income is irregular. In response to further questions, Mr Nasir said that he has not made a claim for benefits but gets a Council Tax rebate and a member of staff in the Council Tax team has indicated to him that he may be eligible for universal credit. He stated that he has not looked for alternative accommodation but expects this to be difficult, especially as he cannot consider a smaller property given the size of his family. Mr Nasir told the Tribunal that there are no other tenancy related issues, such as antisocial behaviour.

8. Mrs Wilkinson told the Tribunal that she did not know that the Respondent had a disabled child. The letting agent told her that the property would be occupied by Mr Nasir and two children, following a separation from his wife. She later became aware that there was a larger family living the property but did not appreciate that there were 6 of them, too many for a three bedroom property. In relation to the comment about antisocial behaviour, she said that there had been one complaint from a neighbour about the front garden not being maintained. This appears to have been due to the eye condition.

Findings in Fact

9. The Applicant is the owner and landlord of the property.
10. The Respondent is the tenant of the property in terms of a private residential tenancy agreement.
11. The Respondent is due to pay rent at the rate of £1200 per month.
12. The Respondent first incurred arrears of rent in March 2020. The account was in arrears from March 2020 until 25 March 2023. For most of that time the arrears were the equivalent of, or less than, one month's rent.
13. The Respondent repaid the arrears on 25 March 2023.
14. The Applicant served a Notice to leave on the Respondent on 14 June 2022.
15. The Applicant has issued information to the Respondent in compliance with the Rent Arrears Pre action Requirements (Coronavirus) Scotland Regulations 2020.
16. The Respondent resides at the property with his wife and four children. The children attend a local school.
17. The Respondent does not have a mortgage over the property and has not suffered significant financial hardship because of the arrears.

Reasons for Decision

18. The application was submitted with a Notice to Leave dated 14 June 2022 together with a Royal Mail track and trace report which establishes that the Notice was served on the same date. The Notice states that an application to the Tribunal is to be made on ground 12, rent arrears over three consecutive months. Part 4 of the notice indicates that the earliest date that an application to the Tribunal can be made is 15 July 2022.
19. The application to the Tribunal was made after expiry of the notice period. The Tribunal is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a copy of the Section 11 Notice which was sent to the Local Authority. The Tribunal is therefore satisfied that the Applicant has complied with Section 56 of the 2016 Act.
20. Section 51(1) of the 2016 Act states, "The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies." Ground 12 of Schedule 3 (as amended by the Coronavirus (Recovery and Reform (Scotland) Act 2022 states "(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. (3) The First-tier Tribunal may find that the ground named in 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."
21. Sub-Paragraph (4) states, "In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider - (a) 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, and (b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Minister in regulations." Relevant benefits are defined in sub-paragraph (5) and include housing benefit and universal credit. The Pre Action-Requirements Regulations include the provision of clear information relating to the terms of the tenancy agreement, the level of the arrears, the tenant's rights in relation to eviction proceedings and how the tenant can access information and advice.
22. The Tribunal is satisfied that the Respondent is currently not in arrears of rent as the outstanding sums were paid on 25 March 2023. However, it is not disputed by the Respondent that the account was in arrears prior to this date and that it had been in arrears since March 2020. The Respondent has therefore been in arrears for three or more consecutive months.
23. The Tribunal proceeded to consider whether it would be reasonable to grant the order and noted the following: -

- (a) The Tribunal is satisfied that the Applicant has complied with the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. The application was accompanied by letters dated 5 and 17 May 2022 which provided information in compliance with the protocol.
- (b) The Tribunal is also satisfied that the arrears are not attributable to a delay or failure in the payment of a relevant benefit. The Respondent has not made a claim for benefit and is not currently aware if he is entitled to universal credit or housing benefit.
- (c) There are currently no arrears of rent owing to the Applicant.
- (d) Although there were arrears over a significant period of time, these were not substantial. For the most part they were the equivalent of one months rent.
- (e) Although the Applicant has experienced inconvenience as a result of the arrears, they have not caused financial hardship.
- (f) An eviction order would have a disruptive impact on the Respondent and his family.

24. The Tribunal concludes that the Applicant has complied with the requirements of the 2016 Act and that the eviction ground has been established. However, having regard to the factors outlined in paragraph 23, particularly the fact that there are currently no arrears of rent, the Tribunal is not satisfied that it would be reasonable to grant an order for eviction.

Decision

25. The Tribunal determines that the application should be refused.

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.