

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

Chamber Ref: FTS/HPC/EV/21/2003

Re: Property at 32 Newhouse Road, Glasgow, G42 0EB (“the Property”)

Parties:

Mrs Naseem Ali, 26 Kingfisher Avenue, Hamilton, ML3 7GF (“the Applicant”) per her agents, GBS Lets Limited, 82, Union Street, Larkhall, ML9 1DR (“the Applicant’s Agents”)

Mr Nadeem Iqbal and Mrs Sobia Iqbal, 32 Newhouse Road, Glasgow, G42 0EB (“the Respondents”)

Tribunal Members:

Karen Moore (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Application should be refused and so made no Order.

Background

1. By application dated between 18 August 2021 and received between 18 August 2021 and 15 September 2021 (“the Application”), the Applicant’s solicitors applied to the Tribunal for an Order for eviction and possession of the Property based on the Ground that there are rent arrears for more than three consecutive months. The Application comprised a copy of the tenancy agreement, a statement of rent due and owing to August 2021, copy Notices to Leave referring to “Ground 17” but specifying the wording of Ground 12 of Schedule 3 to the Act served on both Respondents by Sheriff Officer together with proof of service, copy Notices under Section 11 of the Homelessness Etc (Scotland) Act 2003 to Glasgow City Council, being the relevant local authority, in respect of both Respondents and copy letter dated 18 August 2021 from the Applicant’s solicitors to both Respondents purporting to enclose a copy tenancy agreement, a current statement and guidance leaflet by the Scottish Government. The Application was accepted by the Tribunal and a Case Management Discussion (the “CMD”) was fixed for 17 November 2021 at 10.00 by telephone conference.

2. Immediately prior to the CMD, the first-named Respondent wrote to the Tribunal to indicate that he would not attend the CMD as he had been unwell overnight and requested that the CMD be postponed. The Tribunal, having taken the views of the Applicant's Agent into account and having regard to Rule 2 of the Rules, refused the first-named Respondent's motion to postpone.

Case Management Discussion

3. The CMD took place on 17 November 2021. The Applicant did not take part and was represented by Mr. Barry Munro of the Applicant's Agents. Neither Respondents took part. No written representations were received from either Respondent.
4. The outcome of the CMD was that the Tribunal advised Mr. Munro that it was satisfied that there are rent arrears for more than three consecutive months and so was satisfied in respect of Paragraph 12(2)(a) of Schedule 3 to the Act. However, with regard to Paragraph 12(3)(b) of Schedule 3 to the Act, the Tribunal advised Mr. Munro that it had insufficient information before it to be satisfied that it is reasonable on account of the fact of rent arrears to issue an eviction order.
5. The Tribunal adjourned the CMD to a Hearing on 14 December 2021 for the Parties to provide the information required to allow the Tribunal to make a decision.

Direction

6. The Tribunal issued the following Direction to set out what was required of the Parties:
"1. With reference to Regulation 4 of the Rent Arrears Pre-action Requirements (Coronavirus) (Scotland) Regulations 2020, the Tribunal directs the Applicant to evidence compliance with Regulation 4 which states that the Scottish Ministers specify the pre-action requirements as:" 4 (2) The provision by the landlord to the tenant of clear information relating to: (a)the terms of the tenancy agreement and (b)the amount of rent for which the tenant is in arrears, (c)the tenant's rights in relation to proceedings for eviction (including the pre-action requirements set out in this Regulation), and (d) how the tenant may access information and advice on financial support and debt management.(3) The making by the landlord of reasonable efforts to agree with the tenant a reasonable plan to make payments to the landlord of (a)future payments of rent, and (b)the rent for which the tenant is in arrears. (4) The reasonable consideration by the landlord of (a)any steps being taken by the tenant which may affect the ability of the tenant to make payment to the landlord of the rent for which the tenant is in arrears within a reasonable time, (b)the extent to which the tenant has complied with the terms of any plan agreed to in accordance with paragraph (3), and (c)any changes to the tenant's circumstances which are likely to impact on the extent to which the tenant complies with the terms of a plan agreed to in accordance with paragraph (3).
2.The Tribunal directs the Respondents to produce documentary evidence of any applications for state benefits applied for and the outcome of such applications made by them in respect of the rent arrears accrued by them and

3. The Tribunal directs the Applicant and the Respondents to provide evidence or information in respect of their personal and other circumstances which they wish the Tribunal to consider in reaching a decision that it is reasonable to issue an eviction order in terms of Paragraph 12 3(b) of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016

The said documentation should be lodged in hard copy or by email attachment (not zip file) with the Chamber and copied to the other Party no later than close of business on TUESDAY 7 DECEMBER 2021. A list of any witnesses should be lodged with the Chamber and copied to the other Party no later than close of business on TUESDAY 7 DECEMBER 2021”.

7. Neither Respondent complied with the Direction.
8. In response to the Direction, the Applicant's Agent submitted two letters dated 30 November 2021.
9. The first letter (“First Letter”) stated :- *“We appreciate the feedback from the Tribunal regarding the eviction of Mr and Mrs Iqbal. Having read the decision, we would like to dispute point nine. Our interpretation of point nine is that the PAR's were not fully met and that only advice on debt was issued to the respondents. The letter from Mrs Ali's Solicitor dated 18 August 2021 states they issued the respondents the following three pieces of information, which fulfils the requirement of PAR's in full: Copy of Tenancy agreement Rent account Guidance leaflet by the Scottish Government has information on financial help and the tenant's rights on a repossession. If we have misunderstood the point, then please forgive us. Since the Case Management Discussion, we have been made aware that Mr and Mrs Iqbal are running a successful business with two premises and even received an award for their business from Councillor Thomas Kerr. The company is a nail salon located in the Forge Shopping Centre and the second at Glenmore Avenue Toryglen, which is less than half a mile from their residence. This would suggest that the respondents can meet their rental payments or, at the very least, since COVID restrictions were lifted but have chosen not to do so.”* In addition, they submitted an excerpt from Companies House showing Nadeem Iqbal and Sobia Iqbal to be directors of L.A NAILS & BEAUTY LTD (SC641415) having a place of business at Kiosk A1, The Forge Shopping Centre, Glasgow, Scotland, G31 4EB and a screenshot of a “Nail Salon of the Year” presentation.
10. The second letter (“Second Letter”) stated *“We have been passed the attached SMS and WhatsApp messages by the previous Letting Agent Zubair Inwar which shows Mr Iqbal had made partial payments towards the rent at the beginning of the year but since March 2021 there has been no effort to make payments. The respondent was mainly contacted by phone-call, SMS and in particular WhatsApp as it shows the messages have been received and read. We have also been informed the property is occupied by Mr & Mrs Iqbal, their three children and Mr Iqbal's mother. The respondent informed Mr Inwar his reasons for not claiming rent through Universal Credit during the pandemic was due to the fact that any person who is in receipt of working tax credits and claims UC will have their tax credits stopped. The respondent was not willing to do this, therefore, did not claim UC to cover his rent.”* In addition, they submitted

screenshots of messages purporting to be between the Applicant's letting agents, the Applicant's Agents and the first-named Respondent regarding rent arrears. The messages are mainly from both agents requesting payment of the rent due. There appears to be two messages from the first-named Respondent: one on 5 March 2021 showing a payment of £200.00 and one on 25 May 2021 indicating that a further message would be sent in an hour, although there was no screenshot of that further message, if it had been sent. There was no evidence of contact with the second-named Respondent.

Hearing.

11. The Hearing took place on 14 December 2021 by telephone conference. The Applicant was not present and was represented by Mr. Barry Munro of the Applicant's Agents. Neither Respondent was present. Mr. Munro had no witnesses or evidence further to the letters and documents produced in response to the Direction.
12. Mr. Munro confirmed fairly to the Tribunal that the only information which he could speak to from his own knowledge was that he had found out the Respondents' family composition and that the Applicant's solicitors had advised him their letter of 18 August 2021 to the Respondents jointly had been sent in compliance with Regulation 4 of the Rent Arrears Pre-action Requirements (Coronavirus) (Scotland) Regulations 2020 ("Regulation 4"). Mr Munro agreed with the Tribunal that that letter had been sent contemporaneous with the Application being lodged and had not been issued before the eviction order had been applied for.
13. On behalf of the Applicant, Mr Munro advised the Tribunal that it was unfair that the Respondents could fail to reply to the Application and Direction and could be in breach of the tenancy agreement but it was the Applicant who had to provide evidence by "jumping through hoops". He stated that it is the first-named Respondent who is responsible for the welfare of his family.
14. As there were no witnesses, the Hearing closed.

Tribunal's Assessment of Evidence.

15. The evidence before the Tribunal is the Application, the letters of 30 November 2021 and documents submitted by the Applicant's Agents and Mr. Munro's submissions at the Hearing.
16. With regard to the First Letter which is set out in full at paragraph 9 above, the Tribunal's view is that this letter is speculation on the part of the Applicant's Agents. There is no evidence, direct or indirect, that the Applicant's solicitors' letter of 18 August 2021 complies with Regulation 4, the wording of which is set out in full in the Tribunal's Direction which is repeated at paragraph 6 above. There is no evidence that parts (2) (c) and (d) and part 3 of Regulation 4 were complied with to any extent. In any event, as accepted on behalf of the Applicant, the Applicant's solicitors' letter of 18 August 2021 was not issued before applying for an eviction order.

17. With further regard to the First Letter, the assertions that the Respondents run a successful business and can meet rental payments are unsubstantiated.
18. With regard to the Second Letter which is set out in full at paragraph 10 above, the Tribunal's view is that this letter is unsubstantiated speculation on the part of the Applicant's Agents. The Tribunal's view of the screenshots which accompanied this letter are demands for payment from the first-named Respondent only and do not fulfil or comply with Regulation 4 in any way with respect to either Respondent.
19. With regard to Mr. Munro's submissions at the Hearing, although the Tribunal understands Mr. Munro's frustration on behalf of his client, the Applicant, this does not diminish the Applicant's obligation, or her professional advisors' obligations on her behalf, to follow the statutory process.
20. No evidence was offered in respect of the personal or business circumstances of the Applicant.

Findings in Fact

21. From the Application, the CMD and the Hearing, the Tribunal made the following findings in fact:
 - i) There is a tenancy of the Property between the Parties at a monthly rent of £725.00;
 - ii) Rent amounting to £13,150.00 is unpaid from 25 February 2021 to November 2021, which rent arrears are for more than three consecutive months;
 - iii) Compliant Notices to Leave and Section 11 Notices were issued;
 - iv) The Applicant did not comply with Regulation 4 before applying for an eviction order.

Issue for the Tribunal

22. The issue for the Tribunal is whether or not the Applicant has satisfied the Tribunal in respect of the terms of Paragraph 12 of Schedule 3 of the Act ("Paragraph 12") regardless of whether the Respondents has taken part in the proceedings.
23. Paragraph 12 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.

(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.

(3A) Sub-paragraph (3B) applies where the First-tier Tribunal is satisfied (a) that the eviction ground named by sub-paragraph (1) applies, and (b) that all or part of the rent in respect of which the tenant is in arrears as mentioned in that eviction ground relates to the period during which paragraph 5 of schedule 1 of the Coronavirus (Scotland) (No.2) Act 2020 is in force.

(3B) Where this sub-paragraph applies, in considering for the purposes of sub-paragraph (3)(b) whether it is reasonable to issue an eviction order against the tenant, the First-tier Tribunal is to consider the extent to which the landlord has complied with pre-action requirements before applying for the 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.

(6) In sub-paragraph (3B), "pre-action requirements" means such requirements as the Scottish Ministers may specify in regulations."

Decision and Reasons for Decision

24. From the CMD, the Tribunal was satisfied that Paragraph 12(2)(a) was satisfied and so it follows that Paragraph 12(3)(a) is also satisfied. Therefore, the Tribunal proceeded to consider its decision in respect of the remainder of Paragraph 12.
25. With regard to Paragraph 12 (2)(b) the only evidence before the Tribunal was that contained in the Second Letter and so the Tribunal could not be 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.
26. The Tribunal then had regard to Paragraph 12 (3)(b) and turned its mind to determine if it is satisfied that it is reasonable on account of the fact of the rent arrears to issue an eviction order. In this respect, the Tribunal had regard to Sub-paragraphs (3A), (3B) and (4) of Paragraph 12.

27. Sub-paragraph (3A) states that Sub-paragraph (3B) applies where the Tribunal is satisfied that all or part of the rent in respect of which the tenant is in arrears as mentioned in that eviction ground relates to the period during which paragraph 5 of schedule 1 of the Coronavirus (Scotland) (No.2) Act 2020 is in force. The Tribunal is so satisfied and so Sub-paragraph (3B) applies
28. Sub-paragraph (3B) states that, in considering for the purposes of sub-paragraph (3)(b) whether it is reasonable to issue an eviction order against the tenant, the Tribunal is to consider the extent to which the landlord has complied with pre-action requirements before applying for the eviction order. In this matter the Applicant did not comply with the pre-action requirements to any extent before the Application for an eviction order was made on her behalf. Indeed, the letter from the Applicant's solicitors dated 18 August 2021, taken at face value and at its highest, complies with Regulation 4 in part only and not in full. Therefore, the Respondents were not given the benefit of this statutory protection to which they were entitled. No evidence was before the Tribunal that attempts had been made by the Applicant or on her behalf to advise the Respondents of their housing rights in respect of eviction, to offer them advice and assistance on state benefits and/or on their right to apply to the Scottish Government's Tenant Grant Fund or to advise them of the Applicant's obligation to expressly inform them of her Regulation 4 obligations. The Tribunal gave significant weight to this failure by or on behalf of the Applicant to the detriment of the Respondents and so held the view that it is not reasonable in the circumstance to issue an eviction order.
29. Sub-paragraph (4) states that, in considering for the purposes of Sub-paragraph (3) whether it is reasonable to issue an eviction order against the tenant 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. As the Tribunal has no substantiated evidence or information in respect of the Respondents' position in respect of relevant benefits, the Tribunal cannot be satisfied that it is reasonable to issue an eviction order.
30. Accordingly, as the Tribunal cannot be satisfied that it is reasonable to issue an eviction order, the Tribunal refuses the Application and makes no order.

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.

Karen Moore

Legal Member/Chair

17 December 2021
Date