

**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/21/1835**

**Re: Property at 114 Lesmuir Drive, Glasgow, G14 0EE (“the Property”)**

**Parties:**

**Mrs Narinder Burmy, 188 Southbrae Drive, Glasgow, G13 1TX (“the Applicant”)**

**Ms Elizabeth Craig, 114 Lesmuir Drive, Glasgow, G14 0EE (“the Respondent”)**

**Tribunal Members:**

**Jan Todd (Legal Member) and Frances Wood (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession of the Property be granted in favour of the Applicant.**

- Background
- 1. This was a Case Management Discussion in relation to the application by the Applicant for an order for eviction of the Respondent who is the tenant in the Property.
  2. The following documents were lodged with the Application or shortly thereafter namely:-
    - a. Tenancy Agreement dated 20th January 2020
    - b. Notice to Leave dated 5<sup>th</sup> October 2020
    - c. Evidence of service by e-mail of the Notice to Leave
    - d. Rent statement dated to 25<sup>th</sup> August 2021
    - e. S 11 Notice to Glasgow City Council
  3. The Applicant is the owner and landlord of the Property.

4. The Tribunal sent a direction asking for evidence of the Applicant's compliance with Rent Arrears Pre Action Requirements (Coronavirus) (Scotland) Regulations 2020 and the Applicant responded via her letting agent with copies of letters dated 11 June 2020, 17 August 2020, 30 September 2020, 7 October 2020, 16 October 2020 and 17 November 2021.

### **The Hearing**

5. The Hearing was held on 12<sup>th</sup> January 2022 by teleconference in view of the continued need for social distancing at the current time. Ms Coleen McKinlay attended for the Applicant who was not present. The Respondent did not attend nor was she represented. The Tribunal noted that the application and papers have been served personally on the Respondent by sheriff officers on 30<sup>th</sup> November 2021 and therefore considered it was appropriate and fair to continue with the CMD in the absence of the Respondent.
6. The Legal Member explained the nature and purpose of the CMD and asked Ms McKinlay to explain what she was seeking. She confirmed that as per the application the Applicant was seeking an order for eviction of the tenant. She confirmed that arrears of rent have accrued since 1<sup>st</sup> April 2020, that her firm as letting agent took over the agency at that date and tried to engage and correspond with the Respondent regarding the arrears. Although the Respondent initially said it was an issue with housing benefit she then stopped responding to letters or phone calls. Ms McKinlay advised that they tried to contact her several times to make arrangements to come and inspect the Property and either the Respondent was out of the Property or she cancelled the visit. She advised however that on 21<sup>st</sup> June 2021 on another attempt to attend to carry out the inspection the Respondent was present in the Property but refused the member of staff entry but did confirm that she thought there were no arrears of rent, that it was an issue with benefits and the responsibility of housing benefit.
7. Ms McKinlay confirmed that there has been no response to the letting agents offer to arrange a payment plan to pay off the arrears and they remain at £7150. She advised that the tenant had previously had arrears of rent, when the Property had been let under an assured tenancy, and the Applicant is concerned this will recur if the application is not granted. She advised that in her view it is reasonable that an order is granted due to the level of arrears and non-cooperation from the tenant despite the fact rent is currently being paid for the full amount. It was her understanding that the tenant is not in receipt of benefits at the current time, having had contact with the Council who confirmed housing benefit was not in payment. There had been no contact from the Council in respect of the S11 notice issued.

### **Findings in Fact**

8. The parties entered into a lease of the Property which is a Private Residential tenancy and which commenced on 20<sup>th</sup> January 2020.
9. The Rent due in terms of the lease is £550 per calendar month payable in advance
10. The tenant is still living in the Property

11. The Applicant produced a statement of rent showing that no rent was paid from 1<sup>st</sup> April 2020 to 30<sup>th</sup> April 2021
12. There was over 3 months' rent outstanding at the date of service of the Notice to Leave and at today's date. .
13. As at the date of the Application and today's date £7150 of rent is due and owing.
14. The Respondent started payment of rent on a monthly basis from 1<sup>st</sup> May 2021.
15. A notice to leave was served on the Respondent on 5<sup>th</sup> October 2020 by e-mail confirming that no proceedings would be raised before 7<sup>th</sup> April 2021
16. These proceedings were raised on 28<sup>th</sup> July 2021 and the application included a copy of the Notice to Leave.
17. The Respondent has not responded to any attempts to contact her to discuss payment of the arrears.
18. It is reasonable to grant this application.

## Reasons

19. The Tribunal notes that in terms of the tenancy agreement the monthly rent due is £550. In terms of the Rent statement rent was not paid from 1<sup>st</sup> April 2020 to 30<sup>th</sup> April 2021. Thereafter payments of £550 being the monthly rent have been restarted and continue to be made to date. This leaves an outstanding balance of £7150 the same balance due as at the of the application.
20. The ground of action under Ground 12 is now that
  - a. "Rent Arrears – It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months –
    - i. The First Trier Tribunal may find that the ground named by sub-paragraph (1) applies if –
  - b. For three or more consecutive months the tenant has been in arrears of rent and
  - c. *The Tribunal is satisfied that it is **reasonable** on account of that fact to issue an eviction order.*
  - d. *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."*
21. The Tribunal requires to be satisfied that it is reasonable to grant an order for eviction before it grants such an order. In addition in terms of the Rent Arrears Pre Action Requirements (Coronavirus) (Scotland) Regulations 2020 the Tribunal should take account of what the landlord has done to comply with that in regarding what is reasonable.
22. The Notice to Leave was dated 5<sup>th</sup> October 2021, served on the same date by e-mail and requires the Respondent to leave by 7<sup>th</sup> April 2021. 6 months notice has therefore been given of the landlord's intentions. The Tribunal noted that a S11 notice has been duly served on Glasgow City Council and so was satisfied the application is competently made and from the evidence given in writing and

orally that there are still rent arrears of over 3 months and that there has been no attempt by the Respondent to pay these.

23. The Tribunal then considered whether or not it would be reasonable to grant the order of eviction. The Respondent has not made any representations nor has she attended the CMD so there is nothing for the Tribunal to consider directly in respect of the Respondent's views and nothing put forward to suggest it would be unreasonable to grant the application. The letting agent has written to the Respondent in terms of the Pre Action Protocol requirements and have made attempts to contact and offer support to the Respondent. The Respondent has either cancelled or refused to allow an inspection of the Property to be carried out and has denied that the arrears are an issue claiming this is a housing benefit matter. She has not however attempted to deal with the arrears, to discuss them with the Applicant or her agent.
24. The Respondent has been afforded the opportunity to attend the CMD and has not done so nor has he made any written representations disputing the facts or providing reasons why it would not be reasonable to grant the order for possession. In particular the Respondent has not provided any evidence that the arrears are a result of a delay or failure in payment of a relevant benefit.
25. Taking all of the circumstances into account, including the level of arrears and non-communication from the Respondent, the Tribunal considers that a hearing is not required and that on balance it is reasonable to grant the application and grants the order for possession.

- Decision

**An order for possession is granted**

### **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.**

**Legal Member: Jan Todd**

**Date: 12<sup>th</sup> January 2022**

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