



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

Chamber Ref: FTS/HPC/EV/22/1568

Re: Property at 38 Wyndford Road, Glasgow, G20 8EP (“the Property”)

Parties:

Mrs Frances Hunter, 53 Winton Drive, Glasgow (“the Applicant”)

Mr Paul Hutton, 38 Wyndford Road, Glasgow, G20 8EP (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Janine Green (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 recovery of possession of the property be granted.

Background

1. By application lodged on 25 May 2022, the Applicant applied to the Tribunal for an order for recovery of possession of the property in terms of Section 51 of the 2016 Act against the Respondents. The application sought recovery in terms of Ground 12 of Schedule 3 to the 2016 Act. Supporting documentation was submitted in respect of the application, including a copy of the tenancy agreement, the Notice to Leave, the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003, a Rent Ledger Statement showing the balance of rent arrears owing at the time of the application being made of £11,202 and evidence regarding the ‘pre-action requirements’.

2. On 20 July 2022, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. On 17 August 2022, a copy of the Application and supporting documentation was served on the Respondent by Sheriff Officer, together with intimation of the date, time and details of the Case Management Discussion (“CMD”) to take place by telephone conference call on 3 October 2022. Written representations were to be lodged by 5 September 2022. No written representations were submitted by the Respondent.

Case Management Discussion

4. At the CMD on 3 October 2022 at 10am, the Applicant was represented by Ms Lucinda Hunter, Consultant Solicitor of Rennie McInnes LLP. The commencement of the CMD was delayed for approximately 5 minutes to see if the Respondent would join the call but he did not.
5. After introductions and introductory remarks by the Legal Member, Ms Hunter was asked to present the application and she thereafter answered a number of questions from the Legal Member. Ms Hunter advised that the Applicant is seeking an order for eviction in terms of Section 51 of the 2016 Act in respect that the Respondent has not paid rent over a period of several years and that the arrears amounted to £11,202 in terms of the Application. The rent is £456 per calendar month. She provided a breakdown of the payments made and rent arrears accrued for each of the years 2020, 2021 and 2022 as per the supporting documentation lodged with the Tribunal. Three payments were made in 2020 - £460 in January and two payments of £200 each in September and November; one payment of £250 during 2021 in July; and no payments at all in 2022. The position remains the same, with no further payments towards rent having been made. On being invited to address the Tribunal on the reasonableness of granting an eviction order here, Ms Hunter advised that the Applicant is 81 and disabled and had not told her family about the arrears until earlier this year when she sought advice from Ms Hunter (who is a family member as well as a solicitor). The Applicant had discussed the arrears directly with the Respondent on several occasions during which the Respondent offered no explanation for the arrears but said on each occasion that he would pay the arrears in full. However, no payments were ever made. It was explained that the Respondent was an acquaintance of one of the Applicant’s children and that this is how the tenancy had first come about. There was a prior tenancy between the parties and a background of rent arrears but these had been settled at the end of 2018, Ms Hunter thinks, by family members of the Respondent. The Private Residential Tenancy commenced in January 2019 and no arrears accrued during 2019. Ms Hunter confirmed that the Applicant has three other rental properties, each with long-term tenants which Countrywide have been managing on her behalf since 2019. Countrywide do not manage this property because of the background to this tenancy and it is the Applicant’s intention to sell this property once she has recovered possession. Ms Hunter mentioned the substantial amount of arrears, the length of time over

which these arrears have accrued- over two and a half years, the fact that the Respondent has had several opportunities to provide an explanation and to make payment and that he had not provided any information about any change of circumstances or asked for time to pay nor proposed any payment arrangement. Ms Hunter explained that the Respondent is in his fifties, lives alone at the Property and is understood not to work and to have been in receipt of state benefits long-term. Due to this and the background history of the tenancy and prior arrears, she does not consider that any of the rent arrears have accrued due to the pandemic and nor does the Applicant have any information that suggests that the arrears are due to a failure or delay in paying benefits. It is understood that the Respondent continues to occupy the Property. It is not known whether he intends to or has sought any advice about alternative housing. He had stated to both the Applicant and also Ms Hunter simply that payment would be made in full. As no payments were ever forthcoming, Ms Hunter feels that the Respondent's credibility has been dented. She explained that the Applicant has always been reasonable and would have been amenable to considering a payment arrangement if the Respondent had provided a reasonable explanation for the non-payment or put forward a payment plan. The Applicant had not attended at the Property to speak to the Respondent or anything like that but, rather, had met the Respondent by chance. Apart from Ms Hunter telephoning the Respondent to discuss prior to serving the notice to quit, Ms Hunter also wrote to the Respondent in detailed terms by way of letter dated 12 April 2022. The Respondent has had ample time to engage in the process but has chosen not to do so. In her submission, the letter of 12 April 2022, together with the other attempts mentioned to discuss the situation with the Respondent, by both herself and the Applicant, satisfy the pre-action requirements. Ms Hunter addressed this issue in full, with reference to her written representations already lodged with the Tribunal and her oral submissions today. Although she conceded that her letter does not specifically address how the tenant can access information on financial support and debt management advice, she considers that it is implicit in the terms of that letter that Citizens Advice or legal advice to which the Respondent is pointed to in the context of an eviction based on rent arrears would cover financial/debt management advice. She submitted that, in all of the circumstances, it was reasonable for the Tribunal to grant the eviction order sought by the Applicant.

Findings in Fact

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy commencing 1 January 2019.
3. The rent in terms of the PRT is £456 per calendar month.
4. The Respondent initially made his due rental payments throughout 2019 but during 2020, 2021 and 2022, numerous payments were missed altogether, payments became erratic and substantial rent arrears accrued, totalling £11,202 by the time this Application was lodged.

5. A Notice to Leave in proper form and giving the requisite period of notice was sent to the Respondent by recorded delivery/signed for post on 12 April 2022 and was delivered to/signed for by the Respondent on 13 April 2022.
6. The date specified in the Notice to Leave as the earliest date the eviction Application could be lodged with the Tribunal was specified as 14 May 2022.
7. The Tribunal Application was submitted on 25 May 2022.
8. The last payment towards rent was made on 6 July 2021 and was in the sum of £250.
9. No payments have been made since.
10. The rent has been in arrears since February 2020 and the arrears now exceed the £11,202 specified in the Application.
11. The Respondent has been called upon to make payment of the rental arrears or enter into a satisfactory payment arrangement but has failed to do so.
12. The Respondent is still occupying the Property.

Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, and the oral evidence given at the CMD on behalf of the Applicant.
2. The Tribunal found that the Application was in order, that a Notice to Leave in proper form and giving the correct period of notice had been served on the Respondent and that the application was made timeously to the Tribunal, all in terms of the tenancy agreement and the relevant provisions of the 2016 Act.
3. The Tribunal found that the ground of eviction that the tenant has been in rent arrears for three or more consecutive months (Ground 12 of Schedule 3 to the 2016 Act, as amended) was satisfied and that it was reasonable, having regard to all of the circumstances known to the Tribunal, as outlined above, to grant the eviction order sought. The rent account had been in arrears for a significant period of time (continuously from in or around February 2020) and amount to a significant sum which the Tribunal was satisfied would be having a negative impact on the Applicant's finances. There was no information before the Tribunal to indicate that any of the rent arrears were a consequence of a delay or failure in the payment of a relevant benefit. Although the rent arrears did appear to have mainly accrued during the period that the Coronavirus legislation was in force, the Tribunal had noted that there was a background history of rent arrears (prior to this tenancy) and had no information before it that there had been any change in the Respondent's financial circumstances

as a consequence of the pandemic. In addition, the Tribunal was satisfied that the Applicant had complied to a substantial degree with the pre-action requirements, as well as attempting to discuss and resolve the arrears situation with him on several occasions.

4. The Respondent has not engaged properly with the Applicant, nor her representative, has not provided an explanation for the rent arrears and has not proposed any payment plan. He has repeatedly stated to the Applicant that payment of the arrears would be made in full but no payments have been forthcoming. The Respondent did not submit any written representations to the Tribunal, nor attend the CMD of which he had been properly and timeously notified. The Tribunal did not therefore have any material before it to contradict the Applicant's position. The Tribunal accordingly determined that an order for recovery of possession of the Property could properly be granted at the CMD as there were no facts in dispute nor any other requirement for an Evidential Hearing.

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.

N Weir

Legal Member: Nicola Weir

3 October 2022
Date