



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/22/2035

Re: Property at Flat 1-1 11 Findhorn St, Glasgow, G33 2EF (“the Property”)

Parties:

Mr Mark Reynolds, 4 Dunsyre Street, Glasgow, G33 2PA (“the Applicant”)

Miss Elizabeth McKechnie, 1-1 11 Findhorn Street, Glasgow, G33 2EF (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatrige (Legal Member) and Ann Moore (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted. The decision was unanimous. The Tribunal grants an order for eviction in terms of S 51 of the Act on Ground 12 of Schedule 3 of the Act.

A: Background

1. The case history is contained in the Case Management Discussion (CMD) notes of 22.11.22 and 27.1.23, which are referred to for its terms and held to be incorporated herein.
2. In addition to the documents listed therein the following further documents were lodged by the parties in advance of the hearing on 30.3.23:
 - a) email 6.2.23 from Applicant with statement of previous rent arrears in 2020.
 - b) email from Respondent 6.2.23 with photographs showing 3 pages of a document, which was illegible due to the file size.
 - c) email from Applicant 10.2.23 confirming that the rental charge for the property had been £550 from the start of the tenancy.
 - d) email from Respondent 14.2.23 stating there was never a second lease.
3. All documents lodged by both parties are referred to for their terms and held to be incorporated herein.

B: The Hearing

1. The Hearing took place on 30.3.2023. Ms Brennan from 1-2 Letting and Sales Ltd, representing the Applicant, had confirmed previously that Mr Reynolds would not be attending.
2. The hearing was supposed to be by Webex but due to problems of the Respondent connecting into the hearing it was changed to a voice only teleconference hearing. The Respondent and Ms Brennan attended. The hearing was arranged for the conjoined applications for a payment order and an eviction order lodged by the Applicant and the evidence was heard in a conjoined hearing for both cases.

3. Preliminary Matters:

- a) a) The legal member explained the purpose and format of the hearing.
- b) b) The amount sought in the payment action was reduced by Ms Brennan to £2,038.59, as further payments had been made towards the arrears via direct Housing Benefit (HB) payments to the landlord. These had followed the pattern previously shown in the most recent arrears schedule. The amount was not disputed by the Respondent. The Tribunal allowed the amendment. The amount was also updated regarding the level of rent arrears for the eviction action.
- c) c) The Respondent was asked what the content of the medical evidence was she had sent on 6.2.23. When she read through the pages she stated it was actually not what she had asked her GP for and did not deal with her problems in the run up to the last hearing, which the documents were supposed to address to show she had genuinely been unable to prepare for the hearing on 27.1.23. As the document did not show the relevant information she did not read it out further.

4. McKechnie's evidence:

- a) The Respondent stated that she is no longer disputing the rent was outstanding. She agreed that she owes the rent as stated and that there were also additional arrears of the amount shown in the Applicant's document from 2020. The arrears initially had arisen because of the problems during Covid and whenever she had to make a decision where to allocate the available funds she allocated them to feeding her son, even if that meant not paying the full rent. She stated she will pay the arrears.
- b) She had developed financial problems in particular because after the death of her former partner all maintenance payments from her son's father had stopped and she had gotten into debt. Some of her rent had been paid by discretionary housing benefit initially. Now Housing Benefit paid her full rent and £33.49 towards the arrears.
- c) She is now no longer working because of arthritis. She has other health and mental health problems she is was not prepared to discuss at the hearing. She stated she gets some help with money due to her disability but did not elaborate.
- d) Whilst on the one hand she did not dispute the arrears, she also stated there were outstanding repairs but was not prepared to give any detailed evidence about this other than to say the storm door was not working, the windows let

in and the inspector sent by the letting agent advised her to wipe the dampness off the wall with a cloth.

- e) She agreed that the landlord over a long time had been very patient with her developing rent arrears and that he had repeatedly asked her to sit down with him and address payment options as shown in the text messages. The relationship between her and the Applicant became hostile later.
- f) She appreciates that the landlord was now financially worse off as well, although she doubts that he would wish to sell the property in its current state. She stated that she had been trying to find alternative accommodation, had been in touch with the Housing Department, who were aware of her case, private landlords and housing associations, so far without success.
- g) She stated that she had to oppose the eviction action in order to avoid the Council thinking that she had made herself intentionally homeless, which would not entitle her to re-housing. She had been homeless before and knows that all one would get is temporary accommodation of whatever was available.
- h) This week there had been an incident she was not prepared to discuss but it resulted in her asking the Council to be re-housed immediately.
- i) With regard to the reasonableness issue she stated that she lived at the property with her 17 year old son, who is in 6th year and will finish his exams Mid June 2023. He already has a place in Springburn College, which is in the North of the City. He will continue living with her until he might go to University. He works part time and is doing really well. Disrupting his schooling with a move would be detrimental.

5. Ms Brennan's evidence:

- a) On behalf of the Applicant Ms Brennan stated that over the total period of the tenancy there had been about £6,000 arrears. The current arrears during the management period are only a part of the actual arrears accumulated during the tenancy, which far exceed 3 months rent.
- b) The landlord was now himself in a precarious financial situation and was intending to sell his rental properties, he also has medical problems as shown in the certificate lodged.
- c) She also stated that if an eviction order was granted the Applicant may not insist on enforcing the civil payment order if granted as his main aim at this stage was to be able to conclude this process and get the property back.
- d) With regard to reasonableness she stated the arrears had been in place for a very long time and the Respondent had simply never addressed these, had paid nothing from her own funds towards the arrears since the letting agent had taken over and the arrears were only addressed by Housing Benefit contributions towards the arrears since the letting agents had asked the payments to be made directly to them. Otherwise nothing would have happened. There had been no attempts from the Respondent to resolve the matter.
- e) There were no outstanding repair matters. Whenever the Respondent had contacted them with an issue they would pass it on to the landlord who did the repairs himself.
- f) There would be no problem if the Tribunal considered to postpone any eviction to after the exams of the Respondent's son. The landlord had always tried to be helpful as shown in the correspondence.

g) The Respondent had also not cooperated with any directions of the Tribunal and had not provided any of the evidence she had been asked to produce. There were no medical certificates and nothing had been lodged regarding the repairs allegedly outstanding, such as the report requested. The relationship had become difficult with the Respondent.

6. Submissions:

a. Neither party made any formal submissions. There was no follow up from the Respondent on any of the formal challenges initially mentioned at the CMD.

C: Findings in Fact:

Based on the evidence lodged and the representations of the participants at the CMDs and the hearing the Tribunal makes the following findings in fact:

1. The tenancy is a Private Residential Tenancy over the property which started on 28.1.2018.
2. The parties were the landlords and tenant of said Tenancy Agreement.
3. The tenancy is ongoing.
4. The monthly rent is and has been £550 per month since the start of the tenancy.
5. Payments since the takeover of the management of the property 1-2 Lets are as shown in the rent statements.
6. Between 4.10.21 and 30.3.23 rent arrears of £2,038.59 accrued and remain outstanding.
7. Further arrears of about £2,160 had accumulated in 2020 as shown in the rent statement for that year but were not pursued in the conjoined payment action.
8. In total the arrears for over the course of the tenancy were about £6,000.
9. The Respondent had not offered a payment plan.
10. The rent of £550 was due monthly in advance on the 28th day of each month from the start of the tenancy.
11. There are no outstanding repairs issues, which would affect the rent being due.
12. The Applicant's agents had written to the Respondent on 21.7.22 with the relevant information about rent arrears and advice and assistance contacts prior to raising proceedings.
13. During 2020 and 2021 the Applicant had asked the Respondent on several occasions to meet with him, discuss the arrears and address the arrears.
14. She did not offer a payment plan and did not provide suggestions to resolve the arrears situation.
15. The Applicant had been patient when the Respondent repeatedly was unable to pay the full rent.
16. The Respondent developed financial problems in 2020 and 2021 as she lost the maintenance payments for her son and eventually in 2021 became unemployed.
17. She is now in receipt of housing benefit for the full rent amount and direct payments from Housing Benefit to the Applicant's agents are in place to reduce the arrears by £33.49 every 4 weeks.
18. These payments only started once 1-2 Letting and Sales Ltd became involved in the management of the property and applied for direct payments.
19. No additional contributions towards the arrears were made by the Respondent.
20. The Notice to Leave was sent by the Applicants on 19.5.22 by email to the correct email address and gave the correct notice period.

21. The Notice to Leave referred to the rent arrears as the ground on which the notice was issued.
22. The Applicant had served a S 11 notice on the local authority on 27.6.22.
23. The Respondent lives at the property with her son, who is 17 years old.
24. Her son is in 6th year and will finish his exams in mid June 22.
25. He is doing well in school and has secured a place in Springburn College.
26. Thereafter he will go to college in the North of the city but continue to live with the Respondent.
27. The Applicant engaged letting agents as the management of the property had become too much for him and was damaging his health.
28. He suffers from hypertension.
29. During the period of Covid restrictions he did not take any action against the Respondent for the rent arrears.
30. Even now he was not pursuing the Respondent for all arrears and had limited the application for a payment order to the arrears accrued during the management period.
31. Until 1-2 Letting and Sales Ltd took over the management of the property the Respondent felt supported and treated well by the landlord.
32. The Applicant has not been receiving rent of about £6,000 due to him over the course of the tenancy.
33. He is now seeking to consolidate his financial position by selling properties.

D: Reasons for decision

Relevant Legislation: Ground 12 Schedule 3 Private Housing (Tenancies) (Scotland) Act 2016: Rent arrears

12(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

F28(2)

(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.

(4) 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 Ministers in regulations.

(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) Regulations under sub-paragraph (4)(b) may make provision about—

(a) information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),

(b) steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,

(c) such other matters as the Scottish Ministers consider appropriate.

1. The Tribunal makes its findings on the civil standard of proof, which is the balance of probability. The Tribunal carefully considered the documentary evidence and the oral evidence given by all participants throughout the CMDs and the hearing.
2. It was not disputed that the parties entered into the Private Residential Tenancy (PRT) which was evidenced by the information from both parties about the start date of the tenancy and the rent due per calendar month under the agreement. Only an unsigned PRT document was lodged. The Applicant had advised that the original signed lease was with the Respondent, who had borrowed it. The Respondent stated there was only one signed lease and she had not borrowed it. However, both parties agreed throughout the proceedings that the PRT in place was the model tenancy agreement Mr Reynolds had downloaded from the internet with no adjustments of the clauses and that the rent had been £550 per month. The Tribunal is thus satisfied that the Respondent had entered into a Private Residential Tenancy Agreement with the Applicant for the property on those terms.
3. The Respondent had initially at the first CMD indicated that she was challenging the amount of rent due but despite repeated directions from the Tribunal to quantify the amount disputed and to provide evidence of why the rent was disputed the Respondent did not provide any such evidence and at the hearing on 30.3.23 stated she was no longer disputing the rent was due. The Tribunal thus did not consider that the Respondent had provided any evidence of outstanding repairs being due, which may have justified withholding rent or which would have been a basis for an abatement or rent. No documentary evidence was provided by the Respondent. The Applicant's letting agent stated, credibly, that no outstanding repairs are noted on their file.
4. At no point had the Respondent disputed the accuracy of the payment history as set out in the arrears statements. Based on the information available the Tribunal

was thus satisfied that the arrears accrued during the management period of 1-2 Lettings and Sales Ltd as stated in the rent statements and updated by Ms Brennan at the hearing and that thus rent of £2,038.59 was outstanding and due to be paid by the Respondent to the Applicant for the period of the management of the property by the agents.

5. Furthermore, it is clear from the documents lodged by the Applicant that over a period of almost 3 years there had been ongoing issues of arrears developing. For the year 2020 alone this amounted to about £2,160 (as confirmed in the text message from the Applicant to the Respondent on 4.1.21), a figure that, again, was not disputed by the Respondent. The Tribunal further was satisfied that over the entire course of the tenancy the total arrears of rent accumulated by the Respondent were in the region of £6,000, an amount that was not challenged. The Respondent herself had explained the reasons for her financially precarious situation and her choice to allocate funds available to other priorities rather than her rent when she deemed it necessary to make such choices.
6. The Tribunal was satisfied that the formal requirements of an application were met. Whilst there had been some initial verbal challenges to the validity of the service of the notice, the S 11 notice and a brief mention of the potential application of the Cost of Living (Tenant Protection) (Scotland) 2022 at the first CMD, none of these issues were further specified, pursued or argued before the Tribunal and these matters were not insisted upon by the Respondent at the hearing. The Tribunal considers the service of the notice valid, as it was done by email, one of the permitted service methods. The Respondent did not provide evidence that this would not have been agreed. The reference to personal and mail service was only mentioned in the copy of the PRT which was explicitly not accepted as agreed by the Respondent. The Tribunal also considered that the S 11 notice given to the Local Authority provided the necessary information to fulfil the purpose of said notice.
7. The Tribunal was further satisfied that the Respondent had been in arrears of rent for a consecutive period of at least 29 months at the time the Notice to Leave was served and for an additional 10 months by the time of the hearing. The Tribunal was further satisfied that the arrears were not due to non or delayed payment of relevant benefits, as there was no suggestion from the Respondent that this may have been the case. The statutory criteria for ground 12 were thus met regarding the level and duration of arrears.
8. With regard to the issue of reasonableness, the Tribunal fully considered all relevant matters, including in particular the position of the Respondent, her family situation, the duration of the tenancy, the conduct of the Applicant as landlord during the tenancy, the level of support and information provided by the Applicant, the payment history and conduct of the Respondent as tenant during the tenancy, the level and development of the arrears as well as the Applicant's position.
9. The Applicant is a private individual who has several properties and did not use the services of a letting agent initially. As far back as 3.12.2020 the Respondent was aware that the Applicant could not afford the level of rent arrears

accumulating for the property. She had stated in a text: I know you can't afford it tats why I'm willing to go homeless in January rather than dragging it on if it wasn't for Xmas I'd have left already to save you the hassle On 3.6.21 the Respondent texted the Applicant : On the other hand I know you need your arrears I get that I know you've suffered from the pandemic as well as the rest of us so if you want me out I'll go without a fuss and still pay your money to you that's not even a question The Tribunal noted that throughout the text exchange the Applicant was very supportive of the Respondent and even offered to help her find employment by recommending her for jobs to letting agents he was working for. He patiently requested payment of the rent and on many occasions asked the Respondent to meet with him and address the situation. The Tribunal was satisfied that the Pre-action letter sent by the letting agents was only the last element of a prolonged and consistent effort on behalf of the Applicant to engage the Respondent in addressing the arrears. The Applicant has complied with the pre-action requirements. The information provided by the PARS letter also would have enabled the Respondent to access advice and help.

10. With regard to conduct, the Applicant had over years shown great restraint and understanding of the Respondent's financial situation and that he eventually had to hand the matter over to letting agents as the process had become too stressful for him as shown in his text: [04/09/2021, 10:55:40 am] Mark Reynolds: That's rite it all goes through them but I will do them it's to take the pressure of me it's all affecting my health. The Applicant had provided to the Tribunal a medical certificate confirming he suffers from hypertension and the Tribunal accepts from the text messages, the statements of Mr Reynolds and the explanation at the hearing from Ms Brennan, that the whole situation has become too stressful for the Applicant and continues to affect his health as well as his financial situation.
11. On the other hand it is equally clear from the correspondence and the development of the arrears that the Respondent, whilst she states she will pay off the arrears, has not proactively sought to enter into any meaningful plan with the Applicant or the letting agent to address the arrears. She simply tolerated the Housing Benefit direct payments but made no direct contributions. Over all the Tribunal agreed with the Applicant's argument that the Respondent simply did not engage sufficiently in resolving the matter of rent arrears. There has been a prolonged and persistent failure by the Respondent to address the arrears despite the Applicant's steps to try and engage the Respondent. The Respondent stated that at times she may have put her head in the sand. This kind of behaviour was also apparent during the process before the First-tier Tribunal, for example in not complying with directions and not giving advance notice of her position throughout the case.
12. The Respondent did not provide any medical reports suggesting that she would be particularly affected by an eviction. She made vague references to her physical and mental health issues but other than saying she suffers from arthritis, which makes it difficult for her to continue to work, was not prepared to discuss these matters in any meaningful way before the Tribunal. The Tribunal had very clearly advised the Respondent as follows: "The Respondent is required to provide: 1. any medical evidence the Respondent wishes to rely on with regard to the issue of reasonableness of an eviction order being granted in this case" She did not do so. Based on the evidence available the Tribunal does not find that the

Respondent has provided sufficient evidence to show that her health would mean that an eviction would have more of an impact on her than it would on other tenants. There is no suggestion of any medical conditions of the Respondent's son, who seems to be doing well and finishing school in the summer. There is nothing to suggest an objective need for the Respondent to remain at this specific property such as for example special adaptations of the property.

13. The Tribunal considered that the level and duration of arrears are so significant that even landlord with several properties cannot be expected to continue providing a private tenancy in those circumstances. Even although there is now a small contribution towards the arrears being made by Housing Benefit, it will take in excess of 4 years to clear the arrears accrued from October 2021 to now.
14. One important consideration regarding the reasonableness of an eviction order at present in the Tribunal's mind was the concern of the disruption an eviction would cause to the schooling of the Respondent's son, who is preparing for his final exams in 6th year. In order to safeguard his position the Tribunal considered that delaying the end of the tenancy to a date after the final exams would allow the Respondent's son to take his exams without disruption and would resolve that matter. After the end of the school year the Respondent's son is not going to continue going to the same school but will go to Springburn College. His local ties with the school will thus end with the school year in any event.
15. In all the circumstances the Tribunal thus finds that it is reasonable to grant the eviction order on ground 12 of schedule 3 of the Act.
16. In terms of S 51(1) of the 2016 Act the Tribunal thus grants the application for an eviction order as it is satisfied that one of the eviction grounds in schedule 3 of the Act applies.
17. As the Notice to Leave was served on 19.5.22 and the application was received by the Tribunal on 27.6.22, the application is not affected by the provisions of schedule 2 of the Cost of Living (Tenant Protection) (Scotland) 2022.
18. However, having due regard to the position of the son of the Respondent, the Tribunal determines that in terms of S 51(4) of the Act the tenancy ends on 30 June 2023.

E : Outcome

The Tribunal grants an order for eviction in terms of S 51 of the Act on Ground 12 of Schedule 3 of the Act.

F: 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.



**Petra Hennig McFatrige
Legal Member/Chair**

**31 March 2023
Date**