

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) in respect of an application 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 Rules”)

Chamber Ref: FTS/HPC/EV/22/3156

Re: Property at Flat 3/1, 744 Pollokshaws Road, Glasgow, G41 2AE (“the Property”)

Parties:

Mr Zahid Shafi, 158 Titwood Road, Glasgow, G41 4DB (“the Applicant”) per his agent, G4 Properties Limited, 52, Albert Drive, Glasgow G42 8DN (“the Applicant’s Agents”)

Mr Ovidiu Hendre and Mrs Larisa Hendre, Flat 3/1, 744 Pollokshaws Road, Glasgow, G42 2AE; Flat 3/1, 744 Pollokshaws Road, Glasgow, G42 2AE (“the Respondents”) per their agents Govanhill Law Centre, Samaritan House, 79, Coplaw Street G42 7JG (“Respondent’s Agents”)

Tribunal Members:

Karen Moore (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Application is refused and no Order is granted.

Background

1. By application received between 31 August 2022 and 26 October 2022 (“the Application”), the Applicant’s Agents applied to the Tribunal for an Order for eviction and possession of the Property based on the Ground 12 of the 2016 Act that the tenant has been in rent arrears over three consecutive months. The Application comprised a copy of private residential tenancy agreement between the Parties, copy Notice to Leave in terms of Ground 12 of Schedule 3 to the 2016 Act dated 4 May 2022 with proof of posting dated 5 May 2022, copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to Glasgow City Council, being the relevant local authority,

copy rent statements and copy letters from the Applicant's Agents to the Respondents in terms of the statutory pre-action requirements.

2. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (the "CMD") was fixed for 23 February 2023 at 14.00 by telephone conference. Shortly before the CMD, the second-named Respondent's Agents lodged written submissions opposing the Application. The Applicant's Agents lodged written submissions in response.

CMD and Direction

3. At the CMD, the Applicant was represented by Mr. Imaran Haq and Mr. Keith Hassan of the Applicant's Agents. The first-named Respondent was not present and was not represented. The second-named Respondent was represented by Ms. Lyndsey McBride of the Second-named Respondent's Agents.
4. The outcome of the CMD was that a Hearing was fixed to address and evidence the competency of the Notice to Leave procedure, the establishment of the eviction grounds and if it is reasonable to grant the Order.

5. The Tribunal issued the following Direction:

"The Applicant is required to provide:

- i) An updated rent statement for the Property showing rent due, rent paid and method of payment from the beginning of the tenancy to the date of the Hearing;*
- ii) Detail of the Applicant's property portfolio. Numbers of properties owned and rented will suffice.*
- iii) The extent of bad debt or rent arrears being carried by the Applicant across his total portfolio. A global figure will suffice.*
- iv) A copy of the Applicant's rent arrears policy, if any, and details of how this has been applied in this case.*

The Respondents are required to provide:

- i) Details or proof of the cash payments made by the Respondents towards the arrears;*
- ii) Detail of the steps, if any, taken by the Respondents to secure alternative accommodation and the outcome of these steps and*
- iii) Details of any special or additional needs which might be required by the children and any other family members who reside with the Respondents."*

6. Both Parties complied with the Direction.

Hearing

7. The Hearing took place at the Glasgow Tribunal Centre on 5 June 2023 at 10.00 am. The Applicant was not present and was represented by Mr. Haq of the Applicant's Agents. The Respondents were both present and represented by Ms. Lyndsey McBride of the Respondent's Agents. The Tribunal was assisted by Ms. Claudia Zaha, Romanian language interpreter.

Applicant's Position.

8. On behalf of the Applicant, Mr. Haq addressed the Tribunal on the responses to the Direction.
9. With regard to the rent statement, Mr. Haq explained that the current sum due is £1,300.00, being arrears of £850.00 plus the current rent of £450.00 which fell due on 4 June 2023 and is expected to be paid by Universal Credit on or around 27 June 2023. He advised that no payments had been made by the Respondents toward the rent arrears and that the arrears of £850.00 continue to remain outstanding.
10. With regard to the Applicant's property portfolio, Mr. Haq stated that the Applicant owns six rental properties, two of which are in rent arrears. The total rent arrears is £7,286.89 and this includes the rent arrears due on the Property.
11. With regard to the debt procedure, Mr. Haq explained that the debt policy of three letter all of which conform to the pre-action requirements had been issued in this matter. He stressed that the Applicant is a good and responsible landlord who has not increased the rent. Mr. Haq explained that the Applicant's Agents comply with Scottish Government legislation and are accredited and emphasised that support and guidance is given to tenants and landlords alike, particularly throughout and after the Covid pandemic, with advice being provided in multiple languages.
12. In cross-examination, Ms. McBride noted that the updated rent statements did not show the method of payments made, did not reflect all of the Universal Credit payments made and, in particular, did not reflect that a Universal Credit payment of £450.00 had been made on or around 27 August 2021, the result of which affected the validity of the Notice to Leave and the information contained in the Application. Mr. Haq accepted, as he had at the CMD, that the August 2021 payment had been omitted and pointed out that it had been included in the payments shown as received in March 2023, having been corrected after the CMD. Mr. Haq accepted that the detail of the Notice to Leave was incorrect as payments had been received after the date of December 2021 given in the Notice to Leave and the arrears had not continued to arise, also as stated in the Notice to Leave. However, he maintained that there had been arrears over three consecutive months at the date on which the Notice to Leave was issued, being 4 May 2022.
13. With regard to payments towards the arrears, Mr. Haq disputed that the Applicant and the Applicant's Agent had been made aware that the repairs were required and that the Respondents had sated that they would make payments towards the arrears when the repairs are carried out. Mr. Haq pointed out that a new boiler had been installed and, in the interest of fairness, stated that the Respondents are good tenants who take care of the Property.

Respondent's Position.

14. On behalf of the Respondents, Ms. McBride submitted that the Notice to Leave was in error and so was not competent or valid. She submitted that the errors in the rent

account as accepted by Mr. Haq meant that there were less than three consecutive months arrears when the Notice to Leave was issued and that the level of arrears remains at less than three months.

15. With regard to the Respondents' personal circumstances, the Respondents gave evidence that they have two small children aged three and four years and that the first-named Respondent is in employment. They confirmed that they have applied to Govanhill Housing Association for housing but are not a priority at present. They stated that they are prepared to agree to a payment plan for the arrears and will do so when the repairs are carried out.

16. In response to questions from Mr. Haq, the Respondents disputed that they had not notified the Applicant of the repairs and accepted that rent is not being properly withheld in a separate account pending the repairs being carried out.

Issues for the Tribunal.

17. The issues for the Tribunal are the competency of the Notice to Leave procedure, the establishment of the eviction grounds and if it is reasonable to grant the Order. The first is a matter of law and the second and third are matters of fact and law. The second and third issues are dependent on the satisfaction of the first issue and so the Tribunal dealt with it first.

Notice to Leave.

18. The legislation relative to the Notice to Leave is the 2016 Act at Section 52 (3), Section 62 (1), Section 73 and Ground 12 of Part 1 to Schedule 3. For the purposes of Section 62(1)(d) the relevant regulations are the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 at Schedule 5. The relevant wording is as follows:

- i) Section 52 (3) of the 2016 Act states: *"An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant."*
- ii) Section 62 (1) of the 2016 Act states : *"(1)References in this Part to a notice to leave are to a notice which (c)states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and (d)fulfils any other requirements prescribed by the Scottish Ministers in regulations."*
- iii) Ground 12 of Part 1 of Schedule 3 states: *"It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months."*
- iv) Part 3 of Schedule 5 to the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017, Details and Evidence of Eviction Grounds, states : *"It is important that the Tenant fully understands why you are seeking to evict them and that the action you are taking is justified."*
- v) Section 73 (1) of the 2016 Act states *"(1)An error in the completion of a document to which this section applies does not make the document invalid unless the error materially affects the effect of the document."*

vi) Section 73(2) of the 2016 Act states “*This section applies to... (d) a notice to leave (as defined by section 62(1))*”

19. The Tribunal had regard to Section 62 (1) of the 2016 Act above as narrated at paragraph 18 (ii) above and to Part 3 of Schedule 5 to the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations as narrated at paragraph 18 (iii) and (iv) above. Two criteria relating to grounds for eviction are required to satisfy the validity of a Notice to Leave: the statutory ground for eviction and the information given to the tenant.

20. In this Application, the Notice to Leave which is dated 4 May 2022 states “You are in rent arrears over three consecutive months. There have been no rental or arrears payments since 4 of December 2021 ...resulting in arrears of £2,200.00 and continuing to rise”. The Notice to Leave incorporates an excerpt from a rent statement from 4 January 2021 to 4 April 2022 showing rent due of £2,200.00 and showing no payment of rent for January, February, March, April and May 2022, which it was agreed had been paid. The Parties agreed that information in the Notice to Leave is incorrect as the arrears at the date of the Notice to Leave were £850.00 and the arrears have remained static since before that date.

21. The first question for the Tribunal was: had the Respondents been in rent arrears for three or more consecutive months on 4 May 2022? The Respondents fell into rent arrears amounting to two months around July 2020 and remain in this amount of rent arrears. Therefore, the Respondents had been in rent arrears for three or more consecutive months on 4 May 2022.

22. The second question for the Tribunal was: does the erroneous information in the Notice to Leave invalidate it? The Tribunal had regard to Section 73(1) and Section 73(2)(d) of the 2016 Act as narrated at paragraphs 18 (v) and (iv) above and noted that an error in a Notice to Leave does not invalidate it “*unless the error materially affects the effect of the document.*” The Tribunal took the view that the purpose of the Notice to Leave and the statutory explanatory notes which accompany it are to give fair notice to the tenant of the grounds for eviction and an opportunity to remedy same. In this case, the Tribunal took the view that the Details and Evidence of Eviction Grounds is so fundamentally flawed in respect of accuracy that it materially affects the effect of the Notice of Leave and so the error makes the Notice to Leave invalid in terms of Section 62 of the 2016 Act as narrated at paragraphs 18 (ii) above.

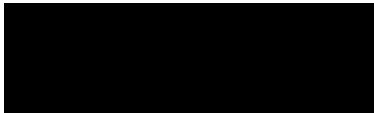
23. The Tribunal then had regard to Section 52 (3) of the 2016 Act as narrated at paragraphs 18 (i) and took the view that as the Notice to Leave is invalid in terms of Section 62 of the 2016 Act, the Application does not comply with Section 52 of the 2016 Act and so the Application must be refused.

24. Accordingly the Tribunal refused the Application and made no Order.

25. This decision is unanimous.

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.



8th June 2023

Legal Member/Chair

Date