



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/23/0520

Re: Property at Flat 3/1, 24 Dixon Avenue, Glasgow, G42 8EE (“the Property”)

Parties:

DBG Properties, Auchengray House, Caldercruix, ML6 8NY (“the Applicant”)

Mrs Jana Budiova, Mr Zdenko Budi, Flat 3/1, 24 Dixon Avenue, Glasgow, G42 8EE (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order in terms of Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 be refused it not being reasonable in the circumstances to grant an eviction order in relation to this application.

The Decision of the Tribunal was unanimous.

Background

1.This application for an eviction order in terms of Rule 109 of the Tribunal rules of procedure was first lodged with the Tribunal on 17th February 2023 and accepted by the Tribunal on 14th March 2023.A case management discussion was fixed for 28th April 2023 at 2pm.

Case Management Discussions

2.The case management discussion were attended by Mr Haq on behalf of the Applicant, and he was accompanied by Mr Hassan, also representing the Applicant.

Miss Moon solicitor of Govan Law Centre was in attendance on behalf of the Respondents.

3.The Tribunal had sight of the application, a tenancy agreement between the parties, a Notice to Leave and email sending this to the Respondents, a Notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003, an email sending this to Glasgow City Council, letters sent to the Respondents by agents on behalf of the Applicant setting out the rent arrears and signposting the Respondents to sources of assistance and rent statements, together with a rent statement and updated rent statement and written representations.

4.The Tribunal also had sight of written representations submitted by Miss Moon on behalf of the Respondents and responses to these put in on behalf of the Applicant.

5.Both representatives confirmed that they were aware that the application was affected by the Cost of Living (Tenant Protection) (Scotland) Act 2022 and in the event that an order was granted there would be a delay in implementing any order.

6.On behalf of the Applicant Mr Hassan advised that the Applicant wanted to proceed with the Application for an eviction order. There had been a good relationship between the parties and the payment of benefits had prevented the rent arrears continuing to increase. The arrears in April 2023 were sitting at £2743.38 and had not increased for some time since benefit payments had been used to pay the rent. Arrears had started to accumulate in 2017 but had worsened in 2021.He said that despite attempts on behalf of the Applicant to communicate with the respondents regarding the arrears there had been very little attempt by the Respondents to deal with these. During Covid times the Applicant's representatives had tried to offer additional support to the Respondents and had given them information regarding grants which might assist them, but nothing had ever been followed through.

7.This was a long-standing tenancy and the Respondents had rented there since 2013.The original tenancy had been replaced by a private residential tenancy which commenced on 29th March 2018.The monthly rent in terms of this tenancy agreement is £500 per month.

8.Miss Moon for the Respondents took no issue with the content or service of the Notice to Leave, or the service of a notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 and did not seek to argue that pre action protocol correspondence had not been sent or indeed that the rent arrears had arisen due to any failure or delay in the payment of a relevant benefit. She indicated that she was simply seeking to persuade the Tribunal that it would not be reasonable to grant an eviction order in the circumstances of the application.

9.Miss Moon advised the tribunal that as far as she was aware the rent arrears had started in 2017 and had stayed around the same level for some time. The arrears had started when the family had suffered a break-in at the property and had lost possessions and had required to replace them. They had in fact suffered a couple of break-ins.The Respondents had lost their employment during Covid and the arrears had increased then and they were now claiming universal credit and the rent arrears

were no longer increasing. The rent was being paid direct by universal credit. The Respondents had applied for direct deductions to be made from their universal credit payments which would put £33 per month towards the arrears. Miss Moon did not suggest that this alone would be a suitable way to pay off the arrears. She said that the Respondents wanted to pay off the arrears and did not suggest that this was a reasonable payment plan and stressed that the Respondents wanted to do more and hoped that they would soon gain employment. When asked about the likelihood of the Respondents gaining employment Miss Moon pointed out that the Respondents required in order to claim universal credit to update their journals with applications for jobs they had made, and they were both young and fit so there were no barriers to them seeking employment.

10. Miss Moon advised that the Respondents lived at the property with their three children aged 13, 16 and 17. The 17-year-old had recently had a baby. The 17-year-old was seeking her own property through Govanhill Housing Association for her and her baby. Miss Moon was not aware of the gender of the remaining children. Miss Moon indicated that the family had applied to be rehomed as a family but had been told this might take 5 years due to the need for a 5 bedroom property, so the Respondents' daughter had applied separately and understood it was likely to be possible in a shorter period of time for her to obtain alternative accommodation. Miss Moon accepted that if the Respondents' daughter was rehoused the difficulty in finding a five bedroom property would not be present. If they were evicted the family would likely be put into temporary accommodation initially.

11. Mr Hassan for the Applicant indicated at the case management discussion on 28th April that the rental property was a two-bedroom property and was therefore overcrowded currently. He said that the landlord was the landlord of 20 properties and was not currently facing any financial hardship due to the rent arrears. The property was mortgage free. He pointed out that if the direct payment at the present rate went ahead, it would take just under 7 years for the rent arrears to be paid off and this was not acceptable to the Applicant. He also took issue with what had been said regarding a break in at the property and indicated that one of the Respondents had told the Applicant's agents that cash had been taken. He also said that he had never had any issue in dealing with the Respondents using English when they contacted the Letting Agents' office. The Applicant had kept the rent at £500 per month and had retracted a proposed rent increase to assist the Respondents. Mr Hassan was not aware of whether the landlord Applicant had been contacted regarding direct payments being taken from universal credit.

12. The Tribunal adjourned to consider its decision. The Tribunal considered that in order to assist it in making a decision on whether it was reasonable or not to grant an eviction order it required further information on the application for direct payment from benefits and whether this had commenced, the up to date position regarding the housing situation of the Respondent's 17 year old daughter, confirmation of the gender of the Respondents' other children, the outcome of the Respondents' welfare rights advice interview and any change in the Respondents' circumstances in relation to their income. The Tribunal issued a Direction to parties requiring information as set out above.

13. A further case management discussion was fixed for 28th July 2023 at 10am. On that date Mr Haq again represented the Applicant with Mr Hassan also present on behalf of the Applicant. Miss Moon again appeared for the Respondents.

14. Since the last case management discussion the Applicant's representative had lodged written representations setting out that since the last case management discussion the Applicant's representative had applied to universal credit for direct payment of rent arrears. Since that date they had received two payments towards the rent arrears, namely £57.88 on 2nd June 2023 and £115.76 on 3rd July 2023. The Respondent's representative Miss Moon lodged written representations setting out the position regarding the Tribunal's queries.

15. The Respondents' 17-year-old daughter had a baby in November 2022 and has applied to Govanhill Housing Association for her own two-bedroom tenancy. A housing officer had advised her that she should be offered a tenancy shortly but there is no concrete date for this.

16. The Respondent's other children are a boy and girl and attend school in the area where the property is situated.

17. The Respondent's had met with a welfare rights adviser on 8th June 2023 and he had carried out a full welfare rights check to consider maximisation of the Respondents' income. He had identified that if the Respondents applied to reduce the amount being taken in relation to an overpayment of tax credits and applied this to rent arrears, they could increase the amount being paid towards the rent arrears to £115.76 per month. This had been effected and the monthly sum now being paid towards the rent arrears is £115.76 and the Applicants have received the first payment.

18. Miss Moon indicated that the Respondents were hoping to return to work to pay more towards the rent arrears until they are cleared. The First Respondent is hoping to go back to work soon and has been unable to work for 3 months due to issues with her back. She previously worked in a butcher's.

19. The second Respondent has a number of health issues for which he receives medication and is hoping to go be able to go back to work and hopes to apply to the place where the first Respondent worked previously.

20. Miss Moon accepted on behalf of the Respondents that they had been sent letters regarding the rent arrears but it was also said that they had found it difficult to source help as they had attended the Well, a local resource centre and had sometimes waited then been turned away.

21. At the case management discussion on 28th July the Tribunal was advised by Mr Hassan who had spoken to the first Respondent during the teleconference that the Respondents' family consisted of two girls and a boy. The girls aged 17 and 13 slept in one bedroom with the baby, the boy aged 16 slept in the living room and the Respondents had the other bedroom. The family had moved into the property in 2013 under a previous tenancy and the three children were younger at that time.

22. For the Applicant Mr Haq expressed concern that the landlord would have to apply every three months for the arrears payments to continue and was concerned that the Respondent's circumstances might change if they returned to work and this might affect the payment of the rent and the rent arrears and the situation might develop again. He was concerned about the overpayment of tax credits which would have to be paid back too. He confirmed that the rent arrears as of 28th July 2023 stood at £2443.74 and he accepted that if the monthly payments towards the arrears were maintained at £115.76 that the arrears would be paid off in just over 21 months. He expressed concern regarding the length of time the arrears had been outstanding and said that the landlord had been more than reasonable with the Respondents but had lost trust in them. He also expressed concern regarding the property being overcrowded with the Respondents, their three teenage children and a baby living there. He said that the Respondents had not told the landlord when the baby had been born and they had only found out recently. There was a concern over excessive wear and tear at the property given the number of people occupying a two-bedroom property. He accepted that given the ages of the children there were 3 children and two adults at the property when the first tenancy started. He was disappointed when his agency had reached out so many times to the Respondents regarding the rent arrears and he considered that the Respondents had not been proactive in managing the arrears and it had taken a tribunal application for eviction for them to do anything to deal with the arrears. In all of these circumstances he submitted that it was reasonable to grant an eviction order and asked the Tribunal to make such an order.

23. Miss Moon asked the Tribunal to find that it was not reasonable to grant an order. The family had applied for a 5 bedroom tenancy and been told it could take years to obtain such a property. The children were at a school in the area. The Respondents had tried many times to seek advice on their position and had attended with a welfare rights adviser and put in place what she described as a temporary but reasonable arrangement to pay off the arrears. She pointed to the fact that the arrears were now decreasing and would be paid off under the current arrangement within just over 21 months. She highlighted that the Applicant was a commercial landlord and the rent arrears were not causing financial hardship to any individual. The Respondents' eldest child and her baby should have their own tenancy soon and it was hoped that higher payments to clear the rent arrears could be made once the Respondents were back in work. Miss Moon indicated that she understood the direct payments towards the rent arrears would continue and be increased if the Respondents obtained work. She submitted that the balance of prejudice and harm if an order were granted would be to the Respondents. The arrears had mainly accrued during the Covid period when they both had lost their jobs. The making of the payment arrangement with money going straight to the landlord showed willing on their behalf as far back as February 2023.

24. The Tribunal considered that it had sufficient information upon which to make a decision and that the proceedings had been fair.

Findings in Fact

25. The Respondents who at that time had three children first entered into a tenancy agreement at the property in 2013.

26. The parties entered into a private residential tenancy agreement at the property with effect from 29th March 2018.

27. The monthly rent payable in terms of the tenancy agreements in place since 2013 is £500 per month.

28. Rent arrears in terms of the tenancy agreements in place between the parties since 2013 started to accrue in 2017 but increased in 2021.

29. A Notice to Leave dated 24th November 2022 in proper form and giving the appropriate notice to the Respondents was sent to the Respondents by email on 24th November 2022.

30. At the time of service of the Notice to Leave the rent arrears stood at £2743.38.

31. In November 2022 rent payments on behalf of the Respondents started to be made directly by universal credit.

32. A Notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 was sent to Glasgow City Council in respect of this application on 17th February 2023.

33. A number of letters were sent to the Respondents by the Applicant's representatives in terms of the pre action protocol requirements setting out the level of rent arrears accrued and signposting them to sources of assistance in November 2022.

34. The rent arrears have not accrued in terms of this tenancy agreement due to any delay or failure in the payment of a relevant benefit.

35. The Respondents are in continuous rent arrears in terms of the tenancy agreement at the property for a period in excess of three months.

36. The Respondents lost their jobs during the Covid 19 restriction period and rent arrears in terms of the tenancy agreement increased at that time.

37. Since the end of November 2022 rent payments in respect of the tenancy agreement are being made directly by Universal Credit on behalf of the Respondents and the rent arrears stopped increasing at that time.

38. The first Respondent hopes to return to work shortly after an issue with her back is resolved.

39. The second Respondent suffers from a number of health issues but hopes to be able to return to work.

40. The Respondents in the spring of 2023 attempted to deal with the rent arrears by asking for £33 per month of their benefit to be put towards rent arrears.

41. In June 2023 the Respondents engaged with a welfare rights officer and free income from benefits paid to the Respondents was identified to allow £115.76 per month to go towards the rent arrears.

42. In June and July 2023 the Applicant received a total of £173.64 in payments towards the accrued rent arrears.

43. The rent arrears as of 28th July 2023 stand at £2443.74 and if payments towards these arrears continue at the rate of £115.76 per month the rent arrears will be cleared in just over 21 months.

44. The Respondents live at the property with their 3 children aged 17, 16 and 13 and the two younger children go to school in the area where the property is situated.

45. The Respondents' 17-year-old daughter had a baby in November 2022 and has applied for her own tenancy and expects to be rehomed soon with her baby.

46. There are two bedrooms at the rented property and one is occupied by the Respondents, the other by their 17 and 15-year-old daughters with the baby, and their 16-year-old son sleeps in the living room at the property.

47. The property is not mortgaged and the Applicant is a landlord of 20 properties.

48. The Applicant landlord is not currently facing any financial hardship as a result of the rent arrears accrued in this tenancy.

Reasons for Decision

49. There was no dispute in this application that the eviction ground was made out, that the appropriate Notice to Leave and Section 11 Notices had been served, that the pre-action protocols had been complied with and that the rent arrears had not accrued due to any delay or failure in the payment of any benefit. The only issue the Tribunal required to deal with was the question of whether it is reasonable to grant an eviction order.

50. The Tribunal's task here was to consider whether, in all the circumstances, granting an order for possession is reasonable, not the most reasonable course of action, nor one within a range of possible actions; if it so decides, it must grant the order (***East Lothian Council v Duffy 2012 S.L.T. (Sh. Ct.) 113 at paragraphs 71 and 72***).

51. In this application the rent arrears had been outstanding for some time (most since 2021) and had occurred in the main due to the Respondents' circumstances being affected by the Covid 19 restriction period when they lost their employment. The rent arrears stopped increasing in November 2022 when rent started to be paid direct from the Respondents' benefit. The Respondents have made efforts in 2023 to have payments taken from their benefits to reduce the rent arrears and their most recent effort at doing this resulted in allocation of £115.74 per month of their benefits towards rent arrears. This will result in the arrears being cleared within just over 21 months which appears to be a reasonable period of time. The landlord is not suffering any financial hardship due to the existence of the arrears and the Applicant's request for an order appeared to be linked to the length of time that the arrears had been in place, a concern that the Respondents' circumstances might change and that this would affect the payment of rent and arrears and a lack of trust in the Respondents to ensure

that the arrears are cleared off, together with a concern regarding overcrowding at the property and that this might cause excessive wear and tear.

52. The Respondents live at the property with their three teenage children, the oldest of whom is 17 and had a baby in 2022. The sleeping arrangements involve the Respondents' son sleeping in the living room and this is far from ideal. The oldest child has applied for her own tenancy with her baby and from what she has been told by a housing officer it is likely that she will be rehomed soon. The property was rented out some years ago to the Respondents when they had three young children. Whilst there is overcrowding at the property it will be alleviated to some extent when the Respondents' oldest child is given her own tenancy. The Tribunal considered the Applicant's concern regarding whether the rent and arrears payment arrangement would not be continued if their circumstances changed. The Tribunal considered that the current arrears payment arrangement was brought about due to efforts on the part of the Respondents to engage with a welfare rights officer and there appeared to be a real desire on the part of the Respondents to stay in the property and clear off the rent arrears in what appears to be a reasonable payment plan being paid direct from benefit. They have expressed the desire to pay more towards the arrears should they obtain work. They have lived at the property since 2013 and their two younger children go to school in the area. Having regard to all of the circumstances the Tribunal took the view that it was not reasonable to grant an eviction order in relation to this application.

Decision

The Tribunal determined that an eviction order in terms of Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 be refused it not being reasonable in the circumstances to grant an eviction order in relation to this application.

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.

Valerie Bremner

Legal Member/Chair

28th July 2023

Date