

Housing and Property Chamber

First-tier Tribunal for Scotland



Decisions with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014 and Section 18 of the Housing (Scotland) Act 1988.

Chamber Refs: FTS/HPC/EV/20/1918 and FTS/HPC/CV/20/1920

Re Property: Flat 0/1, 41 Nithsdale Road, Glasgow, G41 2AL (“the Property”)

Parties:-

Mr Majid Ali, c/o 2 Carment Drive, Glasgow, G41 3PR (“the Applicant”), and

Anderson Strathern Solicitors, George House, 50 George Square, Glasgow G1 1EH (“the Applicant’s Representative”) and

Mr Aziz Mirza, Flat 0/1, 41 Nithsdale Road, Glasgow, G41 2AL (“the Respondent”)

Tribunal Members:

G McWilliams (Legal Member) and E Currie (Ordinary Member)

Decisions:

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determines as follows:

- 1) To grant an order for the Applicant’s recovery of possession of the Property from the Respondent; and**
- 2) To grant an order for payment by the Respondent to the Applicant of the sum of £10,778.83.**

Background

- 1. These are Applications for an eviction order in terms of Rule 65 (Application for order for possession in relation to assured tenancies) and for a payment order in terms of Rule 70 (Application for civil proceedings in relation to an assured tenancy) of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure (“the 2017 Rules”).**

Case Management Discussions 27th October 2020 and 10th December 2020

2. A Case Management Discussion (“CMD”) proceeded remotely by telephone conference call on 27th October 2020 and also on 10th December 2020.. Reference is made to the Notes on each CMD, dated 27th October 2020 and 10th December 2020.

Hearings 13th April 2021 and 28th September 2021

3. An evidential Hearing proceeded remotely by telephone conference call at 10am on 13th April 2021 and was continued, and concluded, also remotely by telephone conference call, on 28th September 2021. Reference is made to the Notes on the Hearing which were issued to the parties in advance of the continued Hearing on 28th September 2021. The parties attended on the Hearing calls on 13th April 2021 and 28th September 2021. The parties gave oral evidence and the Applicant’s Representative’s Ms McAtier, as well as the Respondent made submissions. The parties did not call any witnesses. Ms McAtier lodged an updated Rent Statement shortly before the start of the continued Hearing on 28th September 2021. This was copied by email to the Respondent, and received by him, before the commencement of the continued Hearing.

Evidence and Submissions

4. The parties gave oral evidence in respect of both Applications.
5. The Applicant stated that there were substantial arrears owing, of £10,778.83, in terms of the updated Rent Statement, notwithstanding that the monthly rent of £650.00 had been paid through the Respondent’s Universal Credit Housing Costs Element (“UCHCE”) award, since October 2020, following an initial UCHCE payment to him, of £585.00, in September 2020.
6. The Applicant stated that he and his wife, and their two teenage children, were suffering financial hardship due to the level of rent arrears outstanding. He said that his mortgage lenders in respect of the Property, Birmingham and Midshires, were pressing for repossession and that he needs to recover possession of the Property to pay off mortgage arrears of around £8000.00 as well some other debts. He acknowledged that he had not passed his lenders’ letters, regarding repossession, to Ms McAtier. The Applicant stated that the Property was his only let property and that he had intended to keep it as an investment property for his children, but could no longer afford to do so given the amount of mortgage arrears which had accrued due to the Respondent’s non-payment of rent.. He also said that his take-away business had been closed during the early part of the current public health pandemic and had only recently begun trading again.
7. The Respondent accepted that he had not made any payments of rent during the period August 2019 to August 2020. He was not clear regarding the current amount of rent arrears, referred to in the updated Rent Statement. After being

given some time by the Tribunal, at the continued Hearing, to look over the updated Rent Statement, and the Bank Statements previously lodged, the Respondent did not give any evidence to contradict the terms of the updated Statement.

8. The Respondent reiterated that he had gone to Pakistan in October 2019 and spent a number of months there. He said that he spent any Housing Benefit monies that he received, in late 2019 going into 2020, on costs other than rent. He said that DWP made a one-off Housing Benefit payment directly to the Applicant, in the sum of £961.17 on 5th March 2020. He stated that he had expected DWP to pay around £2000.00 to the Applicant. The Respondent further stated that he then did not receive any further DWP assistance with rent until he was awarded UCHCE in September 2020.
9. The Respondent stated that he has solely brought up his two children, now aged 17 and 16, for some 15 years. He said that his 17 year old son suffers from Autistic Spectrum Disorder ("ASD"), has anger issues and attends a school for children with special needs. The Respondent said that he is hopeful that his son will go onto College. He said that his daughter is doing well at a local secondary school. The Respondent said that he cannot work just now due to his parental responsibilities but hopes to gain some work if his son goes to College.
10. The Respondent stated that his son is supported by a social worker. He said that he took his children to Pakistan on holiday in 2019 with financial assistance from an NGO Family Fund grant, a hardship loan from DWP and, also, from his family in Pakistan.
11. The Respondent said that he had applied for alternative housing accommodation through Glasgow Housing Association and Govanhill Housing Association. He stated that he had not heard recently from these organisations. The Respondent said that he could pay £10.00 per week towards arrears and hoped to increase such payments when he is in work again..
12. Ms McAtier, for the Applicant, submitted that that the updated Rent Statement entries had been cross-checked against the Bank Statements lodged by both parties and that the stated rent arrears of £10,778.83 were correct and due. Ms McAtier submitted that the Applicant had served the Notice to Quit in September 2019 and can no longer sustain such a loss of rent monies and the resultant financial hardship which he and his family are suffering.. She said that the Respondent's offer, of payments of £10.00 per week towards rent arrears, made in evidence at the continued Hearing on 28th September 2021, would, if such payments were made, clear the arrears in over 20 years' time. Ms McAtier submitted that it was not fair, reasonable or realistic for the Applicant to be expected to wait such a period of time for payment of the arrears owing. She submitted that Applicant sought the grant of an order for possession of the Property and a payment order.
13. The Respondent submitted that it was not appropriate for himself and his family to have to leave the Property. He said that the family had resided there for some 7 years and that the children had their friends, and schools, nearby. He submitted

that his son, in particular, would be adversely impacted by a move, given his medical condition and anger issues.

Findings in Fact and Law

14. The parties' current tenancy agreement began on 29th June 2016. The monthly rental amount due is £650.00.
15. The Respondent occupies the Property with his son and daughter, aged 17 and 16 respectively. The Respondent's son suffers from ASD and anger issues and attends a school for children with special needs. He has support from a Social Worker. The Respondent's daughter is progressing well in S5 at a local secondary school.
16. The Respondent fell into considerable arrears of rent in late 2019 going into 2020. The Respondent did not pay any rent between August 2019 and August 2020 inclusive. He did not pay rent with Local Authority Housing Benefit monies he received during this period. Housing Benefit monies of £961.17 were paid directly to the Applicant, by Glasgow City Council, on 5th March 2020.
17. The Respondent went to Pakistan between October 2019 and February 2020. He received NGO Family Fund and DWP Hardship loan monies to assist with his family's travel to Pakistan.
18. The Respondent's monthly rent, of £650.00, has been paid directly to the Applicant by DWP, in terms of the Respondent's UCHCE award, since October 2020. A payment of £585.00 was made by DWP to the Applicant in September 2020.
19. The Applicant served a Notice to Quit ("NTQ") on the Respondent, in relation to the Property, on 6th September 2019. Form AT6, being the Applicant's Notice of Intention to Raise Proceedings for Possession, when arrears of rent were in the sum of £1950.00, was served on the Respondent on 3rd March 2020. These Applications were lodged with the Tribunal on 11th September 2020, after no rent had been paid between August 2019 and August 2020 inclusive.
20. The Respondent is currently in arrears of rent in the sum of £10,778.83.
21. The Respondent accepts that there are considerable arrears of rent owing.
22. The Respondent has applied to Glasgow Housing Association and Govanhill Housing Association for alternative accommodation for himself and his family. He previously received advice and representation, in respect of these Applications, from Govanhill Law Centre.
23. There were 3 months' rent arrears owing when Form AT6 was served on the Respondent on 3rd March 2020. More than 3 months' rent has been in arrears on the Hearing dates of 13th April 2021 and 28th September 2021. The Respondent persistently delayed in paying rent between August 2019 and August 2020. The

Respondent has been in arrears of rent since the Applications were lodged on 11th September 2020. Grounds for possession of the Property numbers 8, 11 and 12, set out in Schedule 5 to the Housing (Scotland) Act 1988 (“the 1988 Act”) are satisfied. The Applicant is entitled to the grant of an order for possession of the Property. It is reasonable that such an order be granted.

24. The Applicant is entitled to the grant of an order for payment to him by the Respondent of rent arrears, in the sum of £10,778.83.

Reasons for Decisions

25. Section 16 of the Housing (Scotland) Act 2014 provides as follows:

“16. Regulated and assured tenancies etc.

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal -

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

(2) But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.

(3) Part 1 of schedule 1 makes minor and consequential amendments.”

26. Accordingly, the Tribunal now has jurisdiction in relation to claims by landlords, such as the Applicant, against tenants, such as the Respondent, for possession and payment of rent arrears relating to a tenancy agreement, such as the parties’ tenancy agreement.

27. In terms of Section 18 of the 1988 Act the Tribunal shall not make an order for possession of the house let on the tenancy except on one or more of the grounds set out in Schedule 5 to the Act.

28. Ground 8 in Schedule 5 to the 1988 Act provides that an order for possession is mandatory if both at the date of the service of the Notice under section 19 of the Act relating to the proceedings for possession (being the date of service of the Form AT6) and at the date of the Hearing, at least three months’ rent lawfully due from the tenant is in arrears.

29. Ground 11 in Schedule 5 to the 1988 Act provides that an order for possession is discretionary if the tenant has persistently delayed paying rent which has become lawfully due, whether or not any rent is in arrears on the date on which proceedings for possession are begun.

30. Ground 12 in Schedule 5 to the 1988 Act provides that an order for possession is discretionary if some rent lawfully due from the tenant—
- (a) is unpaid on the date on which the proceedings for possession are begun;
 - and
 - (b) except where subsection (1)(b) of section 19 of the 1988 Act applies, was in arrears at the date of the service of the notice under that section relating to those proceedings.
31. Section 18 also provides that the Tribunal shall not make an order for possession unless they consider it reasonable to do so. Further it provides that the Tribunal shall have regard, in particular, to the extent to which any delay or failure to pay rent taken into account in determining that the ground is established is or was a consequence of a delay or failure in the payment of relevant Housing Benefit or Universal Credit.
32. The Tribunal considered all of the documentary and oral evidence and submissions.
33. Having considered and weighed all of the evidence the Tribunal found, on a balance of probabilities, that there were 3 months' rent arrears owing when Form AT6 was served on the Respondent on 3rd March 2020. This was agreed by both Ms McAtier, for the Applicant, and the Respondent's previous Representative at the CMD on 10th December 2020. The Tribunal further found that more than 3 months' rent has been in arrears on the Hearing dates of 13th April 2021 and 28th September 2021, that the Respondent persistently delayed in paying rent between August 2019 and August 2020 and, also, that the Respondent has been in arrears of rent since the Applications were lodged on 11th September 2020. The Respondent, in his oral evidence, accepted that he had not paid any rent between August 2019 and August 2020, inclusive, and that he remained in considerable arrears of rent. Accordingly the Tribunal found, on a balance of probabilities that the grounds for possession of the Property numbers 8, 11 and 12, set out in Schedule 5 to the 1988 Act are satisfied.
34. The Tribunal carefully considered and weighed all the evidence regarding the reasonableness of granting an order for the Applicant's recovery of possession of the Property. The Respondent is a single parent of two teenage children and his son suffers from ASD and anger issues. He has not been in work as he has been focusing on his parental responsibilities. The Tribunal accepted the Respondent's oral evidence in this regard. The Tribunal is not unsympathetic to the Applicant's difficult, personal circumstances. The Respondent said that he had not used his Housing Benefit monies to pay rent to the Applicant in 2019 and 2020. He went to Pakistan for some 5 months during this period. The Respondent said that he wanted to stay in the Property and offered to pay towards rent arrears at the rate of £10 per week and possibly more if he regains work.
35. The Applicant is suffering financial difficulties as a result of the rent arrears which have accrued. The Tribunal also accepted the Applicant's oral evidence that he is

in considerable mortgage arrears and requires to recover possession of the Property, which is his only rental property, and sell it to clear the arrears and other debts.. It is consistent with the Respondent's non-payment of rent for 13 months, between August 2019 and August 2020. If re-payment of rent arrears were to be made at the rate offered by the Respondent it would take some 20 years for the arrears to be cleared. The Tribunal found that it would not be fair or reasonable to expect the Applicant to wait such a period for the arrears to be repaid.

36. Having considered and weighed all the evidence and submissions the Tribunal found that it is not reasonable to expect the Applicant to sustain such continuing and considerable rent arrears, in particular when he is faced with possible repossession proceedings at the instance of his mortgage lender. Accordingly the Tribunal, whilst acknowledging that the Respondent has personal difficulties found, on a balance of probabilities, that it is reasonable that an eviction order for possession be granted in favour of the Applicant. The Respondent has recently accessed assistance from DWP and an NGO and has support from a Social Worker in respect of his son. He is also liaising with two Housing Associations in relation to applications for alternative housing and it is to be hoped that, with the support, advice and assistance of such organisations, he will be allocated suitable alternative accommodation for himself and his children in early course
37. The Tribunal therefore determined that the Applicant is entitled to the grant of an order for possession of the Property. It is reasonable that such an order be granted.
38. The Tribunal also carefully considered and weighed all the evidence regarding the amount of the arrears of rent. The Respondent previous Representative accepted the amount of arrears at the date that the Form AT6 was served, of £1950.00. The Respondent, in his oral evidence, accepted that he had not paid any rent between August 2019 and August 2020, inclusive, and that he remained in considerable arrears of rent. At the continued Hearing on 28th September 2021 the Tribunal afforded the Respondent the opportunity of challenging the updated Rent Statement lodged by the Applicant's Representative shortly before the commencement of that Hearing. The Respondent did not challenge or contradict the terms of the updated Rent Statement and, accordingly, the Tribunal found, on a balance of probabilities, that that the arrears of rent claimed by the Applicant at the commencement of the continued Hearing, on 28th September 2021, of £10,778.83, are due and that it is appropriate, and just, that a payment order in that sum should be granted.

Decisions

39. Accordingly, the Tribunal make an order for the Applicant's recovery of possession of the Property from the Respondent and, also, an order for payment by the Respondent to the Applicant of the sum of £10,778.83.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by a 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.

G McWilliams

29th September 2021

Legal Member

Date