

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) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/23/0668

Re: Property at [REDACTED] (“the Property”)

Parties:

Mr Parmjit Athwal, 9 Gilston Place, Broughty Ferry, Dundee, DD5 3JB (“the Applicant”)

Ms Amanda Dolan, [REDACTED] (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Mrs F Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted.

Background

1. This is a Rule 109 application made in the period between 2nd March and 3rd April 2023. The Applicant is seeking an eviction order under ground 12. The Applicant’s representative lodged a copy of the tenancy agreement, which commenced on 10th May 2022 with a monthly rent of £800, copy Notice to Leave with evidence of service, copy section 11 notice with evidence of service, and a rent statement.
2. A Case Management Discussion (“CMD”) took place by telephone conference on 28th June 2023. The Applicant’s position was that, although the application was made under ground 12, he now wishes to sell the Property due to rising mortgage costs. The arrears, which were £2250 at the time of serving the Notice to Leave, were £3198 at the date of the CMD. Several payment plans had failed. The Applicant’s representative confirmed that no pre-action requirement correspondence had been sent to the Respondent, signposting her to sources of independent advice.
3. The Applicant said he used to reside in the Property, and it is the only property that he lets. The situation with rent arrears has caused him stress. He was

concerned to find there are pets in the Property, and he said he feared the condition of the Property was deteriorating due to the Respondent's occupancy and the fact that the Property is crammed with boxes.

4. Responding to questions from the Tribunal, the Applicant said his mortgage on the Property was £533 per month. He does not expect this amount to change. He also has insurance costs, and child maintenance payments to make.
5. The Respondent said she was opposed to an eviction order. She is on the waiting list for social housing. She has been awarded the gold status due to her mobility issues and her family circumstances. She is awaiting a three-bedroom property which would suit her family better than the Property, which only has two bedrooms.
6. The Respondent said she got into financial difficulty during Covid, when her wages were cut. She was then signed off in 2022 due to health issues. She has now returned to full-time work on a phased basis. She said she had tried to stick to the payment plan but child maintenance that had been promised was not paid. She said she has a signed agreement that she will receive 200 euros per week in child maintenance from 1 July, and this will help her in meeting the payment plan. She is now back on a full-time wage and expected to pay £400 the following day towards the rent and arrears. This would be on top of the £500 already paid to the applicant from Universal Credit. She expects to be able to adhere to the £50 per week payment plan.
7. The Tribunal considered it necessary to move to a hearing on reasonableness. The Respondent was advised to take suitable housing or legal advice on the matter of reasonableness and the possibility of representation at the hearing. The Tribunal said the Respondent may wish to lodge evidence of the likely impact of eviction upon herself and her children (aged 12 and 14), and that it would expect to see evidence of attempts made by the Respondent to gain alternative housing including the status of her application to the local authority for housing, and evidence to support the local authority position, including an indication of what would happen if an eviction order was granted.
8. Both parties lodged further written representations and productions in the period leading up to the hearing.
9. On 5th July 2023, an updated rent statement was lodged on behalf of the Applicant showing rent arrears to be in the sum of £3448.

The Hearing

10. A hearing took place by telephone conference on 14th September 2023. Both parties were in attendance. The Applicant's representative, Mr Sean Cruickshank, Pavillion Properties, was also in attendance.

Preliminary Issues

11. The Tribunal referred to the updated rent statement. The Respondent indicated that she agreed that the sum of £3048 was outstanding.
12. The Respondent indicated that she remained opposed to the order being granted.
13. The Tribunal indicated it did not expect to hear evidence in relation to an ongoing issue regarding a dispute between a neighbour and the Respondent unless parties considered this relevant to the matter before the Tribunal.

Evidence-in-chief of the Applicant

14. The Applicant referred to his written representations sent in by email on 25th July 2023, saying he had hoped for a successful and stress-free tenancy agreement, believing, due to the income and expenditure information provided by the Respondent to the letting agent, that she was in a position to afford to pay the rent. It was not clear to him why the rent was not being paid, as the Respondent did not fully explain this. Payment plans had not been adhered to. The ongoing uncertainty and doubt cause him stress, and distracts him from his day-to-day life. He has a mortgage and insurance to pay on the Property. The current mortgage term ends in October this year, and the new monthly payments will rise as a result of interest rates. He managed to get monthly repayments down from £522.42 to £416.37 in February 2023, but this will increase in October 2023. He provided copies of bank statements evidencing mortgage payments.
15. The Property was the Applicant's first home as an adult and he took great pride in looking after it. The stress of the whole situation has made him want to sell the property as confirmed by a letter dated 26 June 23 submitted from his solicitor showing his intention to sell. The Applicant said he needs to sell the Property and use the funds to buy a suitable home for himself near to where his son lives, currently 35 miles from the Applicant's home.
16. The Applicant said he has huge concerns around the end-of-tenancy cleaning and re-decoration bills to bring it to the standard in which he left it, reiterating his concern about multiple pets in the Property. He questioned the veracity of information provided by the Respondent to the effect that she had permission to keep pets, as he had not seen the original emails. On attending at the Property, he was shocked to see how many unpacked boxes and general clutter there was around the house, particularly in the living room and lobby areas, where there was only a very small percentage of the floor space available. This contributes to overcrowding and lack of airing. It can be seen externally that the blinds on all the windows seem to have been damaged. They were not in a damaged state at the beginning of the tenancy.
17. Responding to questions from the Tribunal, the Applicant said he was unaware of the exact increase in his mortgage payment from October, though

he knew it would rise. Mr Cruickshank confirmed that he was unable to see the emails between the Respondent and a former employee of the letting agent in respect of pets, as the former employee's emails could no longer be accessed.

18. The Applicant was asked by the Tribunal for further detail in respect of the effect of the current situation upon him. He said the main thing for him is the state of the house. He does not know what it will be like at the end of the tenancy. There are pictures on all the walls, which will have caused holes, and there is mould. He said he should be getting paid the money he is owed. The failed promises to pay the money, and being kept in the dark, cause him stress. He has lost weight and has had sleepless nights. He is employed in a full-time position in sales. He also has a mortgage on the house in which he lives. Asked about his previous submission that he required to sell the house to buy a property to be nearer his son, the Applicant said he wants to provide the best for his son, and this will cost money. In response to questions, he said he pays insurance of around £400 per annum on the Property and a letting agent fee of 9% of rent.

19. There was no cross-examination of the Applicant.

Evidence-in-chief of the Respondent

20. The Respondent reiterated that she had been given permission to keep pets at the start of the tenancy, and said she was shocked to find that the Applicant was shocked at his discovery that there were pets in the Property. The family had moved from a four-bedroom property to the two-bedroom Property, and she has belongings stored in boxes, and she is sleeping in the living-room, which she accepts causes overcrowding in the Property. The Respondent said she also rents a storage container at a cost of £240 per month, in which larger items are stored, and she cannot afford to rent another container. The Respondent said the windows are kept open all the time. There have been problems with mould in the bathroom, which have been reported to the letting agent, and plumbers have attended. She said she was told by them the bathroom was old and needed replaced.

21. The Respondent said £500 of her rent is covered by Universal Credit, which means she has to pay £300 per month. She was signed off for most of last year due to medical issues. She fell into arrears when she became in receipt of statutory sick pay, and her income was reduced by £1000 per month. She pays £403 per month for her car. She is now back in full-time employment, but she is still playing catch-up. She believes she may have gone back to work too soon, in order to try and improve her financial situation as she couldn't survive on Universal Credit and Statutory Sick Pay. There are issues with maintenance payments, and she cannot rely on receiving payment. The Respondent said she hates being in debt and has tried to keep the letting agent informed of her problems and intentions.

22. The Respondent said she would like to stay in the Property until she can find another more suitable property. She and her family feel safe there. They are receiving support from Women's Aid. She has been allocated gold status by the local authority, but there are not a lot of three-bedroom properties available. Recently, she applied for a property, and discovered 450 other people had also applied for it. It was her position that finding another private let would prove too expensive for her.
23. Responding to questions from the Tribunal as to how she funded payments towards the arrears of £450 in July 2023, the Respondent said she had taken out a loan of £200 and borrowed the rest from family. In August 2023, the maintenance payments stopped and she could not pay the £300 towards the rent. In September 2023, she managed to pay the £300 by borrowing from friends, but paid nothing towards the arrears.
24. Responding to questions from the Tribunal as to whether she could afford to rent the Property, the Respondent said she can afford it, but she is behind because of the problems of last year. She said she is getting there. The Respondent said she is taking legal advice about court action in Ireland to ensure receipt of maintenance payments and other related financial issues. She hopes to have a court order within a couple of months. The Respondent said she has £0.75 in her bank account and will have to use the food bank if she does not receive any maintenance payment as due the following day.
25. Responding to questions from the Tribunal regarding the rent for social housing, the Respondent said it would be around £400 a month. Asked about her understanding of what would happen in respect of social housing if an order was granted, the Respondent said she had been told to see the local authority if an order was granted, and she had not been told by the local authority that it might be easier to get housing if she was homeless. The Respondent said her friend had received notice to quit and had been told by the local authority to stay in her rented property until an eviction order was granted. She and her children have been through a difficult situation and she does not want to have to uproot the children. It was her position that there will be no choice over the area in which they live if they are made homeless. She has extended her search for property to a wider area but would wish to be within travelling distance of the children's school. Her children are both at a local secondary school.
26. Asked by the Tribunal if she had taken any advice from advice agencies following the CMD, the Respondent said she had tried a local authority-run advice project but they said they could not help until she was being removed from the Property. She had looked up advice online, but had not contacted any other advice agencies.

Cross-examination of the Respondent

27. The Respondent confirmed her salary and employment details, and her outgoings. She said she had not yet had a letter of engagement from her

solicitor in relation to the court proceedings that she had mentioned, so she was unsure of the likely cost.

28. Asked if it was fair to the Applicant that the Respondent had not taken advice, the Respondent said she did not mean to cause the Applicant stress.
29. Asked how she would deal with the mould issue, the Respondent said she wipes the mould away. The Respondent again referred to a plumber having stated that the bathroom required to be replaced.

Summing up by the Applicant

30. The Applicant submitted that the Respondent cannot afford to stay in the Property. There is no guarantee of full-time employment moving forward. He is not confident that she can afford the rent. He is concerned about costs mounting up while she stays in the Property. The Applicant said he was not happy that the Respondent had not taken steps to get advice. If the order was not granted, it would be back to square one, and it was likely the Respondent would fall into more arrears. The Applicant said he believed there is social housing available and that the family would be prioritised.
31. Responding to questions from the Tribunal, Mr Cruickshank said the Respondent had got into difficulty from the start of the tenancy and there had never been a zero balance on the rent account after the first part-month.
32. Responding to questions from the Tribunal, the Applicant said he had not taken any professional advice on the mould situation, as it was not necessary. It was common sense that the mould was due to overcrowding. He was concerned that he would have to replace the carpets and blinds at the end of the tenancy.

Summing up by the Respondent

33. The Respondent said she had told the letting agent at the start that she would get a professional clean carried out at the end of the tenancy, and she hoped this would minimise the Applicant's costs. Her current priority is to pay the rent, now that she is working full time. She will be paying every month and will make as much effort as possible to pay more. The Respondent reiterated that she feels safe in the Property and the children are happy and settled there. She does not want to put the children through any more. They have gone through the boxes that are stored in the Property and tried to get rid of some things. There is nowhere for them to put their belongings. They are living in a good area and it is her concern that they will have no control over where they will end up if the order is granted. The arrears are not going to escalate.
34. Responding to questions from the Tribunal as to whether the Respondent could see any positives from an order being granted, and whether she might accept the proposition that the family could be housed somewhere suitable, she said no. The Respondent said she had asked the local authority how the

allocation procedure worked and discovered that a short list is drawn up when several people apply for a property. If there are several people in the same band, the one who has been on the list for the longest period will be allocated the property. She asked the local authority if she'd have had more chance of getting the property she'd recently applied for if she'd been homeless, but she was told that was not the case as there could have been several homeless people on the list. The Respondent said the family was beginning to heal now.

Findings in Fact and Law

35.

- (i) Parties entered into a private residential tenancy agreement in respect of the Property on 10th May 2022 with a monthly rent of £800.
- (ii) The Respondent did not pay the rent for June 2022, and thereafter, there has never been a zero balance on the rent account.
- (iii) The Respondent has been in rent arrears for three or more consecutive months.
- (iv) The Respondent's rent arrears are not due to a delay or failure in the payment of a relevant benefit.
- (v) The pre-action requirements for private residential tenancies have not been met.
- (vi) The Respondent resides in the Property with her two teenage children.
- (vii) The Property has two bedrooms.
- (viii) The Respondent sleeps in the living room.
- (ix) The Respondent and her family require a three-bedroom property.
- (x) It is reasonable to grant an eviction order.

Reasons for Decision

36. Ground 12 of Schedule 3 of the Act provides that it is an eviction ground if the tenant has been in rent arrears for three or more consecutive months. The Tribunal may find that this applies if for three or more consecutive months the tenant has been in rent arrears and the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order. In deciding whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenant's being in arrears of rent over that period is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit and

the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations.

37. The Tribunal is satisfied that Ground 12 has been established.
38. The Tribunal is satisfied that the necessary Notice to Leave has been correctly issued to the Respondent in terms of the Act.
39. The Tribunal is satisfied that the arrears are not due to a delay or failure in the payment of a relevant benefit.
40. In considering whether it was reasonable to grant the eviction order, the Tribunal considered all the documentary and oral evidence. Although the Tribunal was satisfied that there had been reasonable efforts made by the Applicant through his letting agent towards setting up payment plans with the Respondent, the Tribunal was concerned at the failure to comply with the pre-action protocol. It was noted that the Property was fully managed by an established letting agent, which made this omission all the more concerning. As a result, the Respondent was not given information about her rights in relation to possession proceedings or as to how she might access information and advice on financial support and debt management. However, the Tribunal noted that, despite indicating to the Respondent at the CMD that she may wish to take such advice, she had not done so.
41. The Tribunal gave no weight to submissions regarding whether or not the Respondent was allowed to have pets in the Property, and whether the way in which she was using the Property was likely to be causing issues with mould and incurring cost to the Applicant in terms of repairs at the end of the tenancy. There was no evidence provided to substantiate the Applicant's concerns in this regard.
42. The Tribunal gave no weight to the earlier submissions of the Applicant that he had to sell the Property due to rising mortgage costs. No evidence was provided to substantiate this, and the Tribunal noted that information given by the Applicant regarding mortgage payments at the CMD was inaccurate and the level of payments overstated, as substantiated by bank account statements subsequently submitted by the Applicant.
43. The Tribunal considered the rent arrears to be high, and a cause of stress and anxiety for the Applicant.
44. The Tribunal took into account the fact that the Respondent had got into difficulty paying her rent from the second month of the tenancy, and had never had a zero balance, which tended to suggest she was unable to afford the rent. The Tribunal took into account the fact that the Respondent had suffered a period of ill-health and this had impacted upon her income and ability to pay the rent. She is now back in full-time employment, and requires to pay a sum of £300 over and above the Universal Credit payment of £500 each month, to cover the rent. During July 2023, she was able to pay the £300 rent and make

significant payment towards the arrears because she received maintenance payments, a formal loan of £200, and further loans from family. No maintenance payments were made in August 2023, so she was unable to make any payment towards the rent or arrears. In September 2023, she was only able to pay the £300 rent by borrowing from friends, and no payment was made towards the arrears. The Respondent does not know if maintenance will be paid in September. In all, the Tribunal considered that the Respondent cannot afford to maintain the tenancy. On her current full-time wage, she seems unable to pay the monthly £300, far less anything towards the arrears. It was her evidence that she had exhausted other sources such as loans, and that she may have to rely on food banks to feed her family. She is now considering legal action in relation to maintenance, and other financial sums in relation to divorce. The Tribunal considered the idea that she may have a court order from a court in another country in a couple of months to be extremely optimistic. Even after a court order is granted, there may be a further lengthy period before it can be enforced. The Tribunal considered it likely that, if no eviction order was granted, and given the uncertainty in regard to maintenance payments, the Respondent would be unable to pay the £300 towards the rent and ongoing payments towards the arrears. This would mean an increase in the arrears, and continuing stress and anxiety for the Applicant, as well as further loss of income.

45. The Tribunal recognised the seriousness of the situation in which the Respondent and her family find themselves. Having been through significant trauma, they are now settled in the Property, in an area they enjoy which is close to the school the children attend. The Tribunal considered the impact upon the Respondent's health of an order being granted. The Tribunal had regard to a medical letter lodged by the Respondent in which the medical professional stated that the Respondent recognises that the Property is overcrowded, and that she sleeps on the sofa and has no personal space of her own. The medical professional stated that it was not possible to quantify the level of distress and trauma caused by an eviction situation, and that trauma tends to have a cumulative impact rather than individual events having separate sets of consequences. They stated that making the family homeless would be a traumatic event for the family, that the ongoing tribunal proceedings are limiting the Respondent's recovery, and that safe secure housing is a priority for emotional wellbeing.
46. Having regard to the terms of the medical letter and the impact of an eviction order upon the Respondent, the Tribunal considered the enhanced status awarded to the Respondent by the local authority, which suggests that she is already prioritised in terms of points in the allocation system for social housing. Despite this prioritisation, the Respondent is competing with a large number of other families when it comes to available properties. There was no evidence before the Tribunal that this situation is likely to change in the near future.
47. By law, councils must offer a minimum of advice, assistance, and temporary accommodation to all homeless households and those at risk of

homelessness. If an order is granted, there will undoubtedly be a period of uncertainty and stress, but it is likely the family will eventually be housed in safe, secure housing that is more suitable to their needs than the Property, in terms of size and the level of rent. The family are currently living in overcrowded accommodation with many of their belongings in storage outside the Property, or in boxes within it. They are living beyond the current means of the Respondent, and it does not seem likely that this situation will change in the near future.

48. The Tribunal took into account that the family is receiving ongoing and significant support from Women's Aid. The application is affected by the Cost of Living (Tenant Protection) (Scotland) Act 2022, which means execution of an eviction order is likely to be delayed for a period of up to six months, which will allow the Respondent and her family to continue receiving support that may be of assistance in dealing with the local authority, and during the period of transition to social housing.

49. In all the circumstances, the Tribunal decided it is reasonable to grant the order sought.

Decision

50. An eviction order in respect of the Property is granted. The order is not to be executed prior to the earlier of (a) the day following the end of a period of 6 months beginning with the day on which this order was granted, or (b) the expiry or suspension of Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022.

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.

H Forbes

Legal Member/Chair

14th September 2023
Date