



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/22/0618

Re: Property at 1/3 308 Clyde Street, Glasgow, G1 4NP (“the Property”)

Parties:

Mr Amer Rafique, Mrs Nosheen Rafique, 115 Fenwick Road, Giffnock, G46 6JB (“the Applicants”)

Mr Ryan Morgan, 1/3 308 Clyde Street, Glasgow, G1 4NP (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member) and Elaine Munroe (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicants are entitled to the Order sought for recovery of possession of the property.

Background

1. The Applicants made an application to the Tribunal dated 2 March 2022 seeking an order for eviction in terms 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 (Rules and Procedure) Regulations 2017 (“the 2017 Rules”).
2. This application called alongside a related application which proceeds under chamber reference FTS/HPC/CV/22/0606.

3. These applications previously came before the Tribunal for a Case Management Discussion (“CMD”) on 24 May 2022 and a Hearing on 2 August 2022. Reference is made to the Notes and Notices of Direction issued following the CMD and Hearing. The Notes and Notices of Direction in respect of the Hearing on 2 August 2022 were intimated to the Respondent by sheriff officer on 11 August 2022.
4. A further Hearing was assigned for 8 September 2022. At 10am on 8 September 2022, the Tribunal received a telephone call from the Respondent’s father advising that the Respondent was unwell and unable to participate in the Hearing.

The Hearing

5. The Hearing took place by conference call. Both Applicants participated in the Hearing and were represented by Miss Lithgow. The Respondent did not participate and was not represented at the Hearing.
6. The Applicants’ representative indicated that, notwithstanding the call made to the Tribunal on the morning of the Hearing, the Applicants wished to proceed with the Hearing today.
7. Having considered matters, the Tribunal proceeded with the Hearing notwithstanding the absence of the Respondent. The Applicants’ representative advised that she intended to lead evidence from both Applicants.

Summary of evidence

Mr Amer Rafique

8. The Applicants appointed Pacitti Jones as their letting agent in respect of the property. The Respondent moved into the property in September 2020. The parties entered into a Private Residential Tenancy. Rent was payable at the rate of £750 per month. The Respondent made one payment of rent on 25 September 2020 and has not made any payments since that date.

9. The Respondent has made many promises to pay rent and to enter into a payment plan but has failed to make payment.
10. The Applicants have been prejudiced by the Respondent's failure to pay rent; they have a mortgage over the property and have a liability to pay factors' fees. The Applicants have had to use their savings in order to meet these outgoings. The Applicants have been worrying about the financial impact on them arising from the Respondent's failure to pay rent.
11. The Respondent made a report to the Applicants' letting agent regarding a problem with the boiler within the property. The Applicants' instructed a repair of that boiler. The Applicants' have complied with all of their obligations in terms of the tenancy agreement.

Mrs Nosheen Rafique

12. The Applicants were prepared to consider any repayment proposals the Respondent had. The Respondent contacted the Applicants' letting agent by email indicating that he would pay the rent arrears due, but no payment or proposals for payment were forthcoming.
13. When the Applicants gained entry to the property for inspection, they noted that the walls had been damaged and that a mirror had been smashed. They were concerned about the condition of the property.
14. Mrs Rafique owns one other rental property. The Applicants have had to access savings in order to meet the mortgage and common charges associated with the property occupied by the Respondent.

Submissions

15. The Applicants' representative referred to an email exchange she had with the Respondent. By email of 7 April 2021, the Applicants' representative provided details of organisations the Respondent could

contact for financial assistance. The Respondent was advised in that email that the Applicants were prepared to discuss a payment plan in relation to rent arrears. The Applicants have already obtained an order for payment in respect of rent arrears for the sum of £9,000. The total level of rent arrears is now £17,250. It was submitted that the Applicants' had complied with the pre-action protocol and had complied with their obligations as landlords. It was submitted that if an order for eviction was not granted, it is likely that rent arrears will continue to accrue. The Applicants' representative sent an email to the Respondent on 24 May 2022 providing bank details once again to enable the Respondent to make payment. A reminder email was sent on 31 May 2022. The Applicants' representative received no response. It was submitted that in all of the circumstances, it was reasonable for the Tribunal to grant an order evicting the Respondent from the property.

Findings in fact

16. The parties entered into a Private Residential Tenancy which commenced 28 September 2020.
17. Rent was payable by the Respondent at the rate of £750 per month, in advance.
18. The Applicants' representative served the Notice to Leave on the Respondent by email on 25 August 2021.
19. As at the date of the Notice served, the Respondent was in arrears of rent in excess of 3 months.
20. As at the date of this case management discussion, the Respondent was in arrears of rent in excess of 3 months.

Reason for decision

21. The application was intimated to the Respondent by letter of 7 April 2022. In that letter, the Respondent was invited to lodge written representations by 28 April 2022. The Tribunal noted that no written representations were lodged by the Respondent.

22. At the CMD on 24 May 2022, the Respondent accepted that he owed arrears of rent but could not say whether the rent statement lodged was accurate. He explained that he was unable to work for a period of time due to illness and was unable to pay rent during that time. His position was that he had made attempts to agree a payment arrangement with the Applicants' representative, without success. He advised the Tribunal that he was prepared to pay ongoing rent as it fell due and £300 per month towards arrears. The Tribunal issued a Notice of Direction to the Respondent following the CMD, requiring him to lodge documentation supporting his position. Although the correspondence sent to the Respondent was returned undelivered to the Tribunal, a further Notice of Direction was issued to the Respondent by sheriff officer on 11 August 2022. The Respondent failed to comply with the Direction.
23. Shortly after the Hearing on 2 August 2022 started, the Respondent sent an email to the Tribunal indicating that he was awaiting contact from his legal representative. Having taken account of that email and despite opposition from the Applicants representative, the Tribunal adjourned the Hearing on 2 August 2022 to allow the Respondent an opportunity to instruct his legal representative. The Tribunal has not received any communication from a legal representative acting on behalf of the Respondent.
24. After the Hearing on 8 September 2022 commenced, the Tribunal received an email from the Respondent (at 10:09am) stating "I'm really ill and took a test and it's positive for covid, I'm sorry I couldn't of made the phone call today I'm just really ill."
25. The Tribunal took account of the substantial balance of arrears said to be due by the Respondent. The Tribunal found the Applicants to be credible and reliable. The Respondent had several opportunities to lodge documentation supporting his position. No documentation was lodged or detailed submissions made challenging the accuracy of the rent statement. The Tribunal noted that the up to date rent statement lodged in the related application discloses that no payments have been made by

the Respondent, notwithstanding what he told the Tribunal on 24 May 2022.

26. The Tribunal noted from the supporting documents lodged that the Respondent sent an email to the Applicants' representative on 11 November 2020 stating "I'm honestly so unsure why that's not working as that's my card on my phone that's the number? And yeah can I just make up a payment plan please? Could I pay £900 pcm for the next 5 months until the rent arrears are paid off." The Respondent sent a further email to the Applicants' representative on 12 April 2021 stating "Hi there, yeah I'll be out here before that date and I'll be in touch with you before that to make a plan up to pay everything that I owe back, apologies."
27. The tenancy agreement contains the Applicants' representative's bank details. Further the Tribunal noted that the Applicants' representative provided the Respondent with bank details by email. Despite that, the Respondent failed to make payment of ongoing rent or arrears of rent.
28. The Tribunal was satisfied that ground 12 of schedule 3 of the 2016 Act has been established. Having taken account of the Applicants' evidence and the submissions made, the Tribunal was satisfied that it was reasonable to grant the order for eviction.

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.

N. Irvine

Legal Member/Chair

8 September 2022
Date