



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/22/1893

Re: Property at Flat 4, 24 Park Circus, Glasgow, G3 6AP (“the Property”)

Parties:

Mr William Liam Donnelly, WM Donnelly Ltd, 15 Law Place, East Kilbride, G74 4QL (“the Applicant”)

Miss Nasiba Ali, Flat 4, 24 Park Circus, Glasgow, G3 6AP (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Elaine Munroe (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for the eviction of the Respondent from the property.

Background

1. By application dated 16 June 2022 the Applicant’s representatives Ritehome Limited, Glasgow, applied to the Tribunal for an order for the eviction of the Respondent from the property under Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) in respect of alleged rent arrears arising from the Respondent’s tenancy of the property. The Applicant’s representatives submitted a copy of the tenancy agreement, Notice to Leave with proof of delivery, pre-action letters and rent statements and Section 11 Notice with proof of intimation in support of the application.
2. By Notice of Acceptance dated 16 September 2022 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD was given to the Respondent by Sheriff Officers on 7 November 2022.

The Case Management Discussion

4. A CMD was held by teleconference on 8 December 2022. The Applicant did not attend but was represented by Mr Robert Nixon from the Applicant's representatives. The Respondent attended in person.
5. It was agreed that the parties entered into a Private Residential Tenancy agreement in respect of the property that commenced on 1 May 2020 at a rent of £2500.00 per calendar month. It was also agreed that the Respondent had fallen into arrears of rent in March 2021 and that the sum of £28000.00 was now due by the Respondent. With no payments at all having been made since 9 June 2022.
6. The Respondent agreed that she had been properly served with the Notice to Leave and that the Applicant's representatives had followed the correct procedures and had sent her pre-action letters.
7. The Tribunal noted that the local authority had been given intimation of the proceedings in a Section 11 notice sent on 16 June 2022.
8. The Tribunal heard from the Respondent that she had been subjected to controlling behaviour by her husband who prior to their marriage had made the things he wanted a priority and had used her money to pay for them leaving her unable to pay the rent. She said that she had been married in January 2022 and then separated in September 2022 because of her husband's behaviour towards her. She went on to say that she was only now finding herself and that she was working full time with a net income of £6730.00 per month. She said that she would be able to pay from 1 January 2023 the monthly rent of £2500.00 per month plus a further £3500.00 per month to clear the rent arrears. When asked how she would be able to afford this the Respondent explained that she would cut back on other expenditure and that her family would also help with food and payment of her utility bills. In response to further questioning from the Tribunal the Respondent confirmed that she had not yet spoken in depth to her family about providing financial assistance as they were still coming to terms with the issues in her marriage and what had happened but she was confident they would help. The Respondent confirmed she did not have any children.
9. For the Applicant, Mr Nixon said that the Applicant wished to obtain an order for the eviction of the Respondent. He said the level of arrears was high and the Respondent had made no payment since June. She had indicated she had savings and investments but had not used these to reduce her debt. He did not think the Respondent was in a position to make payment to clear the debt and it was reasonable to grant the order.
10. The Respondent explained that the investment she had made in a friend's business was not recoverable at this time as she could no longer get hold of

the lady and that some of her savings was in gold from her marriage and was being disputed by her husband who wanted it returned to him. She said this had to be decided by their Imam. She said she had between £5000.00 and £6000.00 in her bank account.

Findings in Fact

11. The parties entered into a Private Residential Tenancy Agreement that commenced on 1 May 2020 at a rent of £2500.00 per calendar month.
12. As at 1 December 2022 the Respondent owed the Applicant rent amounting to £28000.00.
13. The Respondent has paid no rent since June 2022.
14. Prior to June 2022 the Respondent made irregular payments of rent from April 2021.
15. The Respondent has cash savings of between £5000.00 and £6000.00.
16. The Respondent has other assets which she cannot currently realise.
17. After payment of her rent and other regular outgoings the Respondent has surplus income of about £1700.00 per month.
18. The Respondent was served with a Notice to Leave by recorded delivery post on 16 May 2022.
19. The Respondent was sent pre-action letters by the Applicant's representatives in accordance with the Scottish Governments Pre-Action Protocol.
20. Intimation of these proceedings was sent to Glasgow City Council by way of a Section 11 Notice on 16 June 2022.

Reasons for Decision

21. It was agreed between the parties that they had entered into a Private Residential tenancy that commenced on 1 May 2020 at a rent of £2500.00 per calendar month and that the Respondent had fallen into arrears in March 2021. It was also agreed that the Respondent had been properly served with a valid Notice to Leave and that proper intimation of the proceedings had been given to the local authority.
22. The Tribunal was satisfied that the Applicant had met the grounds for eviction in terms of Ground 12 of Schedule 3 of the 2016 Act but that in terms of the Coronavirus (Scotland) Act 2020 and the Coronavirus Recovery and Reform (Scotland) Act 2022 the Tribunal required to be satisfied in the circumstances that it was reasonable to grant the order sought.

23. In reaching its decision the Tribunal took account of the fact that the level of arrears was very substantial and that no payment at all had been made since June of this year. The Tribunal acknowledged that it appeared that the Respondent had been through some difficult times as a result of her relationship with her husband from whom she was now separated. However, it appeared that throughout the period since the arrears started to accrue the Respondent has been earning a very substantial salary and must have made a conscious decision to not pay her rent leaving her in the vulnerable position, she is now in. Whilst the Tribunal does have sympathy for the Respondent and understands she may have found herself in a difficult position with her husband up until September when he left that does not explain why in the months that followed the Respondent has made no attempt to commence paying rent despite having savings available and a substantial income. The Tribunal is also not satisfied that the Respondent has the means at her disposal to actually pay the amount she has offered to clear the arrears. To do so at the rate of £3500.00 per month she would need a very substantial amount of financial help from her family and she has not yet had those discussions with them. Without family assistance it would be unreasonable to expect the Applicant to wait potentially several years for the debt to be cleared. Taking everything into account the Tribunal is satisfied that it is reasonable to grant the order for the eviction of the Respondent from the property.

Decision

24. The Tribunal having carefully considered the written representations and documents together with the oral submissions and being satisfied it has sufficient information before it to make a decision without the need for a hearing finds the Applicant entitled to an order for the eviction of the Respondent under Ground 12 of Schedule 3 of the 2016 Act.

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.



**Graham Harding
Legal Member/Chair**

**8 December 2022
Date**