

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

Chamber Ref: FTS/HPC/EV/22/2827

Re: Property at B/1, 7 Niddrie Square, Glasgow, G42 8QX (“the Property”)

Parties:

Mrs Allison Hussain, 430 Shields Road, Glasgow, G41 1NS (“the Applicant”)

Mr Saif Monir, B/1, 7 Niddrie Square, Glasgow, G42 8QX (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member) and David Fotheringham (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application is refused and no order is granted.

- Background
 1. An application was submitted to the Tribunal under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). Said application sought a repossession order against the Respondent on the basis of rent arrears accrued by the Respondent under a private residential tenancy, being Ground 12 under Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”).
- Case Management Discussion
 2. A Case Management Discussion (“CMD”) took place on 20 January 2023, by conference call. The Applicant was represented by Mr Deen of Apex Property Services. The Respondent was personally present and represented himself.
 3. The Applicant’s representative advised that the rent arrears (of £3,119) had been cleared in full within the previous 24 hours. However despite this he

remained instructed to move for the Order to be granted as sought. The parties had entered into a Private Residential Tenancy Agreement (“the Agreement”), which commenced April 2020. The Respondent had fallen into arrears of rent immediately and had been in a continuous arrear since then. The DWP were paying £350 per month towards his rent of £500 per month, but the Respondent had been failing to pay the shortfall. Due to repairing issues within the Property, a Rent Relief Order had been in place since May 2022 which had reduced the rent to £300 per month. A Notice to Leave had been served on the Respondent on the basis of Ground 12 of Schedule 3 to the 2016 Act, on 6 July 2022. The Respondent had been in a continuous rent arrear for at least 3 months just prior to the CMD. The Applicant now wished to sell the Property as she was suffering financial difficulties herself. It was reasonable to evict against that background.

4. The Respondent submitted that the Order should not be granted as the arrears had been cleared in full. He had hoped that by doing so he would be allowed to continue to reside in the Property, as the monthly rent had been paid in full (or overpaid) for the last few months. He had suffered financial difficulties but had obtained payment from DWP towards his rent on a monthly basis. It would not be reasonable to evict where the arrears had been cleared in full. The Respondent had also raised in his written submissions lodged prior to the CMD, that the Applicant had not complied with the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.

5. The following documents were lodged alongside the application:

- (i) Copy Private Residential Tenancy Agreement
- (ii) Copy Notice to Leave
- (iii) Proof of service of the Notice to Leave by email
- (iv) Section 11 notification to the local authority under the Homelessness etc. (Scotland) Act 2003
- (v) Rent statement

- Findings in Fact

6. The Tribunal made the following findings in fact:

- (i) The parties entered into a Private Residential Tenancy Agreement (“the Agreement”) which commenced on 12 April 2020;
- (ii) In terms of Clause 8 of the Agreement the Respondent was due to pay rent to the Applicant in the sum of £500 per calendar month payable in advance;
- (iii) A Rent Relief Order had been granted which reduced the rent due by the Respondent under the Agreement to £300 per month from May 2022 to date;
- (iv) The Applicant has served a Notice to Leave on the Respondent on the basis of Ground 12 of Schedule 3 to the 2016 Act, and which was served on 6 July 2022;
- (v) The Respondent has been in continuous arrears of rent between April 2020 and January 2023;
- (vi) The monthly rent due had been paid in full, or had been overpaid, each month since May 2022;

(vii) The Respondent had cleared the rent arrears in full on 19 January 2023 and there were no arrears of rent due at the date of the CMD;

- Reasons for Decision

7. Section 51 of the 2016 Act states as follows:

51 (1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

8. Ground 12 of Schedule 3 to the 2016 Act states as follows:

12((1)It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2).

(3)The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a)for three or more consecutive months the tenant has been in arrears of rent, and

(b)the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.

(4)In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider

(a)whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, and

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

(5) For the purposes of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971),

(ii) a payment on account awarded under regulation 91 of those Regulations,

(iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,

(iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,

(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.

(6) Regulations under sub-paragraph (4)(b) may make provision about—

(a) information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),

(b) steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,

(c) such other matters as the Scottish Ministers consider appropriate.

9. The Tribunal was satisfied that a Notice to Leave had been served on the Respondent and which specified that ground, in accordance with the requirements of section 52 of the 2016 Act. The Tribunal was satisfied that the Respondent had been in arrears of rent between April 2020 and January 2023. However, the Tribunal was not satisfied that it was reasonable to grant the Order sought, under the circumstances. The arrears had been cleared in full prior to the CMD taking place. The Respondent had made sufficient payments to the rent since May 2022 to cover the monthly rent and in fact to overpay the rent in 6 of those months. The Respondent had demonstrated that for the last few months he could adhere to his rental obligations and in terms of the payments made, could adhere even if the Rent Relief Order was terminated and the rent went back up to the original sum of £500 per month. The Tribunal was satisfied that the Respondent had shown willing and ability to meet his contractual obligations. The Tribunal had seen no evidence of the Applicant having complied with the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. Against that background, the Tribunal was not persuaded that it would be reasonable to grant an order to evict the Respondent from the Property, when there were no rent arrears outstanding.

10. The Tribunal noted the submissions made by the Applicant's representative that the Applicant was having difficulties meeting her monthly mortgage payments and as a result she now wished to sell the Property. It was noted that the Respondent had adhered to his monthly rental obligations since May 2022 and therefore any ongoing difficulty suffered by the Applicant to meet her mortgage payments during that period could not be directly attributed to the Respondent. It would be open to the Applicant to serve a further Notice to Leave on the Respondent and relying specifically on the ground that she intended to sell the Property, if she did in fact wish to do so.

- Decision

11. The Tribunal refused the application and no order is granted.

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.

Legal Member: Mrs Fiona Watson

Date: 20 January 2023