



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

Chamber Ref: FTS/HPC/EV/23/1916

Re: Property at 15 Harland Street, Glasgow, G14 0AT (“the Property”)

Parties:

Mr Sundeep Purewal, 27 Torridon Drive, Renfrew, PA4 0US (“the Applicant”)

Ms Michelle Grocutt, 15 Harland Street, Glasgow, G14 0AT (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

- 1.** The Applicant seeks an eviction order in terms of Section 51 of the 2016 Act. A tenancy agreement, Notice to leave, email to the Respondent with the Notice to leave, rent statement, section 11 notice and contract with 1st Choice Joinery and Building Services were lodged in support of the application.
- 2.** A copy of the application was served on the Respondent by Sheriff Officer. Both parties were notified that a case management discussion (“CMD”) would take place by telephone conference call at 10am on 12 October 2023 and that they were required to participate. Prior to the CMD the Applicant lodged an updated rent statement.
- 3.** The CMD took place on 12 October 2023. The Applicant was represented by his father, Mr Singh. The Respondent did not participate and did not contact the Tribunal in advance of the CMD.

The CMD

4. Mr Singh told the Tribunal that he has attempted to contact the Respondent on many occasions, without success. She does not respond to phone calls. In addition, she will not allow anyone into the house including the builders who are instructed to carry out work at the property and who needed access to assess what will be involved. Recently, she refused to allow the gas engineer to enter the property to carry out the gas safety check and an application has been made to the Tribunal under the Right of Entry procedure because this inspection must be carried out.
5. In response to questions from the Tribunal, Mr Singh said that the tenancy started on 10 June 2022. The previous tenant was moving out and a neighbouring resident said that her cousin was looking for a flat. The Respondent told him that she was in receipt of benefits and that these would be transferred from her current accommodation. She said that she is paid on the 18th of the month. The Applicant agreed that she could move into the property on the 10 June on the understanding that the first month's rent would be paid on the 18 June. However, the rent was not paid and over the next 2 or 3 months she claimed that the delay was due to the move from one property to another. On checking the website, the Applicant discovered that they could make an application to Universal Credit for the rent to be paid direct. This took a month to process but since then the sum of £495 has been received every month. There is a shortfall of £30 per month. The Respondent is supposed to pay that but has made only one payment. There is a credit of £180 in the rent account. However, this was made by the Applicant. The Respondent told him that she had to pay £180 to get the washing machine fixed. She did not provide a receipt and had not reported that it was not working. However, they gave her the benefit of the doubt and credited the account with £180. In response to questions about the Rent Arrears Pre Action Protocol, Mr Singh said that he sent rent statements to the Respondent told her where she could get help. He confirmed that he was told by the Respondent at the start of the tenancy that she was in receipt of universal credit. She sent him a letter from UC which confirmed that UC was in payment in relation to the current property in August 2022. UC would not backdate the direct rent payments or pay toward the arrears.
6. Mr Singh told the Tribunal that the Respondent is 43 and resides at the property alone. There was no evidence of any health issues or disabilities when she moved in. However, she later referred to a health issue and hospital appointments by way of explanation for her failure to respond to phone calls and messages. Mr Singh said that the Applicant is his son. Mr Singh previously owned this and two other rental properties, but he transferred them to the Applicant. In relation to the planned work at the property, he said that it should take about 4 weeks. He had intended to suggest that the Respondent move out of the property temporarily, while it is carried out. However, as she will not speak to him, he has been unable to discuss this with her. The work is in three parts. Currently the toilet at the property is in a small extension at the back of the

property, separate from the bathroom. His intention to replace the bathroom fittings and install a toilet in that room, as the back extension is really cold. Underfloor insulation is to be installed in accordance with Scottish Government requirements. None of the work must be carried out just now and can wait until the tenancy terminated.

Findings in Fact

7. The Applicant is the owner and landlord of the property.
8. The Respondent is the tenant of the property in terms of a private residential tenancy agreement. The tenancy started on 10 June 2022.
9. The Respondent is due to pay rent at the rate of £525 per month.
10. The Respondent has been in arrears of rent since the start of the tenancy. No rent was paid until 18 October 2023 when direct payments from Universal Credit commenced.
11. The Respondent currently owes the sum of £2200 in unpaid rent.
12. The Applicant intends to carry out work at the property. This involves the refurbishment of the bathroom, replacement of the bathroom furnishings, installation of under floor insulation and the replacement of the lounge door. The proposed works are estimated to take 6 weeks and the contractor has stated that the property requires to be unoccupied.
13. The Applicant served a Notice to leave on the Respondent on 2 March 2023
14. The Respondent resides at the property alone and is in receipt of universal credit.
15. The Respondent has failed to allow the Applicant access to the property and has refused to allow access for the gas safety inspection to be carried out.

Reasons for Decision

16. The application was submitted with a Notice to Leave dated 1 March 2023, together with a copy of an email which establishes that the Notice was sent to the Respondent on 2 March 2023. The Notice states that an application to the Tribunal is to be made on ground 12, rent arrears over three consecutive months and ground 3, the landlord intends to refurbish the let property. Part 4 of the notice indicates that the earliest date that an application to the Tribunal can be made is 3 June 2023

17. The application to the Tribunal was made after expiry of the notice period. The Tribunal is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a copy of the Section 11 Notice which was sent to the Local Authority. The Tribunal is therefore satisfied that the Applicant has complied with Section 56 of the 2016 Act.
18. Section 51(1) of the 2016 Act states, “The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.”
19. Ground 3 of Schedule 3 states Ground 3 of Schedule 3 (as amended by the Coronavirus (Recovery and Reform (Scotland) Act 2022 states “(1) It is an eviction ground that the landlord intends to carry out significantly disruptive work to or in relation to the property. (2) The First-tier Tribunal may find that the eviction ground named in sub-paragraph 1 applies if – (a) the landlord intends to refurbish the let property... (b) the landlord is entitled to do so, (c) it would be impracticable for the tenant to continue to occupy the property given the nature of the refurbishment intended by the landlord and (d) the Tribunal is satisfied that it is reasonable to issue the eviction order on account of those facts.”
20. From the information provided at the CMD, and the copy of the contract with the contractor lodged with the application, the Tribunal is satisfied that the Applicant intends to carry out the specified work and that this work would require the tenant to move out of the property, at least temporarily. The contractor states that the work will take 6 weeks and the property must be vacant. However, the Tribunal notes that the work in question is not essential. Mr Singh told the Tribunal that the Applicant could wait until the tenancy came to an end to instruct the work. Furthermore, he had planned to discuss with the Respondent the possibility of her moving out of the property on a temporary basis until the conclusion of the work. In the circumstances, the Tribunal is not satisfied that it would be reasonable to grant an order for eviction on ground 3.
21. Ground 12 of Schedule 3 (as amended by the Coronavirus (Recovery and Reform (Scotland) Act 2022 states “(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. (3) The First-tier Tribunal may find that the ground named in 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.”
22. Sub-Paragraph (4) states, “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 Minister in regulations.” Relevant benefits are defined in sub-paragraph (5) and include housing benefit and universal credit. The Pre Action-Requirements Regulations include the provision of clear information relating to the terms of the tenancy agreement, the level of the

arrears, the tenant's rights in relation to eviction proceedings and how the tenant can access information and advice.

23. The Tribunal is satisfied that the Respondent currently owes the sum of £2200 and that she has been in arrears of rent for three or more consecutive months, both at the date of service of the Notice to leave and the CMD.

24. The Tribunal proceeded to consider whether it would be reasonable to grant the order on ground 12 and noted the following: -

(a) The Tribunal is not satisfied that the Applicant has fully complied with the Rent Arrears Pre-Action Protocol. The Applicant did not lodge any evidence with the application, although his representative stated that she was given information about advisory services and sent rent statements. However, based on the information provided at the CMD, the Tribunal is satisfied that the Applicant has made efforts to contact the Respondent to discuss the arrears and has made her aware of the sums owed.

(b) The Tribunal is satisfied that there is no evidence to suggest that the arrears are attributable to a delay or failure in the payment of a relevant benefit. The Respondent did not participate in the CMD or provide any information regarding her circumstances. Mr Singh was able to advise the Tribunal that the Respondent told him at the outset that she was in receipt of state benefits. As a result, he did not insist on rent being paid in advance or before she moved into the property. She also provided him with evidence that universal credit was in payment, shortly after the start of the tenancy. However, she did not pass on any housing costs received and rent has only been paid since the Applicant applied for housing costs to be paid by Universal Credit directly to the landlord.

(c) The Respondent has failed to engage with the Applicant regarding the arrears. She has offered no explanation for her failure to pay the shortfall or contribute to the arrears. She has also failed to cooperate with the Applicant in relation to inspections of the property or the gas safety check. The Applicant has had to seek assistance from the Tribunal under the right of entry procedure.

(d) The Respondent resides at the property alone and there is no evidence of health issues or other vulnerabilities.

25. The Tribunal concludes that the Applicant has complied with the requirements of the 2016 Act and that ground 12 has been established. For the reasons outlined in paragraph 24, the Tribunal is also satisfied that it would be reasonable to grant the order for eviction in relation to ground 12.

Decision

26. The Tribunal determines that an eviction order should be granted against the Respondent.

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

12 October 2023