



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/22/4187

Re: Property at 102 Barshaw Road, Glasgow, G52 4EB (“the Property”)

Parties:

Edward Tweedie, Suite 204, Old Embroidery Mill, Abbey Mill Business Centre, Paisley, PA1 1TJ (“the Applicant”)

Maria Reilly, 102 Barshaw Road, Glasgow, G52 4EB (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member) and Ann Moore (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 be granted against the Respondent.

Background

1. This is an application by the Applicant for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”). The PRT in question was by the Applicant to the Respondent commencing on 1 December 2021 (though we were told that the Respondent had resided at the Property under previous tenancies since 2016).
2. The application was dated 21 November 2022 and lodged with the Tribunal on that date. This makes the application subject to the *Cost of Living (Tenant Protection) (Scotland) Act 2022*, as shall be referred to further below.
3. The application relied upon a Notice to Leave dated 19 October 2022 in terms of section 50 of the *Private Housing (Tenancies) (Scotland) Act 2016*, intimated upon the Respondent by Sheriff Officer service on that day (in terms of clause 3 of the Tenancy Agreement. The Notice relied upon Ground 12 of Schedule 3 Part

1 of the 2016 Act, being that “the tenant has been in rent arrears for three or more consecutive months”. In regard to Ground 12, the body of the notice referred to arrears of £4,550 being £350 of arrears from 2021 and missed payments of March to October 2022. The application papers also provided a rent statement showing these arrears. The rent stated in the Tenancy Agreement lodged was £525 a month, meaning the arrears as at the date of the Notice to Leave exceeded eight months of arrears. The Notice intimated that an application to the Tribunal would not be made before 17 November 2022.

4. Subsequent to correspondence to the Applicant by the Tribunal’s clerk, noting that the application would be subject to the 2022 Act, the Applicant confirmed that he sought to amend the application to seek eviction on the additional ground of Ground 12A: “substantial rent arrears”. The Applicant was informed that this would be considered at the case management discussion.
5. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon Glasgow City Council on 18 November 2022 was provided with the application. Evidence of the Applicant providing pre-action protocol information to the Respondent by letter on 20 April, 27 September, 5 October, and 16 November 2022 was further provided in the application papers.

The Hearing

6. The matter called for a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 20 March 2023 at 10:00. We were addressed by the Applicant’s administrative assistant, John Greenfield, who worked for the Applicant’s property business “Edward Tweedie Properties”. The Applicant was also on the call but did not speak. There was no appearance from the Respondent.
7. We were informed by the clerk that no contact had been received from the Respondent (or on her behalf) with the Tribunal. The Applicant’s agent said that there had been no recent contact from the Respondent since March 2022. An attempt to speak to her at the Property was made in Summer 2022 when the door was opened by a friend who explained that the Applicant was on holiday. The last material communication by the Respondent was via Glasgow City Council in 2022 in regard to complaints about repairs (discussed further below).
8. We considered that the Respondent had received clear intimation of the CMD from Sheriff Officers. Having not commenced the CMD until around 10:05, we were satisfied to consider the application in the Respondent’s absence. In any case, no attempt was made by the Respondent to dial in late to the CMD.
9. At the CMD, the Applicant’s agent confirmed that the application for eviction was still insisted upon and provided an updated rent arrears figure of £7,175 (on the basis that no further rent had been received since the Notice to Leave in October 2022). He confirmed that the Applicant still sought to amend the application to rely on the additional ground of Ground 12A, being substantial arrears over 6 months. We considered the matter and agreed it was reasonable to allow the

amendment given the substantial arrears and the lack of communication and cooperation from the Respondent (discussed further below). In terms of section 52(4) of the 2016 Act, we then continued with consideration of the application on the basis of Grounds 12 and 12A.

10. The Applicant's agent stated that he had no knowledge of any benefits being sought or any issues arising from benefits. Rent had always been paid promptly by the Respondent until early 2022. The Applicant's agent provided the following information on the history of the arrears:
 - a. The Applicant first occupied the Property in 2016. At that time, she was not believed to be working, but discussed looking for work.
 - b. Rent was paid promptly by the Respondent to the Applicant direct to the Applicant through to 2021. The only issue with rent was that the Respondent had previously asked permission not to pay rent in December, and pay double in January. This was agreed to and the December arrangement was maintained for a number of years.
 - c. No rent was received in December 2021, which the Applicant expected further to the agreed arrangement. In January 2022, however, only an extra £100 was paid (along with the usual £525 rent). In February 2022, an extra £75 was paid (along with the usual £525 rent). No payments had been received since.
 - d. Around Spring 2022, contact was received from Glasgow City Council to the Applicant regarding two complaints by the Respondent, regarding works to the Property and alleged mould.
 - e. The Applicant's position on the two issues was:
 - i. The Applicant had agreed to install a new kitchen at the Property shortly before the pandemic. Lockdown interrupted the plans, but when the Applicant sent contractors after lockdown to assess for the work, the Respondent refused them entry.
 - ii. The Respondent complained of mould at the Property. The Applicant commissioned an expert who visited the Property but attributed the mould to the Respondent failing to ventilate properly when drying clothes. A copy of the report was sent to the Respondent and the Applicant believed she disputed the report.
 - f. Further correspondence was then received from the Council saying that they were taking matters no further as the Respondent was not cooperating with them, and so the Council was taking no steps against the Applicant.
 - g. There had been correspondence to, and multiple attempts to contact, the Respondent on the arrears but this had not been successful in making contact with her since Spring 2022 and no proposal had been received.
 - h. The Applicant's agent had noted that on passing the Property recently the curtains always seemed drawn, whereby previously they may be opened during the day. He spoke to a neighbour in the last week or so and the neighbour believed the Respondent still resided at the Property.
11. The Applicant's agent believed that the Respondent had a young daughter (thought to be around 3 or 4 in 2016, so likely around 10 or 11 now) who resided with her. The Applicant's agent knew of no reason that the Respondent required the Property due to its specific location or convenience to any support service.

12. No motion was made for expenses.

Findings in Fact

13. On 18 November 2021 the Applicant let the Property as a Private Residential Tenancy to the Respondent under a lease with commencement on 1 December 2021 ("the Tenancy").
14. In terms of clause 7 of the Tenancy Agreement, the Respondent required to pay rent of £525 a month in advance on the 1st day of each month.
15. On 19 October 2022, the Applicant drafted a Notice to Leave in correct form addressed to the Respondent, providing the Respondent with notice, amongst other matters, that she was in rent arrears for a period in excess of three consecutive months and detailing arrears at that date of £4,550.
16. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior to 17 November 2022.
17. The Applicant's Sheriff Officer served a copy of the Notice to Leave on the Respondent on 19 October 2022.
18. The Applicant raised proceedings for an order for eviction with the Tribunal, under Rule 109, initially relying in part on Ground 12 of Schedule 3 Part 1 of the 2016 Act.
19. As at the date of the Notice to Leave, rent arrears were in excess of six months.
20. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon Glasgow City Council on the Applicant's behalf on 18 November 2022.
21. The Applicant provided the Respondent with suitable pre-action protocol information by letter on 20 April, 27 September, 5 October, and 16 November 2022.
22. As of 20 March 2023, the Respondent remained in arrears of rent in the amount of £7,175 which is equivalent of over thirteen months of rent.
23. The Respondent does not claim to have paid any amount of the arrears of £7,175 remaining as at 20 March 2023.
24. The sum of arrears remaining as of 20 March 2023 is neither wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, other than any referable to an act or omission of the Respondent.
25. On 14 February 2023, the Tribunal intimated to the Respondent the date and time of the CMD of 20 March 2023 by Sheriff Officer.

26. The Respondent resides at the Property with her daughter.
27. The Property is not specially adapted with the use of the Respondent or any dependent.

Reasons for Decision

28. The application was in terms of rule 109, being an order for eviction from a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been correctly drafted and served upon the Respondent.
29. Ground 12 of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:
 - (1) *...the tenant has been in rent arrears for three or more consecutive months. ...*
 - (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.*
30. Ground 12A of the said Schedule applies if:
 - (1) *It is an eviction ground that the tenant has substantial rent arrears.*
 - (2) *The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—*
 - (a) *the tenant has accrued rent arrears under the tenancy in respect of one or more periods,*
 - (b) *the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy when notice to leave is given to the tenant on this ground in accordance with section 52(3), and*
 - (c) *the Tribunal is satisfied that it is reasonable to issue an eviction order.*
 - (3) *In deciding under sub-paragraph (2) whether it is reasonable to issue an eviction order, the Tribunal is to consider—*

- (a) whether the tenant being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit,*
- (b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers under paragraph 12(4)(b) (and continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022).*

(4) For the purpose of this paragraph—

(a) references to a relevant benefit are to—

- (i) a rent allowance or rent rebate under the Housing Benefit Regulations 2006 (S.I. 2006/213),*
- (ii) a payment on account awarded under regulation 93 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.

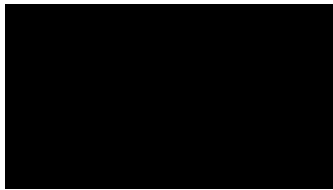
31. The arrears information provided at the CMD clearly showed that Ground 12A was satisfied in regard to the length of arrears and amount outstanding. There is nothing to suggest that Respondent's failure to pay is related to an issue with benefits. We were satisfied that there was evidence of the pre-action protocol being complied with. As Ground 12A is satisfied, as is Ground 12.
32. We require, in terms of the Act as currently amended, to consider the reasonableness of the application even in regard to such substantial arrears. We were satisfied that the Applicant's reasons for seeking eviction were reasonable given the amount and duration of the arrears. We were conscious that the Applicant has a property business, and that the Property appears to be a family home, but the arrears are substantial and there is the absence of any engagement by the Respondent on payment of the arrears. We were not minded to grant any additional suspension of the order to evict given the lack of information from the Respondent.
33. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time under Ground 12A. We do not also grant under Ground 12 at this time, as any order under that would require to be suspended in terms of the 2022 Act and thus cause confusion as to the order being issued. Had we not allowed the amendment of the application (and so considered Ground 12A), we would have been satisfied to grant the order under Ground 12 however (subject to the appropriate suspension under the 2022 Act).

Decision

34. In all the circumstances, we grant an order against the Respondent for eviction from the Property under section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* further to ground 12A of Schedule 3 of that 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.



20 March 2023

Legal Member/Chair

Date