



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 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)

Chamber Ref: FTS/HPC/EV/22/0491

Re: Property at 222, 6/2 Howard Street, Glasgow, G1 5HE (“the Property”)

Parties:

Mr Subhash Bhundia, 31 Meadvale Road, Leicester, LE2 3WN (“the Applicant”)

Mr Christopher Gen, 222, 6/2 Howard Street, Glasgow, G1 5HE (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession of the property be granted.

Background

1. By application dated 17 February 2022, the Applicant applied to the Tribunal for an order for recovery of possession of the property in terms of Section 51 of the 2016 Act against the Respondents. The application sought recovery in terms of Ground 12 of Schedule 3 to the 2016 Act. Supporting documentation was submitted in respect of the application, including a copy of the lease, the Notice to Leave, the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003, a Rent Ledger Statement showing the balance of rent arrears owing at the time of the application being made of £9717 and evidence that the ‘pre-action requirements’ had been complied with.
2. On 12 May 2022, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.

3. On 16 June 2022, a copy of the Application and supporting documentation was served on the Respondent by Sheriff Officer, together with intimation of the date, time and details of the Case Management Discussion (“CMD”) to take place by telephone conference call on 25 July 2022. Written representations were to be lodged by 6 July 2022. No written representations were submitted by the Respondent.

Case Management Discussion

4. On 25 July 2022 at 2pm, the Applicant was represented by Mr Daniel Kennedy and Mr Ross Macleod of Macleod Lettings. The commencement of the CMD was delayed for approximately 5 minutes to see if the Respondent would join the call but he did not.
5. After introductions and introductory remarks by the Legal Member, Mr Macleod was asked to present the application and both he and Mr Kennedy answered questions from the Tribunal Members. Mr Macleod confirmed that the tenancy commenced on 19 September 2019 and that everything was fine until Covid struck and the Respondent was made redundant and stopped paying rent and communicating properly with them. Several months’ rent at £695 per month were missed altogether and erratic partial payments were made, resulting in the arrears rising quite quickly. The arrears now total £12,795. The last payment towards rent was £450 on 24 February 2022 and prior to that, the previous payment was the last payment showing on the rent ledger submitted to the tribunal of £200 on 1 December 2021. They have rarely as letting agents experienced such a case, even during Covid, and they always try and work together with tenants to try and resolve any issues. They regularly communicated with the Respondent regarding the arrears and the types of assistance which may be available to him, as well as potential alternative accommodation. However, they did not get much back from the Respondent by way of updates and are unaware if, for example, he had been able to secure any benefits or alternative employment. They do not know what the Respondent’s employment was before he was made redundant or his personal circumstances, other than that he was the sole tenant in terms of the lease and they believe that he lived alone. They have attempted to arrange inspections of the property but have not been able to get in for the past two years as the Respondent has indicated he would not allow this, and it is not possible to tell from outside if the property is definitely still occupied. They are not certain if the Respondent is still living there or not. They do not know if the Respondent has been in communication with the local authority for any type of assistance. The Tribunal had noted from the emails submitted in support of the application as evidence that the pre-action requirements had been complied with, that a number of emails had been sent to the Respondent over the months and that, it appeared from the Respondent’s email to the letting agents following a meeting with them in July 2021, that he was appreciative of the assistance and support they had offered him. Mr Kennedy stated that the last communication they had had from the Respondent was when he was being served with the eviction papers and that he had not had the impression that the Respondent was hostile to this action being taken nor indicated that he would intend to

defend eviction proceedings. Mr Macleod confirmed that the Respondent had been given 6 months' notice as required at the time the Notice to Leave was served and stressed that their client, the Applicant, is now out of pocket by over £12,000 and that an urgent resolution to the situation is required. He therefore was hoping that the eviction order would be granted today.

Findings in Fact

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy commencing 19 September 2019.
3. The rent in terms of the lease is £695 per calendar month.
4. The Respondent initially made his due rental payments but from around August 2020 onwards, several payments were missed altogether, payments became erratic and rent arrears accrued.
5. The Applicant's letting agent carried out pre-action requirements by contacting the Respondent on several occasions via email and having a meeting with him in July 2021, throughout which process advice and assistance was offered to him, as required.
6. A Notice to Leave in proper form and giving the requisite period of notice of 6 months applicable at that time was sent to the Respondent by recorded delivery/signed for post on 23 July 2021, at which point the rental arrears owing were £5,755.
7. The date specified in the Notice to Leave as the end of the notice period was 31 January 2022.
8. The Tribunal Application was submitted on 17 February 2022 by which time the arrears amounted to £9,717.
9. One payment has been made by the Respondent since the Tribunal application was lodged, of £450 on 24 February 2022.
10. The rental arrears now amount to £12,795.
11. The Respondent has been called upon to make payment of the rental arrears, enter into a satisfactory payment arrangement and to update the Applicant's letting agent as to his current circumstances but has failed to do so.
12. It is uncertain as to whether the Respondent is still occupying the Property.

Reasons for Decision

13. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, and the oral evidence given at the CMD on behalf of the Applicant.
14. The Tribunal found that the application was in order, that a Notice to Leave in proper form and giving the correct period of notice of 6 months to the Respondent in terms of the Coronavirus (Scotland) Act 2020 had been served on the Respondent and that the application was made timeously to the Tribunal, all in terms of the lease and the relevant provisions of the 2016 Act.
15. The Tribunal found that the ground of eviction that the tenant has been in rent arrears for three or more consecutive months (Ground 12 of Schedule 3 to the 2016 Act, as amended) was satisfied and that it was reasonable, having regard to all of the circumstances known to the Tribunal, to grant the eviction order sought. The rent account had been in arrears for a significant period of time (continuously from in or around August 2020) and amount to a significant sum which the Tribunal was satisfied would be impacting significantly on the Applicant's finances. There was no information before the Tribunal to indicate that any of the rent arrears were a consequence of a delay or failure in the payment of a relevant benefit. The rent arrears did appear to have mainly accrued during the period that the Coronavirus legislation was in force and appeared to be due (at least in part) to the Respondent having been made redundant during 2020. However, the Tribunal was satisfied that the Applicant had complied with the pre-action requirements and had attempted to work with the Respondent throughout to resolve the rent arrears and offer him assistance and support.
16. The Respondent has not engaged recently with the Applicant's letting agent and did not submit any written representations to the Tribunal, nor attend the CMD of which he had been properly and timeously notified. The Tribunal did not therefore have any material before it to contradict the Applicant's position. The Tribunal accordingly determined that an order for recovery of possession of the Property could properly be granted at the CMD as there were no facts in dispute nor any other requirement for an Evidential Hearing.

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.

Nicola Weir

Legal Member/Chair

26 July 2022
Date