



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/22/2543

Re: Property at Flat 2/2, 424 Victoria Road, Glasgow, G42 8YS (“the Property”)

Parties:

Mr Mohammad Durrani, Mrs Nasreen Hamid, 150 Capelrig Road, Newton Mearns, G77 6LA (“the Applicant”)

Ms Daniela Muntean, Flat 2/2, 424 Victoria Road, Glasgow, G42 8YS (“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 in favour of the Applicant.

Background

1. The Applicants lodged an application on 27 July 2022, seeking an eviction order in terms of Section 51 of the Private Housing Tenancies (Scotland) Act 2016 (“the 2016 Act”). Documents lodged in support of the application include a Tenancy agreement, Notice to Leave, Notice to the Local Authority in terms of Section 11 of the Homelessness etc (Scotland) Act 2003, letters to the Respondent and rent statements. The application is based on ground 12 of schedule 3 to the 2016 Act, rent arrears over three consecutive months.
2. A copy of the application and supporting documents were served on the Respondent by Sheriff Officer. Both parties were notified that a case management discussion (“CMD”) would take place by telephone conference

call on 20 December 2022 at 2pm, and they were required to participate.

3. The CMD took place on 20 December 2022 at 2pm. The Applicant was represented by Mr Gordon, solicitor. The Respondent did not participate.
4. Mr Gordon told the Tribunal that that the Respondent was still occupying the property. However, there had been no contact from her since the Notice to Leave was served and no payments to the rent account. The Tribunal noted that two rent statements had been lodged. The first appeared to have been attached to the Notice to Leave which was given to the Respondent. The second was submitted in response to a request for further information issued to the Applicant when the application was being sifted. The first statement appeared to include arrears incurred during a previous assured tenancy between the parties. The second showed a list of payments which had been missed between June 2021 and August 2022. Neither statement showed the total sum due at the date of service of the Notice to leave or at the date of the CMD. Mr Gordon advised the Tribunal that he did not have this information but could provide a full rent statement for the relevant period, if the CMD was continued to a later date.
5. Following a brief adjournment, the Tribunal was notified that the Respondent had attended at Glasgow Tribunal Centre, accompanied by two children. It was established that she would require an interpreter to allow her to participate in a CMD.
6. The Tribunal determined that the CMD should be adjourned to a later date for a rent statement to be lodged and an interpreter arranged for the Respondent.
7. The parties were notified that a CMD would take place by telephone conference call on 16 March 2023 at 10am. On 9 February 2023, the Applicant submitted an amended and updated rent statement. They also requested that a direction be issued to the Respondent for details of her income. This was refused.
8. On 4 March 2023, the Respondent requested a postponement of the CMD stating that she was due to be admitted to hospital for a medical procedure on 13 March 2023. She was asked to provide medical evidence in support of the request. The Applicant notified the Tribunal that the request was opposed, due to the level of arrears and the fact that the Respondent could have arranged for a representative. In the absence of any medical evidence, the Tribunal refused the postponement request. On 12 March 2023 the Respondent submitted a hospital information leaflet which related to the procedure. However, this did not identify the Respondent or a date of admission. The parties were notified that the CMD would proceed.

Summary of discussion at the CMD

9. Mr Gordon referred the Tribunal to the updated rent statement and stated that no rent has been paid since the document was lodged. A further payment was

missed on 25 February 2023 and the arrears now stand at £9725. He told the Tribunal that the Respondent is understood to reside at the property with her husband or partner and 4 children, possibly 5 if the information recently provided is correct. The children are young but their ages are not known. Several months ago, the police contacted Ms Hamid asking about the whereabouts of the husband or partner but they did not explain the reason for the request. There is no evidence to suggest that he is no longer at the property. In response to questions from the Tribunal, Mr Gordon said that the Applicant does not know why the rent is not being paid as there has been no communication from the Respondent about the rent. Ms Hamid went to the property prior to the first defective Notice to leave in June 2021. She spoke to the Respondent at the door of the property. She was able to understand English and acknowledged the rent arrears. There has been no further contact between the parties since that time. The Applicants are unaware if the Respondent is in receipt of benefits or whether she is entitled to same. It does not appear that the previous payments to the rent account came from the DWP at any stage.

10. Mr Gordon told the Tribunal that Mr Durrani is in ill health and that Mrs Hamid holds power of attorney for him. She is also his carer. The Applicants rely on the income from the property. They have other properties and some pension income. The rent arrears are causing financial difficulties for them. Although there is no mortgage over the property there are ongoing insurance, maintenance and factoring charges which must be covered. The arrears are substantial and the Applicants believe that it is unlikely that they will ever recover these. Mr Gordon advised the Tribunal that an eviction order is sought and that the Applicants would oppose any delay in enforcement of an eviction order.

Findings in Fact

11. The Applicants are the owners and landlords of the property.
12. The Respondent is the tenant of the property in terms of a private residential tenancy agreement.
13. The Respondent is due to pay rent at the rate of £525 per month.
14. The Respondent has been in arrears of rent since July 2021.
15. The Respondent owes the sum of £9725 in unpaid rent to the Applicant.
16. The Applicant served a Notice to leave on the Respondent on 2 June 2022.
17. The Applicant issued information to the Respondent in compliance with the Rent Arrears Pre action Requirements (Coronavirus) Scotland Regulations 2020 on 21 April and 13 May 2022.

18. The Respondent resides at the property with a partner and 4 or 5 dependent children.
19. The Applicants rely on the rental income from the property and have experienced financial difficulty because of the arrears.

Reasons for Decision

20. The application was submitted with a Notice to Leave dated 2 June 2022 together with a copy email which establishes that the Notice was served on that date. The Notice states that an application to the Tribunal is to be made on ground 12, rent arrears over three consecutive months. Part 4 of the notice indicates that the earliest date that an application to the Tribunal can be made is 3 July 2022.
21. 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.
22. 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." 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."
23. 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
24. The Tribunal is satisfied that the Respondent currently owes the sum of £9725 in unpaid rent and that no payments have been made to the rent account since October 2021. The account has been in arrears since July 2021. The Respondent has therefore been in arrears for three or more consecutive

months, both at the date of service of the Notice to leave and the date of the CMD.

25. The Tribunal proceeded to consider whether it would be reasonable to grant the order and noted the following: -

(a) The Tribunal is satisfied that the Applicant has complied with the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. The application was accompanied by two letters dated 21 April and 13 May 2022, both sent by recorded delivery, which enclosed information in compliance with the protocol.

(b) The Respondent did not participate in the CMD and did not provide the Tribunal with any information regarding her personal circumstances. Prior to the CMD, she sent an email stating that she was due to be admitted to hospital for a procedure relating to the birth of a child. She was asked to provide medical evidence of this but failed to do so. The Applicant's representative was able to confirm that the Respondent resides at the property with her husband and partner and 4 children. She is understood to be Romanian, but speaks and understands some English. The Applicant has no information about the employment status of the Respondent or her partner or whether she is in receipt of, has claimed or is entitled to benefits. In the circumstances, there is no evidence to suggest that the rent arrears have been caused, in whole or in part, by a delay or failure in the payment of a relevant benefit.

(c) The Respondent has made no payments to the arrears or to the rent account since October 2021 and has been in arrears since July 2021. The arrears currently stand at £9,725.

(d) The First Applicant is in ill health and the Applicants are retired. They depend upon rental income to supplement their pension income. The level of arrears has caused financial difficulty.

26. The Tribunal concludes that the Applicant has complied with the requirements of the 2016 Act and that the eviction ground has been established. The Tribunal is also satisfied that it is reasonable to grant an order for eviction.

27. As there are several young children in the property, the Tribunal is satisfied that a delay in execution of the order should be granted in terms of Rule 16A of the Procedure Rules. In the circumstances, the Tribunal orders that the eviction order should not be executed until 25 May 2023.

Decision

28. 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.

Josephine Bonnar

16 March 2023

Legal Member