



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/22/3800

Re: Property at Flat 0/1, 14 Garturk Street, Glasgow, G42 8JE (“the Property”)

Parties:

Virhia Consulting Limited, 52 Albert Road, Glasgow, G42 8DN (“the Applicant”)

Dora Luncan, Flat 0/1, 14 Garturk Street, Glasgow, G42 8JE (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member) and Gordon Laurie (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’s predecessor in title (the Applicant’s director’s father) to the Respondent commencing on 12 January 2018.
2. The application was dated 17 October 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 15 September 2022 in terms of section 50 of the *Private Housing (Tenancies) (Scotland) Act 2016*, intimated upon the Respondent by email on that day (in terms of clause 4 of the

Tenancy Agreement, to the email address set out in clause 1 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 £5,185.04 at that time and referred to a statement of account (which was included in the application papers). The application papers also provided a simplified rent statement in a table. Between the two forms of rent statement, it could be seen that there were a number of missed payments (and then irregular payments) from the start of the pandemic lockdown in Spring 2020 through that year, some irregular payments in 2021, and thereafter the arrears remaining relatively stable since 2022 when payments apparently from benefits commenced. In the period from April 2020 to the Notice to Leave, arrears peaked at £5,650 on 12 July 2021, and had been around £5,185.04 since March 2022.

4. The rent stated in the Tenancy Agreement lodged was £550 a month, meaning the arrears as at the date of the Notice to Leave exceeded nine months of arrears. The Notice intimated that an application to the Tribunal would not be made before 16 October 2022.
5. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon Glasgow City Council on 17 October 2022 was provided with the application. Evidence of the Applicant’s letting agent providing pre-action protocol information to the Respondent by letter on 15 September 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 16 March 2023 at 10:00. We were addressed by the Applicant’s agent, Keith Hassan, Office Manager of G4 Properties. 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, though he had bumped into her during a lunch break near the start of the year, and asked her to come into the office to discuss matters. He said that she had not done so. His last material contact with her was when she contacted his office on 10 January 2023 on access for a gas safety inspection and possibly making a proposal on the arrears (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

£5,698.06. He explained that since January 2023, the monthly rent had increased to £695/month but no further payments had come in from the Respondent nor had her Universal Credit payments increased. The arrears, formerly stable, were now increasing by £145 each month. (No correspondence showing the rent increase, nor updated statement showing the precise arithmetic, was lodged.)

10. The Applicant's agent was not aware of any issues with benefits. He was aware of Universal Credit being awarded in 2022 and covering £550 per month, and was not aware of any attempt by the Applicant to seek an increase. There was no suggestion of a pending benefit claim that could address the historic arrears. The Applicant's agent provided the following information on the history of the arrears:
 - a. The Applicant was a Romanian woman with a good command of English, whom had been a tenant through his agency for a couple of years prior to moving to the Property. He regarded them as having had a good relationship.
 - b. He believed that she had worked in a city centre restaurant, and her place of work closed during the pandemic. She had, however, up to that point always paid her rent in cash to their office, which was also closed during the pandemic. Though the Applicant's agent provided multiple sources of information (by letter and pinned to their closed premises) as how payment could be made, no payments were made by the Respondent in the early months of the pandemic lockdown. (The Applicant's agent did not draw a conclusion as to whether the non-payment arose from the Respondent's workplace closing, difficulties making payment other than in cash, or both.)
 - c. This interrupted period of payment resulted in the majority of the arrears building up. The Applicant's agent believed that the Respondent did return to work, and sporadic payments were then made in 2020/2021.
 - d. The Respondent received Universal Credit from around January 2022 (which was paid direct to the Applicant's agent averaging £550/month).
 - e. The last payment made by the Respondent herself was £100 on 16 November 2021.
 - f. There had been correspondence to, and multiple discussions with, the Respondent on the arrears and asking her to make a proposal to pay the arrears. The Respondent said in Spring or Summer 2022 that she would make a proposal, but then did not.
 - g. An inspection was set up for the Property for 16 December 2022 and the Applicant's letting agents attended to find the Property unoccupied and with the locks changed. As they were about to leave, the Respondent's mother arrived at the Property and said that the Respondent was back in Romania but would be returning soon.
 - h. Since January 2023, correspondence has been sent to the Respondent pointing out that there is now a £145 shortfall each month, but no payments have been made to make it up.
 - i. On 10 January 2023, the Respondent contacted the Applicant's agent's office to apologise for no one being in at the time of the inspection, saying that she would be returning soon, and giving alternative contact details for

a gas safety inspection. In that call, the need for a proposal on the arrears was again discussed but none has since been made.

- j. The Applicant's agent believes that the Respondent has returned to the Property given that he met her in the street nearby. As stated above, she was asked to come into the office but has not done so. The Applicant's agent regards the Respondent as having "buried her head in the sand" over the arrears.
11. The Applicant's agent was not sure whether the Respondent's mother did live with her permanently, but believed that she might. Further, there had been a partner who had been with the Respondent during some visits to the Applicant's agent's office but the Applicant's agent did not know if he and the Respondent were still together. He believed that the Respondent may have two or three children residing with her.
12. 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. It was a ground floor flat and was not specially adapted for the Respondent's needs or the needs of any dependent. The Applicant was a family owned company, and there was one other property managed by the Applicant's agents, though the agent did not know if there were others handled by other agents. There was a wider group of properties owned by the family, through various family members and entities. There had been "tens of thousands" of unpaid arrears across the broader portfolio of properties since the start of the pandemic.
13. The Applicant's agent sought a brief adjournment to discuss with a colleague whether a continuation would be sought to amend the application to include any of the grounds of the 2016 Act not restricted under the 2022 Act, such as in consideration that there were more than 6 months of arrears. After the brief adjournment the Applicant confirmed that he was not seeking a continuation and sought the application considered as originally lodged. No motion was made for expenses.

Findings in Fact

14. On 12 January 2018, Gurdev Virhia let the Property as a Private Residential Tenancy to the Respondent under a lease with commencement on 12 January 2018 ("the Tenancy").
15. Title to the Property was transferred to the Applicant with the date of entry of 29 April 2019.
16. In terms of clause 8 of the Tenancy Agreement, the Respondent required to pay rent of £550 a month in advance on the 12th day of each month (from commencement of the Tenancy until 12 December 2022).
17. On 15 September 2022, the Applicant's agent 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 £5,185.04.

18. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior to 16 October 2022.
19. The Applicant's agent served a copy of the Notice to Leave on the Respondent by email to the email address within the Tenancy Agreement, all per the terms of the Tenancy, on 15 September 2022.
20. The Applicant raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying in part on Ground 12 of Schedule 3 Part 1 of the 2016 Act.
21. 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 17 October 2022.
22. The Applicant's agent provided the Respondent with suitable pre-action protocol information by letter on 15 September 2022.
23. The rent due under the Tenancy was increased to £695 a month in advance on the 12th day of each month from 13 January 2023 onwards.
24. As of 16 March 2023, the Respondent remained in arrears of rent in the amount of £5,698.06 which is equivalent of over nine months of rent (at the original rate).
25. The Respondent does not claim to have paid any amount of the arrears of £5,689.06 remaining as at 16 March 2023.
26. The sum of arrears remaining as of 16 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.
27. On 13 February 2023, the Tribunal intimated to the Respondent the date and time of the CMD of 16 March 2023 by Sheriff Officer.
28. The Respondent resides at the Property with her children.
29. The Property is not specially adapted with the use of the Respondent or any dependent.

Reasons for Decision

30. 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.

31. 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.

32. The arrears information provided at the CMD clearly showed that Ground 12 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, as it appears that Universal Credit has long since been awarded and continues to pay out. We were satisfied that there was evidence of the pre-action protocol being complied with.

33. 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 is a commercial entity, and that the Property is 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. In any case, the 2022 Act is to be extended to a new end date of 30 September 2023, and so the Respondent has a further six months before being under threat of eviction.

34. 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 but with the earliest date of eviction suspended in terms of the 2022 Act in the following fashion: not to be executed prior to 12 noon on the earlier of (a) the day following the end of a period of 6 months beginning with the day on which this order was granted (that

is 16 March 2023), or (b) the expiry or suspension of Paragraph 1 of Schedule 2 of the 2022 Act.

Decision

35. 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 1 of Schedule 3 of that Act, suspended as stated above in terms of the 2022 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.

Joel Conn

16 March 2023

Legal Member/Chair

Date