



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/22/3010

Re: Property at 456 Alison Street, Glasgow, G42 8TA (“the Property”)

Parties:

Mr Abid Mahmood, 1 Struan Road, Glasgow, G44 3AT (“the Applicant”)

Mr Haroon Bashir, 456 Alison Street, Glasgow, G42 8TA (“the Respondent”)

Tribunal Members:

Yvonne McKenna (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and issued an Eviction Order against the Respondent.

Background

1. The Applicant submitted an application to the Tribunal for eviction/possession of the Rented Property under section 51(1) of the Private Housing Tenancies (Scotland) Act 2016, in terms of Rule 109 of the Procedure Rules.
2. The application was dated 24th August 2022. The application stated that the ground for eviction was as follows: ‘Ground 12 rent arrears under the Private Housing (Tenancies)(Scotland) Act 2016 which states it is an

eviction ground that the tenant has been in rent arrears for 3 or more consecutive months.'

3. An updated rent statement was requested by the Tribunal together with further information. The rent statement provided detailed that as at October 2022 the tenant was £12,780.00 in arrears.
4. The application was accepted by the Tribunal on 9 November 2022.
5. The documents lodged with the Tribunal were:-
 - The Tenancy Agreement specifying a start date of 28 May 2019
 - A rent statement for the period January 2021 to October 2022
 - Notice to Leave dated 6 June 2022 advising the Tenant that an application will not be submitted to the Tribunal for an eviction before 9 July 2022
 - Letter accompanying Notice to Leave dated 6 June 2022
 - Proof of Delivery of Notice to Leave by recorded delivery confirmation of delivery on 7 June 2022
 - Section 11 Notice addressed to Glasgow City Council
 - Proof of delivery of Section 11 Notice being e-mail from Applicant's solicitors to Glasgow City Council dated 6 June 2023
 - Various e-mails exchanged between the Applicant's solicitors and the former Letting Agents dated 9 February 2022 -22 March 2022

Written Representations

6. The Respondent did not provide any written representations.

Case Management Discussion

7. This case called for a conference call Case management Discussion (CMD) at 10.00 on 8 February 2023.
8. Ms Claudia Hoey, the Applicant's Representative, and the Respondent attended the CMD.

The Applicant's Position

9. Ms Hoey invited the Tribunal to grant the application for an eviction order. The Respondent has been in continuous arrears of rent since January 2021 and has made no effort to pay the same.
10. She maintained that as far as she was aware the Respondent was still resident at the Property. The surrounding neighbours state that he still lives there.
11. Regarding the pre-action protocol she said that there had been several attempts made by the former Letting Agents who were no longer in business to enter into discussions with the Respondent regarding the outstanding rent and no offer had been made to pay any rent. She maintained that the Letting Agents had referred the Respondent to take appropriate advice from the relevant agencies and said that when she was instructed she proceeded to serve the Notice and thereafter to commence proceedings.
12. She made reference to the fact that there had been some e-mails exchanged by her with Castlemilk Law Centre and therefore the Respondent had indeed taken advice regarding his situation.
13. She also referred to her letter which accompanied the Notice which stated;-
'I would draw your attention to the following information.
Even after the Notice to Quit has run out, before the tenant can lawfully be evicted, the landlord must get an Order for possession from the court.
If a tenant does not know what kind of tenancy he/she has, or is otherwise unsure of their rights, they can obtain advice from a solicitor. Help with all, or parts of the cost of legal advice and assistance may be available under the Legal Aid legislation. A tenant can also seek help

from a Citizens Advice Bureau or a housing advisory assistant. Should you wish to take legal advice, we would advise you to do so.'

The Respondent's Position

14. The Respondent said that he moved out of the Property at the end of 2021 and that the former Letting Agent and the Applicant were aware of that. He maintained that the rent arrears had started to accrue after a brick was put through the windows of the Property. The Applicant had placed a board over the same but did not replace the windows. He said that it took 18 months for the landlord to replace them - until May 2022. Then, a month later, he was served with the Notice to Leave.
15. In addition he complained that a bedroom ceiling had cracked and then collapsed during the course of 2022.
16. He stated that his wife was still living in the Property and that she always dealt with the rental payments either in cash or by bank transfer. He lived now with his daughter and was "walking distance away" from the Property. He is a full time carer for his wife and spends some time at the Property occasionally staying overnight. He said that his 18 year old son also resides there.
17. His wife needs a full time carer as she has various disabilities including chronic pain in her spine and neck, she suffers from depression and he said that her health has been going downhill (partly due to living in a cold house). There had also been issues with the boiler and a gas leak he said at the Property.
18. His wife receives some benefits regarding her ill health.
19. The Respondent said that he was not claiming Housing Benefit as he was no longer living at the Property. He is not working as he sustained a

facial injury in July 2022 when he fractured part of his face. Six months prior to that he had been in a motor accident.

20.He had spoken with the Council Housing Department but no case worker has yet been allocated. His wife had also been referred for advice to a local law agency called, “Castlemilk Law Centre.”

21.He acknowledged that he was the tenant and his wife was not named on the tenancy.

22.He said that he had not taken further advice when the papers were served on him by the Tribunal as there was a waiting list for appointments and that his own lawyer was a criminal lawyer and he needed a civil lawyer regarding this matter.

23.The Respondent stated that after the Letting Agents closed their business that the Applicant had not been in touch and had not provided bank details for the rent to be paid to him.

24.He said that he was not opposing the application for the Eviction Order. He accepted the amounts said to be due and outstanding.

Findings in Fact

25.The Tribunal identified with the Applicant’s representative and the Respondent the following agreed facts, which were accepted by the Tribunal:

(i)The Respondent is Tenant of the Property in terms of a lease between the parties.

(ii)The start date of the Tenancy detailed in the lease was 28 May 2019.

(iii)The lease is a Private Residential Tenancy in terms of the Private Housing Tenancies (Scotland) Act 2016 ('The 2016 Act').

(iv)The Applicant, Mr Abid Mahmood, is Landlord of the Property. The Tribunal had a copy of the Applicants' title deeds being Land Certificate GLA231144. Section B of the Land Certificate confirmed that the Applicant purchased the Property on 29 January 2018.

(v)The rent detailed in the tenancy agreement was £710.00 per calendar month, payable in advance.

(vi)The Notice to Leave was dated 6 June 2022 and it was sent to the Respondent by recorded delivery mail on that date.

(vii)The Notice to Leave was signed for by the Respondent on 7 June 2022.

(viii)The Notice to Leave stated that the Respondent was in rent arrears over three consecutive months, which is Ground 12 of Schedule 3 of the Private Housing (Tenancies) Scotland Act 2016.

(ix)At the time of serving the Notice to Leave the rent arrears were £9940.

(x)No payments of rent have been made by the Respondent since February 2022.

(xi)The current rent arrears amount to £15620.

(xii)At the date of the Notice to Leave, the date of the application and at the present date the Respondent has rent arrears of three or more consecutive months.

Reasons for the Decision

26.The Tribunal determined that at the date of the Notice to Leave, the date of the application and at the present date the Respondent has rent arrears of three or more consecutive months.

27. The Tribunal found that the rent arrears were not due to a delay or failure in payment of a relevant benefit.

28.The Tribunal found that it was reasonable for the eviction order to be granted given the considerable amount of the rent arrears owing, the fact that the Respondent is no longer living at the Property, the fact that

the Applicant's representative has received communication from Castlemilk Law Centre confirming they were instructed to act for the Respondent and the fact that the Respondent does not oppose the application.

29. Accordingly, the Tribunal found in law that the ground in Schedule 3(12) (1) of the 2016 Act was met.

30. The Tribunal noted that the provisions of the Cost of Living (Tenant Protection)(Scotland) Act 2022 in relation to delaying evictions do not apply to this application as the Notice to Leave was served on the Respondent before 6th September 2022 and the application was received by the Tribunal before 28th October 2022.

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.

Yvonne McKenna

8 February 2023

Legal Member/Chair

Date