



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/23/4194

Re: Property at Ground Flat 03, 21 Craig Road, Glasgow, G44 3DW (“the Property”)

Parties:

Edward O’Loughlin, 150 Netherlee Road, Glasgow, G44 3QA (“the Applicant”)

Nisha Shaheen, Ground Flat 03, 21 Craig Road, Glasgow, G44 3DW (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be determined without a Hearing and made an Order for Possession of the Property.

Background

1. By application, dated 23 November 2023, the Applicant sought an Order for Possession of the Property under Section 18(1) of the Housing (Scotland) Act 1988 (“the Act”). The Grounds relied on were Grounds 8 and 8A of Schedule 5 to the Act, namely that at the date of the service of the Form AT6 Notice under Section 19 of the Act and at the date of the Case Management Discussion, at least three months’ rent lawfully due by the Respondent was in arrears (Ground 8), and that the Respondent has accrued rent arrears under the tenancy in respect of one or more periods, and the cumulative amount of those rent arrears equated to, or exceeded, an amount that is the equivalent of 6 months’ rent when notice was given under Section 19 on this Ground (Ground 8A)
2. The application was accompanied by a copy of an Assured Tenancy Agreement between the Parties, commencing on 1 November 2013 at a rent

of £350 per month, a Notice to Quit and Notice given under Section 19 of the Act (Form AT6 Notice), both dated 11 September 2023, and both requiring the Respondent to remove from the Property by 2 November 2023, with evidence of service of the Notices on the Respondent by sheriff officer on 11 September 2023, and a Rent Statement showing arrears as at 1 August 2023 of £2,500. The arrears had accumulated between April 2021 and January 2022, since when the rent had been paid monthly.

3. The Applicant also provided copies of letters of 11 September and 10 October 2023 to the Respondent, signposting her to sources of possible advice and financial assistance, as formerly required by the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.
4. On 18 January 2024, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 7 February 2024.
5. On 27 February 2024, the Respondent made written representations to the Tribunal. She provided a copy of an email exchange with the Social Work Department of Glasgow City Council in which she was advised that they were waiting for her to “hit the top of the list” for her area and that nothing more could be done other than to wait. She told the Tribunal that a deterioration in her health had led to her being unable to pay the rent, which resulted in the arrears, but that the rent is now being paid every month. Her health workers and social worker are helping her to find alternative accommodation, but this is taking some time and she asked that the Tribunal take this into consideration when setting an eviction date.

Case Management Discussion

6. A Case Management Discussion was held by means of a telephone conference call on the morning of 6 March 2024. The Applicant was represented by Ms Sadiq of TCH Law, solicitors, Hamilton. The Respondent was also present.
7. The Applicant’s representative advised the Tribunal that he is 71 years old but is still having to take on odd jobs as a drainage contractor, as he is losing money on his two rental properties. The interest-only mortgage on the present Property is at a variable rate and the monthly payments have increased from £170 per month to £320 per month. He also has to pay factoring fees and insurance, an additional £80 per month. There are rent arrears of £4,500 on his other rental property and he is in the process of seeking to recover possession of both properties, so that he can sell them. Ms Sadiq confirmed that the Respondent has paid £100 towards the arrears, but there is no agreed payment plan in place.
8. The Respondent told the Tribunal that the Social Work team had not yet been able to find alternative accommodation for her and that, if she vacated the Property voluntarily, she would be regarded as having intentionally made

herself homeless. She understood the Applicant's position, but was asking for time to be rehoused. She confirmed that she lives alone.

Reasons for Decision

9. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.
10. Section 18(1) of the Act states that the Tribunal shall not make an Order for Possession of a house let on an Assured Tenancy except on one or more of the Grounds set out in Schedule 5 to the Act. By Section 18(3) of the Act, if the Tribunal is satisfied that any of the Grounds in Part I or Part II of Schedule 5 is established, the Tribunal shall not make an Order for Possession unless the Tribunal considers it reasonable to do so.
11. The present application is made under Grounds 8 and 8A of Part I of Schedule 5 to the Act.
12. Ground 8 of Schedule 5 to the 1988 Act provides that the Tribunal may make an Order for Possession if, both at the date of the service of the Notice under Section 19 of the 1988 Act and at the date of the Hearing at least three months' rent lawfully due from the tenant is in arrears. Ground 8A (introduced by the Cost of Living (Tenant Protection) (Scotland) Act 2022) applies where the Respondent has accrued rent arrears under the tenancy in respect of one or more periods, and the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent when notice is given under Section 19 on this Ground or, if dispensed with, when proceedings are raised for an Order of Possession on this Ground.
13. The Tribunal was satisfied that, both at the date of service of the Form AT6 Notice and at the date of the Case Management Discussion the arrears of rent lawfully due by the Respondent to the Applicant exceeded six months and that the requirements of Grounds 8 and 8A had been met.
14. The remaining question for the Tribunal to decide was, therefore, whether it would be reasonable to make an Order for Possession.
15. The Tribunal noted the request from the Respondent to be allowed time to secure alternative accommodation and decided that a period of three months would be reasonable in the circumstances, having regard to the interests of both Parties.
16. The Tribunal noted that the Applicant is 71 and having to take on odd jobs involving manual labour, as he was making no income from the Property or from his other rented property and that he felt he needed to sell them both. The

Respondent had health issues, but is being actively assisted by health workers and by the local authority Social Work department to find alternative accommodation. If the Respondent remains in the Property, the prospects of selling it with her as a sitting tenant at a rent that has not increased in over 10 years must be regarded as remote. It appeared to the Tribunal that it would be in the interests of both Parties if the Tribunal made an Order for Possession. The Respondent's position on a housing waiting list would be improved and the Applicant would be able to sell with vacant possession.

17. Having considered all the evidence before it, the Tribunal decided that it would be reasonable to make an Order for Possession of the Property under Grounds 8 and 8A of Schedule 5 to the Act.

18. The Decision of the Tribunal was unanimous.

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.

G Clark

Legal Member/Chair

6 March 2024
Date