



**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/19/0997

Re: Property at Flat 3/1, 21A Park Avenue, Dundee, DD4 6NB (“the Property”)

Parties:

Northern Housing Company Limited, 1 Explorer Road, Dundee, DD2 1EG (“the Applicant”)

Mr Christopher Rose, Flat 3/1, 21A Park Avenue, Dundee, DD4 6NB (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member)

Summary of Discussion

This Application related to an order for possession of the property and had been discussed at a previous case management discussion (CMD) on 6th June 2019. At that time the Application had been continued to allow the Respondent to make an appointment with the Applicant to agree a mutually agreeable payment plan for the payment of rent arrears and to adhere to the terms of the plan until the next CMD.

This Application is conjoined with HPC/CV/19/0998, which is an Application for a payment order in relation to unpaid rent said to be lawfully due by the Respondent.

At the CMD on 6 September 2019 when the Application first called, only the Applicant's solicitor Ms Morrison was present. The Respondent attended after 10.15am having gone to the venue where the first CMD had been held.

The Tribunal had sight of the Application, the tenancy agreement, an up to date rent statement, an AT6 form in respect of Grounds 8, 11, and 12 of the 1988 Act together with an execution of service and a Notice to the local authority together with confirmation e-mail.

The Tribunal was advised by Ms Morrison for the Applicant that the Respondent had attended with the Applicant in the week after the first CMD, had paid £400 that day and had agreed a payment plan to pay £500 towards the arrears on the last day of each month but had not made any payments in terms of the plan. The only payment received since the last CMD had been the £400. Ms Morrison moved the Tribunal to grant a possession order in terms of the 1988 Act under Grounds 8, 11 and 12. She advised that the rent arrears stood at £2329.79 with the monthly rent being £399.04.

There was discussion regarding the Grounds under which the possession order was requested and the Applicant's solicitor indicated that she would seek a possession order in terms of Ground 8 only, where at the date of the service of the Notice of proceedings for possession and at the date of the CMD at least three months' rent lawfully due was in arrears.

The Respondent did not dispute what was said regarding the payment plan and said that he simply could not afford the rent and arrears repayments. He had not calculated the arrears in detail but did not seek to challenge them or to disagree that he was in arrears with rent payments. He advised the Tribunal that he was self-employed and simply could not make the payments required by way of monthly rent and arrears. He accepted that the arrears were not due to any delay or failure in the payment of housing benefit or universal credit which he said he did not receive.

Findings in Fact

1. The Applicant and Respondent entered into a tenancy agreement for the property with effect from 15th October 2010.
2. The rent payable as stated in the agreement lodged with the Tribunal was £330 per month initially but increased throughout the tenancy and stood at £399.04 per month at the time of the Application.
3. The Respondent fell into arrears of rent at the property. At the time of service of the Notice of proceedings for possession the arrears of rent lawfully due amounted to three months' rent and as at the CMD on 6 September 2019 the arrears stood at £2329.79.
4. The arrears are not due to any failure or delay in the payment of housing benefit or universal credit.

Reasons for Decision

The Tribunal was satisfied that the Respondent was in arrears of rent lawfully due to the Applicant amounting to 3 months' rent as at the time when he was notified of proceedings to recover possession and that these had risen to £2379.79 as at the date of the CMD on 6th September 2019. These arrears were not due to any failure or delay in payment of benefit. The grounds for a possession order under Ground 8 of Schedule 5 of the Housing (Scotland) Act 1988 are met and the Applicant is entitled to a possession order for the property.

Decision

The Tribunal makes a possession order for the property in terms of section 18 of the Housing (Scotland) Act 1988 as the terms of Ground 8 of Schedule 5 of the Act are met.

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.

V. Bremner

Legal Member/Chair

6 September 2019

Date