

Housing and Property Chamber
First-tier Tribunal for Scotland



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/19/3134

Re: Property at 5E Tullideph Street, Dundee, DD2 2PQ (“the Property”)

Parties:

Mrs Elizabeth Reynolds, 1 Reddie Cottage, Westmuir, Kirriemuir, DD8 5LX (“the Applicant”)

Ms Jennifer Young, ADDRESS UNKNOWN, ADDRESS UNKNOWN (“the Respondent”)

Tribunal Members:

Petra Hennig-McFtridge (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be granted.

Background:

The application was made on 2 October 2019. The application asked for an order for possession to be made on Grounds 8, 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988 (the Act).

Attached to the application were:

1. the Tenancy Agreement for the property commencing 2 April 2017
2. Copy AT6 document dated 13 August 2019 with certificate of service by Sheriff Officers dated 14 August 2019
3. Copy Notice to Quit dated 13 August 2019 certificate of service by Sheriff Officers dated 14 August 2019
4. S 11 Notice to Dundee City Council
5. Printout of rental payments for the property to 2 February 2018 to 29 July 2019

A Case Management Discussion (CMD) was scheduled for 9 December 2019 but Sheriff Officers reported they could not achieve service as the property appeared to be unoccupied. An application for service by advertisement was made by the Applicant.

On 28 November 2019 the Applicant lodged an updated rent statement showing arrears of £3,600.

A further CMD was then fixed for 10 January 2020 and both parties advised of the date, time and venue. Service on the Respondent was carried out by advertising from 5 December 2019 to 10 January 2020.

The Tribunal thus considers that the appropriate notice has been given to the Respondent.

No representations were received from the Respondent. The Respondents had not contacted the Tribunal prior to the CMD and did not attend.

The Case Management Discussion

The Applicant attended the CMD with her sister as supporter. The Respondent did not attend. The Applicant advised the Tribunal that no further payments had been received since the application was made. The last payment had been received as shown on the rent statement on 29 July 2019. The Applicant explained she had contacted the Respondent to advise that she would attend on 2 October 2019 at 2 pm, which was the date the Notice expired. When she attended the Respondent did not let her into the premises and stated she would move out as soon as she could. However, no keys were returned. When the Applicant contacted Electricity and Gas suppliers afterwards to enquire how the services could be returned to her name the Respondent contacted her to say she still required the services. Since then there had been no further contact. No keys have been returned and she had no contact from the Respondent to confirm that the Respondent had moved out. She appreciates that Sheriff Officers reported to the Tribunal that the property is no longer occupied but cannot verify that without legally gaining entry. This is why she is asking for the order so she can take the property back. She referred the Tribunal to the documents lodged with the application, which are referred to for their terms and held to be incorporated herein. She also confirmed that the S 11 Notice had been sent to the Council by email on 2 October 2019 and could show the email on her telephone to the legal member. As far as the Applicant is concerned she is entitled to rent payments until the tenancy has been properly concluded. She was able to show the legal member bank transactions on her telephone showing that no payments of rent had been made in January, December, November and October since the application was made. She further confirmed that when she attended the property recently and looked through the letterbox she could see that some items were still in the property.

There were no representations from the Respondent.

1. The parties entered into an Assured Tenancy for the property with a start date of 2 April 2017 (Clause 5).
2. Rent of £450 per month is payable monthly in advance (Clause 7)
3. An AT6 document dated 13 August 2019 stating Grounds 8, 11 and 12 was served on the Respondent by Sheriff Officers on 14 August 2019
4. The first day of raising proceedings was stated as 2 October 2019.
5. At that time the arrears were £1,350.
6. These were stated in the AT6 document as evidence of the Grounds stated.
7. The Notice to Quit terminated the contractual tenancy on 2 October 2019.
8. The Respondent has not made any payments towards the arrears since 29 July 2019.
9. The outstanding amount as of 10 January 2020 is £3,600, which is the equivalent of 8 rent payments.
10. The Respondent has not returned the keys to the property and has not advised the Applicant of a moving out date.
11. Clause 41 of the tenancy agreement refers to the Grounds in Schedule 5 of the Act as reasons on which the tenancy agreement can be brought to an end.

Reasons for the Decision:

The Tribunal make the decision on the basis of the written evidence lodged by the Applicant and the information given at the hearing by the Applicant.

In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

(a) in any place where a hearing may be held;

(b) by videoconference; or

(c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

(a) identifying the issues to be resolved;

(b) identifying what facts are agreed between the parties;

(c) raising with parties any issues it requires to be addressed;

(d) discussing what witnesses, documents and other evidence will be required;

(e) discussing whether or not a hearing is required; and

(f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

The Respondent did not make any written representations and did not attend the CMD. The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case.

In terms of S 18 of the Housing (Scotland) Act 1988 (the Act), the tribunal shall not make an order for recovery of 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. In terms of S 19 (1) of the Act this requires an AT6 form to be correctly served in terms of S 19 (4).

In this case the AT6 document was based on Grounds 8, 11 and 12 of Schedule 5 of the Act. The notice period of the AT6 in terms of S 19 (4) (a) of the Act had to be 2 weeks. As established by the documents submitted, the notice period had been properly given by the AT6 having been served on 14 August 2019 for 2 October 2019. The contractual tenancy had been terminated by the Notice to Quit on 2 October 2019, which is an ish date. The tenancy since then continues as a statutory assured tenancy in terms of S 16 of the 1988 Act.

Based on the rental statements and the evidence of the Applicant at the CMD the Tribunal is satisfied that Ground 8 of Schedule 5 applies as "*both at the date of the service of the notice under Section 19 of this Act relating to the proceedings for possession and at the date of the hearing at least three months rent lawfully due from the tenant is in arrears.*" The monthly rent is £450. At the date of service of the AT6 document the arrears were £1,350 which is three months rent. No further payments have been made. There are currently 8 months rent arrears for the months of March 2019, May 2019, August 2019, September 2019, October 2019, November 2019, December 2019 and January 2020. At the date of the CMD the arrears were £3,600 and this is in excess of three months rent. This is a mandatory ground. There had been no suggestion that the failure to pay is a consequence of a delay or failure in the payment of relevant housing benefit in terms of S 18 (3A) of the Act. The Tribunal grants the order for possession on that ground.

Based on the rental statements the Tribunal is satisfied that Ground 11 of Schedule 5 of the Act applies as "*whether or not any rent is in arrears on the date on which proceedings for possession are begun the tenant as persistently delayed paying rent which has become lawfully due.*" The rent statement shows that arrears have been accrued by persistent lack of payment or part payments since March 2019. The Tribunal applying its discretion in the matter considers that taking into account all relevant matters it is fair in all the circumstances to grant the order for possession on that ground.

The panel is satisfied Ground 12 of Schedule 5 of the Act : *“some rent lawfully due from the tenant:- (a) is unpaid on the date on which the proceedings for possession are begun; and (b) except where subsection (1) (b) of section 19 of this Act applies, was in arrears at the date of the service of the notice under that section relating to those proceedings”* applies in this case and, applying its discretion in the matter considers that taking into account all relevant matters it is fair in all the circumstances to grant the order for possession on that ground.

Decision

The Tribunal grants an order for possession in terms of S 18 of the Act on Grounds 8, 11 and 12 of Schedule 5 of the 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.

**Petra Hennig-
McFatridge**

Legal Member/Chair

10.1.2020

Date