

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/18/0670

**Re: Property at 4 Beechwood, Kirkmuirhill, Lanarkshire, ML11 9SH (“the
Property”)**

Parties:

**Mr Leslie Norris, 295 Carlisle Road, Kirkmuirhill, Lanarkshire, ML11 9ra (“the
Applicant”)**

**Mr Matthew Paton, 2 Croftpark Street, Bellshill, Lanarkshire, ML4 1EY (“the
Respondent”)**

Tribunal Members:

Melanie Barbour (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that**

Background

An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under rule 65 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order for recovery of possession in relation to an assured tenancy under the Housing (Scotland) Act 1988 by the Applicant against the Respondent in relation to the subjects, 4 Beechwood, Kirkmuirhill, Lanarkshire.

The application contained a copy of the tenancy agreement, copy of the AT6 form; copy of the notice to quit; correspondence in relation to rent arrears; correspondence in relation to gaining access to the property; section 11 notice together with evidence of service.

The Applicant appeared. The Respondent appeared with a supporter, David Kerr. There was also an observer in attendance Janice Reid, from the Citizens Advice Bureau.

Notice of the hearing together with copies of the full application had been served on the Respondent on 9 May 2018.

The Hearing/Case Management Discussion

The applicant confirmed that he was seeking an order for eviction under Ground 8 of schedule 5 of the 1988 Act as the respondent was in arrears of rent for more than 3 months at date of service of the notice and also at the date of the hearing; and also under Ground 13 any obligation of the tenant (other than one related to payment of rent) had been broken or not performed.

The respondent indicated that he had not received his service copy of the papers for today's hearing, although had received some papers which he had brought with him (those were papers which had been submitted by the landlord and included photographs of the property in support of the Ground 13). He was advised that there was a certificate of service from sheriff officers confirming that the application and notice of the hearing had been properly served. He advised that his mother has Alzheimer's disease and the papers were served at her address.

The respondent advised that since April 2018 he was no longer the tenant at the property.

The applicant advised that the current position regarding outstanding rent arrears was that since the tenancy began, there had been three payments made, two for £425, and a second for £350.01p. The tenant was more than 3 months in arrears of rent. The payment of £350.01 had been made by universal credit agency. This money was paid direct to the letting agents. The letting agent had received a letter dated 24 April 2018 from universal credit advising that they had reviewed the temporary alternative payment arrangement for the respondent and decided to stop paying universal credit direct to the letting agents and the letting agent would need to make arrangements direct with the respondent for the payment of rent.

The respondent advised that the first payment shown on the rent statement on 27 November 2018 was for £425 and was for his deposit, and it was agreed that the first month was to be rent free was a rent free month. He had been looking to move into the property in January. He advised that there were difficulties thereafter as universal credit lost his papers, and there was no communication for a few months from them. He advised that universal credit then liaised directly with the letting agents in terms of his payment of rent. He had understood that it would be backdated, and rent paid for two months.

The respondent advised that he had not been well and therefore he had not always been able to attend to matters directly.

He advised that he received correspondence from the letting agents in March advising that they were seeking to have him evicted from the property; he advised that he asked the letting agents for time to get out of the house and asked for his deposit back.

He advised that he had never been contacted by universal credit. He advised that he had not instructed universal credit to pay the landlord direct. However as far as he was concerned all benefit matters were being dealt with between the universal credit and the letting agent on the phone.

The applicant advised that the letting agent had been dealing with the matter on his behalf; they had advised him that they often could not get in contact with the respondent. The applicant had been advised that he would have to follow proper procedures but once there was three months' rent arrears he could institute proceedings to recover his property.

The respondent advised that he left the property on 12 April 2018 and since then he has been in a new tenancy. He advised that he did not know that he still was the tenant for the property until he found about this hearing.

The applicant advised that the house had not been occupied all over the winter, and this continued to be the case. It had not been maintained or looked after. He had received very little rent for it. He was concerned as he could not do anything with the property at the present time.

He considered that the tenant was the tenant until 27 May 2018.

The respondent advised that he believed that there had been a double payment of rent in 21 March 2018. He was asked if he had paid the rent himself and he said that he had paid it. He was then asked why he had paid the rent in March himself if he thought that universal credit was paying the rent direct to the letting agent. He did not however explain why this was the case.

Findings in Fact

The tribunal have found the following facts to be established:

A tenancy agreement was entered into between the applicant and the respondent for the property. It was entered into on 27 November 2017. It was for an initial period of 6 months until 27 May 2018.

Its termination date was 27 May 2018.

Rent was payable in advance on 27th of each month.

Clause 12 stated that the property was to be the respondent's only or principal home. Clause 13 stipulates that the tenant would have to advise the landlord if he were to be absent for more than 14 days.

Clause 34 of the tenancy agreement provided for termination of the tenancy.

Clause 34.3 allowed the tenant to terminate it giving the landlord one month's notice in writing to terminate the tenancy at its termination date.

Clause 34.4 provided that the landlord could seek recovery of possession under the grounds set out in Schedule 5 of the Housing (Scotland) Act 1988 and these grounds were thereafter set out in the tenancy agreement.

The rental statements showed that as at 21 March 2018 there were three months outstanding rent due

That at the date of hearing there was still at least three months' rent due.

That the tenancy had not been the respondent's principal or only home since at least 12 April.

That the respondent now lived in new accommodation.

That the respondent had applied for universal credit to pay the rent for the property. That universal credit had been paid to the respondent on or around March 2018. That universal credit had paid a final sum on 10 May 2018 direct to the letting agent.

We found that there had been an attempt to serve the AT6 however it had not been called for. We did not therefore consider it had been served on the respondent on 27 February 2018

We found that the notice of the hearing and the full application had been served on the respondent, and this included a copy of the AT6 Form.

Reasons for Decision

Section 18 and 19 of the Housing (Scotland) Act 2018 state:-

18 Orders for possession.

(1)The First-tier 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 this Act.

(2)The following provisions of this section have effect, subject to section 19 below, in relation to proceedings for the recovery of possession of a house let on an assured tenancy.

(3)If the First-tier Tribunal is satisfied that any of the grounds in Part I of Schedule 5 to this Act is established then, subject to subsections (3A) and (6) below, the Tribunal shall make an order for possession.

(3A)If the First-tier Tribunal is satisfied—

(a)that Ground 8 in Part I of Schedule 5 to this Act is established; and

(b)that rent is in arrears as mentioned in that Ground as a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit, the Tribunal shall not make an order for possession unless the Tribunal considers it reasonable to do so.

(4) If the First-tier Tribunal is satisfied that any of the grounds in Part II of Schedule 5 to this Act is established, the Tribunal shall not make an order for possession unless the Tribunal considers it reasonable to do so.

(4A) In considering for the purposes of subsection (4) above whether it is reasonable to make an order for possession on Ground 11 or 12 in Part II of Schedule 5 to this Act, the First-tier Tribunal shall have regard, in particular, to the extent to which any delay or failure to pay rent taken into account by the Tribunal in determining that the Ground is established is or was a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit.

(5) Part III of Schedule 5 to this Act shall have effect for supplementing Ground 9 in that Schedule and Part IV of that Schedule shall have effect in relation to notices given as mentioned in Grounds 1 to 5 of that Schedule.

(6) The First-tier Tribunal shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless—

(a) the ground for possession is Ground 2 or Ground 8 in Part I of Schedule 5 to this Act or any of the grounds in Part II of that Schedule, other than Ground 9... Ground 10, Ground 15 or Ground 17; and

(b) the terms of the tenancy make provision for it to be brought to an end on the ground in question.

(6A) Nothing in subsection (6) above affects the First-tier Tribunal's power to make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, where the ground for possession is Ground 15 in Part II of Schedule 5 to this Act.

(7) Subject to the preceding provisions of this section, the First-tier Tribunal may make an order for possession of a house on grounds relating to a contractual tenancy which has been terminated; and where an order is made in such circumstances, any statutory assured tenancy which has arisen on that termination shall, without any notice, end on the day on which the order takes effect.

(8) In subsections (3A) and (4A) above—

(a) "relevant housing benefit" means—

(i) any rent allowance or rent rebate to which the tenant was entitled in respect of the rent under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971); or

(ii) any payment on account of any such entitlement awarded under Regulation 91 of those Regulations;

(aa) "relevant universal credit" means universal credit to which the tenant was entitled which includes an amount under section 11 of the Welfare Reform Act 2012 in respect of the rent;

(b) references to delay or failure in the payment of relevant housing benefit or relevant universal credit do not include such delay or failure so far as referable to any act or omission of the tenant.

19 Notice of proceedings for possession.

(1) The First-tier Tribunal shall not entertain proceedings for possession of a house let on an assured tenancy unless—

(a) the landlord (or, where there are joint landlords, any of them) has served on the tenant a notice in accordance with this section; or

- (b) the Tribunal considers it reasonable to dispense with the requirement of such a notice.
- (2) The First-tier Tribunal shall not make an order for possession on any of the grounds in Schedule 5 to this Act unless that ground and particulars of it are specified in the notice under this section; but the grounds specified in such a notice may be altered or added to with the leave of the Tribunal.
- (3) A notice under this section is one in the prescribed form informing the tenant that—
- (a) the landlord intends to raise proceedings for possession of the house on one or more of the grounds specified in the notice; and
- (b) those proceedings will not be raised earlier than the expiry of the period of two weeks or two months (whichever is appropriate under subsection (4) below) from the date of service of the notice.
- (4) The minimum period to be specified in a notice as mentioned in subsection (3)(b) above is—
- (a) two months if the notice specifies any of Grounds 1, 2, 5, 6, 7, 9 and 17 in Schedule 5 to this Act (whether with or without other grounds); and
- (b) in any other case, two weeks.
- (5) The First-tier Tribunal may not exercise the power conferred by subsection (1)(b) above if the landlord seeks to recover possession on Ground 8 in Schedule 5 to this Act.
- (6) Where a notice under this section relating to a contractual tenancy—
- (a) is served during the tenancy; or
- (b) is served after the tenancy has been terminated but relates (in whole or in part) to events occurring during the tenancy,
- the notice shall have effect notwithstanding that the tenant becomes or has become tenant under a statutory assured tenancy arising on the termination of the contractual tenancy.
- (7) A notice under this section shall cease to have effect 6 months after the date on or after which the proceedings for possession to which it relates could have been raised.

On the basis of the evidence before the tribunal, we found that an assured tenancy existed. That within the tenancy agreement there was a duty to pay rent and also a duty to reside in the property as the respondent's principal home. That there was also provision to recover the property where the respondent was in breach of the grounds set out in schedule 5 of the 1988 Act.

We note that the AT6 was not served as at 28 February 2018, however we are content that it was served with the rest of the applicant by sheriff officers as at 9 May 2018.

We consider that the terms of Section 19 requires that the tribunal cannot entertain proceedings of a house let on an assured tenancy unless the landlord has served on the tenant a notice in accordance with this section; or the tribunal considers it reasonable to dispense with the requirement of such notice. Section 19 (5) of the 1988 Act provides that the tribunal cannot dispense with service of the AT6 notice if Ground 8 is sought as a basis for recovery of possession.

The papers served on the respondent by the sheriff officers, contained a complete copy of the application, which included the AT6 Notice. Given this we consider that we are entitled to proceed to entertain the application brought by the applicant.

We also determined that even, in the event, that the AT6 had not been properly served and we were not entitled to entertain the application, we would have dispensed with service of the notice on the respondent in relation to Ground 13, as we note that service was attempted in February 2018, it was thereafter served by sheriff officers along with the application, the respondent by his own admission has left the property, and we were therefore satisfied in all the circumstances that it would be reasonable to dispense with the requirements of such a notice.

We considered that the respondent had breached the terms of his tenancy, both in terms of clauses 12 and 13, as he had not, by his own admission, resided in the property as his principal home, since at least 12 April 2018. We also noted the photos lodged by the landlord and thought it likely that the respondent had not resided in the property prior to 12 April.

Given that the respondent has left the property, the terms of Ground 13 are met and the tribunal may grant the order.

The respondent advised us that he had advised the applicant's letting agents that he was leaving the property, and therefore considered that no order should be granted. However the terms of clause 34.3 do not allow termination by the respondent until the tenancy agreement has reached its termination date and written notice of one month has been given, no such written notice was provided by the respondent. Accordingly, we find that the respondent is still the tenant of the property.

We considered that it would be reasonable to grant the order under Ground 13.

We also consider that in terms of Ground 8 there were three months outstanding rent at the date that the application was served by the sheriff officers on 9 May 2018 and at the date of the hearing. Accordingly, we consider that we are also entitled to grant an order on the basis of Ground 8.

We heard evidence from the respondent regarding his application for universal credit, and in order to grant an order under Ground 8 we require to be satisfied that the rent arrears are not as a consequence of failure or delay in the payment of relevant universal credit. While we note that the respondent has indicated that there was a delay in processing his universal credit, he did not provide any evidence in support of this position. In any event, it is clear that universal credit was being paid for the property as evidenced by the payment made in 21 March 2018 and 10 May 2018. We did not therefore consider that the arrears were due to delay in universal credit payments as any delay seemed to have been rectified and payments were made, however the respondent was still in arrears of rent for the property for more than three months. Further, as he was not in a position to terminate his tenancy until 27 May 2018 rental payments until then were still therefore due.

For the avoidance of doubt, we noted that the respondent advised that he had not received the papers from the sheriff officer, but had received other papers in

connection with today's hearing. He indicated that his mother had Alzheimer's disease. The tribunal considered that the papers had been properly served. Further we noted that he had received papers for today's hearing, all papers had been sent to or served at his mother's address.

We had regard to the overriding objective in the 2017 Rules which is to deal with the matter justly. We noted that the respondent was aware of today's hearing, as he had previously contacted the tribunal office as he thought it was no longer going ahead as he no longer lived in the property; he did not dispute that he had left the property; and he did not dispute that the arrears were outstanding other than to explain that this was due to universal credit delaying matters, albeit he provided no evidence to support this. We also noted that the applicant advised that the property had been empty for a number of months with no one maintaining it. We considered that in all the circumstances it would be in accordance with the overriding objective to continue with the today's hearing, and we considered that it would just to make a decision in at today's hearing.

Accordingly, the tribunal was prepared to make an order for eviction Grounds 8 and 13 having been met.

Decision

The Tribunal grants an order in favour of the Applicant against the Respondent for possession of the property.

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

M Barbour

Legal Member/Chair

11. 6. 18

Date