



**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/18/0612

Re: Property at 5 Helmsdale Drive, Dundee, DD3 0NJ (“the Property”)

Parties:

Mr Stuart Hunt, Mrs Yvette Hunt, 20 Lansdowne Place, DUNDEE, DD2 3HT (“the Applicants”)

Miss Grace Hocking, Mr Jonathon Adams, 5 Helmsdale Drive, DUNDEE, DD3 0NJ (“the Respondents”)

Tribunal Members:

Petra Hennig McFtridge (Legal Member) and Linda Reid (Ordinary Member)

Decision (in absence of the Respondents)

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

- 1. The Hearing took place at Dundee on 24 August 2018. Present were the Applicants Yvette and Stuart Hunt. The Respondents were not present. The tribunal was satisfied that the Respondents had received notification of the hearing as their legal representatives Dundee North Law Centre had been in contact prior to the hearing and had advised that their instructions were not to attend as the Respondents had nothing further to say. At the Case Management Discussion on 25 June 2018 Dundee North Law Centre had submitted a letter setting out the issues they wished to raise and had also confirmed that they were acting for both Respondents. The date and time had also been intimated to the parties at the Case Management Discussion on 25 June 2018.**
- 2. The application for an order for repossession in terms of Rule 65 had been made on 6 March 2018.**
- 3. The supporting documents lodged by the Applicants at the date of the hearing consisted of a copy of the tenancy agreement starting 31 May 2014, which listed the Applicants as Landlords, copy form AT6 dated 30 November 2017 and copy Notice to quit dated 30 November 2017 with recorded delivery slip, copy S 11**

Notice dated 30 November 2018, copy form AT5 dated 26 May 2014, printout of Tenant payment record, missed/overpayments table, text exchange between landlord and tenant dated 8 February 2018 to 21 May 2018, Repairing Standards Order Discharge and Certificate of Completion dated 23 February 2017 for case number PRHP/RP/16/0180 and email dated 11 July 2018 to the Tribunal submitting the Repairs Case documentation and updating the arrears.

4. The documents submitted on behalf of the Respondents consist of the letter from Dundee North Law Centre of 25 June 2018, their emails 5 July 2018, of 23 August 2018 confirming their clients had instructed them not to attend and had moved out.
5. On 25 June 2018 a Case Management Discussion had taken place where the rent arrears figure was updated to £5,757.00 and various matters were discussed. A Note had been prepared and is referred to for its terms and held to be incorporated herein.
6. At the hearing the Applicants confirmed that the application is made in terms of Rule 65 and the process under which the application is made is S 18 of the Housing (Scotland) Act 1988 and that the application for repossession relies on the Notice to Quit and grounds 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988 solely.
7. The Applicants gave evidence that no rental payments had been received since a payment of £500 in April 2018 and that in addition to that there were significant further historic rent arrears as documented on the printout of Tenant payment record, missed/overpayments table and the text exchange between landlord and tenant dated 8 February 2018 to 21 May 2018. They also gave evidence that they had tried to support the Respondents in sorting out payments under Universal Credit as per the text exchange but that the Respondents would not release the necessary information to them to set up direct payments of Universal Credit for rent to the landlords and had not passed on any payments since the one payment in April. Prior to this there had been substantial rent arrears building up as per the printout and although some payments had been made after the conclusion of the Repairs Case, the Respondents had persistently failed to pay the full rent due and had in fact accrued rent arrears of over £6,00.00.
8. The Applicants further confirmed that no abatement or rent had been ordered in terms of the Repairing Standards case PRHP/RP/16/0180 and that they had carried out all the repairs and had cooperated with the process fully. The case had been concluded on 23 February 2017 and although some payment of rent was made by the Respondents afterwards they had then continued to accrue arrears until now. Even the one off payment of £500 in April 2018 had not covered the rent due. The Respondent Miss Hocking had stated at the Case Management Discussion she was not paying as she was saving for a deposit for a new house.
9. The Applicants argued that the text message exchange shows that the Respondents were in receipt of Universal Credit and that the Applicants had been contacted regarding their bank statements by the Universal Credit office. However, when they then telephoned to set up direct payments they had been advised they would need to give the National Insurance Number and date of birth of the Respondents, which the Respondents were not willing to disclose. The text messages show that the Respondents acknowledged they were due to pay the rent and had been asked for the relevant information, which was then not given to

the Applicants. The Respondents were also aware from the text messages of the payments not being made directly to the Applicants by Universal Credit.

10. The Missed/Over Payments list shows persistent issues with payment of rent since June 2015.
11. The Applicants further gave evidence that they had received a text message on 22 August 2018 from a mutual friend who stated to them that the Respondents had asked the friend to notify the Applicants that the Respondents had moved out. The message did not include a forwarding address. The Applicants stated they had then visited the premises and noted that there were still some items left in the property and they could not be sure of the position, especially since the Respondents had not given them a forwarding address. The Respondents themselves had not been in contact with the Applicants.

Findings in Fact:

1. The property is let on a Short Assured Tenancy, which commenced on 31 May 2014.
2. The agreed rent is £550 to be paid in advance with the due date on the first day of the month.
3. The rent arrears relevant to the application as the date of the Case Management Discussion were £5,757.00 as per the table of arrears produced.
4. No further payments had been made since.
5. The Respondents issued a Notice to Quit dated 30 November 2017 for 30 January 2018 to the Respondents and this was sent recorded delivery and received by the Respondents on 2 December 2017.
6. Clause 22 of the Tenancy Agreement provides for a notice to be served if there is a breach of any obligation by the Tenant under the tenancy.
7. The AT6 lists under part 3 as reasons: "Ground 1- We require the property to move back into due to selling our present home and Ground 11 & 12- You have persistently failed to pay rent since moving into the property".
8. The Tenancy Agreement had not made explicit reference to Ground 1 of Schedule 5 of the Housing (Scotland) Act 1988.
9. A Repairing Standards Case under ref PRHP/RP/16/0180 for the property in question has been finally determined by the Tribunal on 23 February 2017 and no rent abatement was ordered by the Tribunal. The Tribunal in case PRHP/RP/16/0180 found that the repairs were all carried out to the Tribunal's satisfaction and there were no outstanding matters. The Repairing Standard Enforcement Order relative to the case was discharged. The parties were notified of this and of their right of appeal by letter of the Tribunal dated 23 February 2017.
10. The Respondents have not notified the Tribunal of a change of address. Their solicitor sent an email on 23 August 2018 stating that the Respondents moved out but gave no further details as to when and where to.

Legal Submissions and Reasons for Decision:

The Respondent's solicitor raised in his letter of 25 June 2018 the following issues:

No 1: in terms of tacit relocation the tenancy continues to 1 June 2019. The panel considers that the Tenancy Agreement in clause 22 allows for Notice to Quit to be

served if there is a breach of the tenancy conditions. In this case there are significant rent arrears breaching Clause 5 of the Tenancy Agreement. The Notice to Quit was served on the Respondents on 2 December 2017 for a date of 30 January 2018 and thus gave the required 40 days notice. Thus on 30 January 2018 the contractual tenancy ended and became a statutory assured tenancy on the same terms.

No 2: Ground 1 of Schedule 5 of the Act had not been notified in the Tenancy Agreement. The panel agrees that this is the case and that the Application cannot succeed on this Ground.

No 3: The other grounds relate to Ground 11 and 12 of the 1988 Act and the Respondents argue that the property had been substandard and does not meet the Repairing Standard. Reference is made to case PRHP/RP/16/0180 and a possible reduction of rent. The Respondent's defence is that they did not pay rent because necessary repairs had not been carried out. The panel disagrees with this submission. The jurisdiction on the issue of abatement of rent for the property was with the tribunal panel for case PRHP/RP/16/0180. This case had been finally determined. A final inspection report was submitted and the Tribunal for that case found that the repairs were all carried out to the Tribunal's satisfaction and there were no outstanding matters. The Repairing Standard Enforcement Order relative to the case was discharged. The parties were notified of this and of their right of appeal by letter of the Tribunal dated 23 February 2017. The panel in this action has no jurisdiction over the concluded case issues and the Respondents had the opportunity to appeal the previous decision or to lodge a further Repairing Standards Case but had not done either. Thus the panel in this case is satisfied that any rent abatement matters had been finally resolved, no abatement was ordered and the full rent was due by the Respondents each month. Thus the panel is also satisfied that there are substantial rent arrears and that these have accrued over a long period of time as per the printout.

No further issues had been raised by the Respondent.

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 either requires an AT6 form to be correctly served in terms of S 19 (4) or in terms of S 19 (1) (b) the tribunal to consider it reasonable to dispense with the requirement of such a notice.

In this case the AT6 document included in the list of grounds Ground 1 and thus the notice period of the AT6 in terms of S 19 (4) (a) of the Act had to be 2 months. As established by the documents submitted, the notice period was less than 2 months as the AT6 was dated 30 November 2017 for a date on 30 January 2018 when the AT6 document stated proceedings could be raised. The AT6 document was in fact served on 2 December 2017. Thus the AT6 notice is defective as it did not provide the full 2 months required.

However, in this case the panel considers that it is reasonable to dispense with that requirement in terms of S 19 (1) (b) of the Act. The Respondents were fully aware of the intention to raise proceedings. The notice period was only missed by 3 days and

the Respondents were aware that there were substantial rent arrears for the property. The main reasons for the application were Grounds 11 and 12, which only require a 2 week notice period for the AT6 documents. Had the Respondents not mentioned in addition Ground 1 of Schedule 5, the AT6 document would have been validly issued. The panel considered that the Respondents were fully aware of the relevant facts relating to the intention of the landlords to apply for possession of the premises.

The panel then has to consider whether the Grounds 11 and 12 of Schedule 5 of the Act apply in this case. Both are discretionary grounds for possession. In this case the arrears as of the time the application as submitted were £3,477.00. The Applicants have submitted payment records showing that as at 25 June 2018 the arrears had increased to £5,757.00. The also state since then no further payments had been made. The panel considers that the Respondents were aware that even if they raised proceedings under case reference PRHP/RP/16/0180 this would not allow them to stop paying rent unless there was a formal order from the Tribunal in that case for abatement of rent and even then the remainder of the rent would be due. The Applicants have provided clear evidence that no abatement of rent was ordered and that the case concluded in February 2017. It is clear from the payment record lodged that rent arrears were building up since June 2015 and that there has been a persistent shortfall of rent payments over most of the period of the tenancy. The panel is further satisfied that this is not due to problems with Housing Benefit or Universal Credit payments not being made to the Respondents. The text message exchange satisfied the panel that the Applicants had asked for cooperation in this matter from the Respondents, which they did not receive and that the texts also show that Universal Credit payments seem to have been received appropriately by the Respondents. Furthermore, no submissions were made by the Respondents that there may have been a problem with the Housing Benefit or Universal Credit payments leading to the arrears. The Respondents appear to have decided not to pay the rent because they may have considered there were some problems with the standard of the premises. However, this had been argued, investigated and determined in case PRHP/RP/16/0180 and the Respondent should have made full rental payments for the duration of the tenancy. Both grounds 11 and 12 of Schedule 5 of the Act were notified to the Respondents in the AT6 document.

The Respondents may already have left the premises but this is not entirely clear. They did not notify the Applicants formally of having moved out. Only a text by a third party was sent to the Applicants on 22 August 2018. They did not inform the Tribunal of a change of address. The Applicants asked the Tribunal at the hearing to grant an order for possession to ensure the status of the tenancy was clarified. They now only wish to rely on Grounds 11 and 12 of Schedule 5 of the Act.

The panel is satisfied Ground 11 of Schedule 5 of the Act: *“whether or not any rent is in arrears on the date on which proceedings for possession are begun the tenant has persistently delayed in paying rent which has become lawfully due”* 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.

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 the order 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.

Petra Hennig-McFatrige

Legal Member/Chair

Date

24.8.18