



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for eviction/ possession of a Rented Property in terms of Rule 65 of the Procedure Rules.

Chamber Ref: FTS/HPC/EV/22/3891

Re: 2 Beech Terrace, Larkhall, ML9 2LX ("the Property")

Parties:

A & N Residential Properties Ltd, Unit D, Block 9, South Avenue, Blantyre, G72 0XB ("the Applicants")

Barry Munro, GBS Lets Ltd, 82, Union Street, Larkhall, ML9 1DR ('the Applicants' Representative').

Derek Burns residing at 2 Beech Terrace, Larkhall, ML9 2LX ("the Respondent")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal")

Tribunal Member: Jacqui Taylor (Legal Member) Helen Barclay (Ordinary Member)

Background

1. The Applicants applied to the Tribunal for eviction/ possession of the Rented Property under section 18(1) of the Housing (Scotland) Act 1988, in terms of Rule 65 of the Procedure Rules. The application was dated 24th October 2022. The application states:

'We are seeking possession of the Property under Grounds 8a and 12 due to the fact that at the time of the notice being sent the tenant was £5000 in rent arrears. We also believe the tenant has breached their tenancy under ground 15, anti social behaviour. Details were provided'.

The documents lodged with the Tribunal were:-

- A copy of the lease between the parties dated 6th October 2017 for the period 6th October 2017 to 5th April 2018 and monthly thereafter. The monthly rent payment due was £550.
- Form AT6 dated 30th September 2022, which intimated that the Landlord intended to raise proceedings for possession under grounds 8, 12 and 15 of Schedule

5 of the Housing (Scotland) Act 1988 and that proceedings would not be raised before 20th October 2022.

- Certificate of Intimation by Malcolm Boyd, Sheriff Officer, dated 3rd October 2022 confirming service of the AT6 on Derek Burns on 3rd October 2022.
- Section 11 Notice addressed to South Lanarkshire Council with covering email to South Lanarkshire Council dated 24th October 2022.
- Rent statement dated 13th September 2022 for the period 12th June 2020 to 6th September 2022 showing an outstanding rent balance of £5000.
- Three Preaction letters and accompanying emails the Applicant's Representative sent to the Respondent dated 13th September 2022, 20th September 2022 and 27th September 2022.
- An email from Lanarkshire DASU dated 21st June 2022 confirming that the police searched 2 Beech Terrace, Larkhall under a drugs warrant on 21st April 2022.
- An updated rent statement dated 24th February 2023 showing the outstanding rent arrears to amount to £7750.

2. The First Case Management Discussion.

2.1 This case first called for a conference call Case Management Discussion at 2pm on 10th March 2023.

The Applicant was represented by Barry Munro.

The Respondent was not present and was not represented.

The Respondent had been served notice of the Case Management Discussion by Andrew McLean, Sheriff Officer on 8th February 2023. No written response had been received from the Respondent. The Tribunal were satisfied that the requirements of Tribunal Rule 29 had been satisfied.

2.2 Barry Munro advised the Tribunal as follows:

2.2.1 The rent arrears currently amount to £8300.

2.2.2 He has made attempts to recover the rent from the Respondent. He arranged for him to receive a grant but has since fallen back into arrears.

2.2.3 As far as he is aware the Respondent has not been convicted but the Police told him cannabis was being grown in the Property.

2.2.4 At no point has the Respondent been in receipt of housing benefit.

2.2.5 As far as he is aware the Respondent resided in the Property alone.

2.2.6 A previous Tribunal had determined that the AT5 was invalid and the lease was not a short assured tenancy it was an assured tenancy.

2.2.7 He had been advised that there was no requirement to serve a Notice to Quit on the tenant as he is seeking to recover possession on the property on the basis of rent arrears.

In connections with the Grounds detailed in the application Mrs Taylor advised Mr Munro of the **Requirements of Section 18(1) of the Housing (Scotland) Act 1988** She explained that this section states that the Tribunal will not make an order for possession of a property let on an assured tenancy except on one or more grounds set out in Schedule 5 of the Act.

The application stated that the application for the eviction/ order for possession was based on the following grounds of Schedule 5 of the 1988 Act:-

Ground 8A: The tenant has accrued rent arrears under the tenancy where the cumulative amount of rent arrears equates to, or exceeds, an amount equivalent to 6 months' rent when the section 19 notice is served or, where notice is dispensed with, when proceedings are raised for an order for possession.

Mrs Taylor explained that for the Tribunal to find that Ground 8A had been established the Tribunal would have to be satisfied that this is a valid ground were no notice to quit has been served on the Tenant.

Ground 12: 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.

Mrs Taylor explained that ground 12 does not fall within grounds excluded from the eviction moratorium introduced by the Cost of Living (Tenant Protection)(Scotland) Act 2022.

Ground 15: The tenant, a person residing or lodging in the house with the tenant or a person visiting the house has— (a) been convicted of— (i) using or allowing the house to be used for immoral or illegal purposes; or (ii) an offence punishable by imprisonment committed in, or in the locality of, the house; or (b) acted in an anti-social manner in relation to a person residing, visiting or otherwise engaging in lawful activity in the locality; or (c) pursued a course of anti-social conduct in relation to such a person as is mentioned in head (b) above. In this Ground “anti-social” , in relation to an action or course of conduct, means causing or likely to cause alarm, distress, nuisance or annoyance, “conduct” includes speech and a course of conduct must involve conduct on at least two occasions and “tenant” includes any one of joint tenants.

Mrs Taylor explained the detail of the ground and that evidence would be required if the Application were to proceed under this ground.

3. On 9th May 2023 the Applicants' Representative sent the Tribunal a copy of a Notice to Quit dated 21st December 2020 addressed to the Respondent giving him Notice to Quit the Property by 5th July 2021. The Respondent had been sent the Notice to Quit by tracked mail on 23rd December 2020 which he signed for on 30th December 2023.

4. On 18th May 2023 the Applicants' Representative sent the Tribunal an email requesting the Tribunal to agree to amend the AT6 to eviction ground 8A.

6. The Second Case Management Discussion.

6.1 This case called for a further conference call Case Management Discussion at 10am on 31st May 2023.

The Applicant was represented by Barry Munro.

The Respondent was not present and was not represented.

6.2 The Respondent had been sent notice of the Case Management Discussion by tracked mail on 26th April 2023 which he signed for on 3rd May 2023. No written response had been received from the Respondent. The Tribunal were satisfied that the requirements of Tribunal Rule 29 had been satisfied.

6.3 Barry Munro advised the Tribunal as follows:

6.3.1 He asked the Tribunal to amend the AT6 to refer to Ground 8A as previously requested by email to the Tribunal dated 18th May 2023. Mrs Taylor explained that section 19(4) of the Housing (Scotland) Act 1988 (as amended by the Cost of Living (Tenant Protection) (Scotland) Act 2022) requires two months notice to be given to the Tenant if the eviction Ground is Ground 8A of the Housing (Scotland) Act 1988. The Tribunal agreed to a short adjournment to enable Barry Munro to consult his solicitor. Unfortunately, Barry Munro's solicitor was not available. Barry Munro agreed that the Tribunal should proceed with the eviction under Ground 12 of the Housing (Scotland) Act 1988, as amended and he no longer wished the AT6 to be amended to Ground 8A.

6.3.2 He explained that it was reasonable for the eviction to be granted as the rent arrears are presently £9000 and the Respondent has not lodged any defence to the application. As far as he is aware the Respondent is self employed and resides in the Property alone. He confirmed that the Respondent has no special requirements.

6.4 The Tribunal agreed to proceed with the Application on the basis that the eviction was sought under Ground 12 of Schedule 5 of the Housing (Scotland) Act 1988.

7. Findings in Fact

The Tribunal make the following findings in fact:

7.1 The lease is a statutory assured tenancy in terms of the Housing (Scotland) Act 1988 as the Landlord had served a valid notice to Quit on the Tenant on 30th December 2020.

7.2 The rent due in terms of clause 4.1 of the lease is £550 per month payable monthly in advance.

7.3 The Tenant has rent arrears of more than three months rent (£1650) at the date of today's hearing (31st May 2023), at the date of the application (24th October 2022) and at the date of service of the AT6 on the Tenant (3rd October 2022).

7.4 On 3rd October 2022 the Landlord had served the Tenant with form AT6 dated 30th September 2022, which stated that the grounds of eviction were Grounds 8,12 and 15 of Schedule 5 of the Housing (Scotland) Act 1988 and that proceedings would not be raised before 20th October 2020.

7.5 Clause 17.6 of the lease states:

' The Short Assured Tenancy may be ended by...The Landlord giving the Tenant the required Notice in the prescribed format in terms of Section 19 of the Housing (Scotland) Act 1988 of their intention to commence proceedings and then subsequently obtaining an order for recovery of possession from the Sheriff Court on one or more of the following grounds set out in Schedule 5 of the Housing (Scotland) Act 1988.'

Thereafter the lease sets out in full the terms of the said grounds 1-17.

7.6 The Applicant's Representative had sent the Respondent three Preaction letters and accompanying emails dated 13th September 2022, 20th September 2022 and 27th September 2022.

7.7 The Landlord had sent the required section 11 notice to South Lanarkshire Council.

8 Outcome

8.1. Requirements of Rule 65 of the Procedure Rules.

Rule 65 (a) states that the application under section 18(1) of the 1988 Act must state:

- (i) the name, address and registration number of the Landlords.
- (ii) the name and address of the Landlords' representative.
- (iii) the name and address of the Tenants.
- (iv) the possession grounds which apply. The grounds stated in the application are Grounds 8A, 12 and 15.

The Tribunal confirmed that the application correctly detailed the requirements of Rule 65(a) of the Procedure Rules.

(b) Section 65 (b) states that the application must be accompanied by the following documents:-

(i) The Tenancy Agreement (if available).

A copy of the lease had been provided.

(ii) A copy of the notice of intention to raise proceedings for possession of a house let on an assured tenancy.

A copy of form AT6 had been provided. The form was dated 30th September 2022 and stated that proceedings would not be raised before 20th October 2022. The grounds on which the Landlords were seeking possession are grounds 8, 12 and 15 of the Housing (Scotland) Act 1998.

(iii) A copy of the Notice to Quit served by the Landlord on the Tenant (if applicable).

A copy of the Notice to Quit had been provided.

(iv) Evidence as the applicant has that the possession ground or grounds have been met.

The Tribunal were satisfied that evidence that Grounds 8A and 12 of Schedule 5 of the Housing (Scotland) Act 1988 had been provided as the rent statement produced showed that the Tenant's rent arrears amounted to £5000 at September 2022 and £7750 as at February 2023, albeit the Tribunal acknowledged that the Applicant was no longer proceeding under Ground 8A.

No evidence was provided that the Tenant had been convicted, as required by Ground 15 of the Housing (Scotland) Act 1988.

(c) The application form had been correctly signed and dated by the Applicants' Representative, as required by Section 65(c) of the Procedure Rules.

8.2 Requirements of Sections 18 and 19 of the Housing (Scotland) Act 1988

8.2.1 The Tribunal found that a valid AT6 notice had been served on the Respondent giving him more than two weeks notice that the Landlord intended to apply for an Order for Possession on Grounds 12 and 15 of Schedule 5 of the Housing (Scotland) Act 1988 and the Notice had been validly served on the Respondent by Sheriff Officer on 3rd October 2022. The Tribunal noted that Ground 8 of Schedule 5 of the Housing (Scotland) Act 1988 had been repealed by the Coronavirus (Recovery and Reform)(Scotland) Act 2022.

8.2.2 The Tribunal found that Ground 12 of Schedule 5 of the Housing (Scotland) Act 1988 has been met as the Tenant had rent arrears of more than three months rent (£1650) at the date of today's hearing (31st May 2023), at the date of the application (24th October 2022) and at the date of service of the AT6 on the Tenant (3rd October 2022).

8.2.3 In connection with the requirements of Section 18(4) of the Housing (Scotland) Act 1988:

8.2.4 The Tribunal accepted the evidence of Barry Munro that the rent arrears were not due to failure or delay in payment of housing benefit.

8.2.5 The Tribunal found that the Applicants had complied with the pre-action protocols by sending the Respondent preaction letters dated 13th September 2022, 20th September 2022 and 27th September 2022.

8.2.3.2 The Tribunal found that it was reasonable for the eviction order to be granted as the rent arrears are currently £9000; the Respondent does not oppose the application and the Tribunal has not been provided with any special needs of the Respondent that need to be taken into account.

9. Decision

The Tribunal determined that the requirements of section 18(1) of the Housing (Scotland Act) 1988 had been complied with and made an order for possession of the Property.

10. The Tribunal noted that the provisions of the Cost of Living (Tenant Protection)(Scotland) Act 2022 in relation to delaying evictions apply to this application as the Notice to Leave was served on the Respondent before 6th September 2022.

11. 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.

Legal Member

31 May 2023