

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18 of the Housing (Scotland) Act 1988

Case Reference Number: FTS/HPC/EV/19/1785

Re : Property at Flat 2, 65 Chalmers Street, Ardrishaig, by Lochgilphead, Argyll PA30 8DX (“the Property”)

The Parties:

- (1) Mrs Helena Martina Bevis, Braefoot, Balvicar, by Oban, Argyll PA34 4RA;**
- (2) Andrew Graham Bevis, Braefoot, Balvicar, by Oban, Argyll PA34 4RA**
(“the Applicants”)

represented by Stevenson Kennedy, solicitors, Linndhu House 19 Stevenson Street,
Oban, Argyll PA34 5NA

Miss Elaine Shaw, Flat 2, 65 Chalmers Street, Ardrishaig, by Lochgilphead, Argyll PA30 8DX (“the Respondent”)

The Tribunal comprised:-

David Bartos (Legal Member)

Leslie Forrest (Ordinary Member)

DECISIONS

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) orders the Respondent to remove herself from and to give up possession of the Property in favour of the Applicants.

The Tribunal refuses the application of the Applicants for an award of expenses against the Respondent.

BACKGROUND

- 1. The Applicants seek recovery of possession of the Property and removal of the Respondent from it. They seek recovery of possession**

under sections 18 and 19 of the Housing (Scotland) Act 1988 (and rule 65 of the Tribunal's rules) on the basis of non-payment of rent.

2. The hearing took place on 8 August 2019 at 10.00 hrs at Lochgilphead CE Centre, Manse Brae, Lochgilphead PA31 8XQ. The Applicants were represented by Ms Catherine Crowe, solicitor, of Stevenson Kennedy, solicitors. The Respondent appeared on her own behalf. The Applicants were also present and the First Applicant gave oral evidence.
3. The hearing followed on from the case management discussion ("CMD") on 21 August 2019. The Notes of the CMD were sent to the Applicants' representatives and to the Respondent by letters from the Tribunal's Casework Officer dated 27 August 2019. That to the Respondent was sent by recorded delivery but not called for. The Notes were subsequently sent again by first class post to the Property on 4 September 2019.
4. These Notes of the CMD on 21 August 2019 are referred to for their terms. The Notes from the CMD set out the procedural background prior to the CMD. They also set out oral evidence which had been given to the Tribunal by the First Applicant at the CMD and in paragraph 15 they identified a number of disputed issues.

The Evidence

5. At the outset of the hearing the Applicants' representative sought to lodge a number of documents late. The documents were:-
 - Copy signed 15 page tenancy agreement of the Property between the Applicants and the Respondent dated 27 January 2015
 - Copy signed 4 page tenancy agreement of the Property between the Applicants and the Respondent dated 27 January 2015
 - Copy key agreements dated 27 January and 30 January 2015

She submitted that there was a reasonable excuse for their late lodging. The Tribunal explored the reasons for the late lodging. It transpired that at the last CMD, during an adjournment, the First Applicant had telephoned Argyll & Bute's Benefits Department seeking to find out whether they had a copy of the signed tenancy agreement. Following this, the Applicants' representative submitted that Ms Colhoun, who had appeared for the Applicants' at the last CMD had e-mailed the Council. However she was unable to produce the e-mail. It was not on the solicitors' file.

6. The First Applicant spoke to having attempted to telephone Ms Colhoun about 3 weeks ago, but not having succeeded. She then tried again and spoke to Ms Crowe. Ms Crowe spoke to this having been on 24 September 2019. At that point Ms Crowe was unable to advise of any

progress. She did however telephone the Council having e-mailed the Council and been told that the relevant person was on annual leave. Ms Crowe spoke to a Lisa Nicolson at the Council who informed her that she was unable to say whether the Council could advise that they had the tenancy agreement without further approval. On 27 September Ms Nicolson had advised Ms Crowe that there was some information on the system but that she was unsure of what to disclose. Then there was a holiday on 30 September and only on Tuesday 1 October was Ms Nicolson able to advise that a Freedom Of Information request should be made through the Council's on-line portal.

7. The First Applicant confirmed that she had applied on 1 October 2019 for release of the agreements under freedom of information procedures. Ms Crowe confirmed that this had resulted in the disclosure of the copy agreements now sought to be lodged by the morning of Friday 4 October. The disclosure had been made by two e-mails. She was unable to action them on Friday due to other commitments and the office was, in common with other offices in Oban closed due to the "Faculty holiday".
8. The Respondent had no comment to make on claim of reasonable excuse for late lodging.
9. The Tribunal was not convinced that anything material had been done before 24 September 2019 to recover the agreements. That said, further delay had been caused by the Council's officials being either on annual leave or unable to act because of concerns about data protection. The Tribunal was, on balance, satisfied that this amounted to reasonable excuse for the non-production of the documents by the time limit of 1 October 2019. In these circumstances they were allowed to be admitted late.
10. The evidence before the Tribunal consisted of:-
 - Copy title for the Property numbered ARG7938
 - Copy unsigned 15 page tenancy agreement of the Property between the Applicants and the Respondent
 - Copy printed Facebook messages between the First Applicant and the Respondent from 4 December 2014 to 30 May 2019
 - Copy AT6 form with two attached pages
 - Copy notice to quit from First Applicant to Respondent dated 28 April 2018
 - Copy Bank of Scotland statements of account of the Applicants
 - Copy letter from Mary Semple dated 12 August 2019
 - copy letter from First Applicant to Respondent dated 23 February 2019
 - copy section 11 notice to Argyll and Bute Council

- The oral evidence of the First Applicant
- The oral evidence of the Respondent
- Copy signed 15 page tenancy agreement of the Property between the Applicants and the Respondent
- Copy signed 4 page tenancy agreement of the Property between the Applicants and the Respondent
- Copy key agreements

11. The First Applicant and the Respondent both gave oral evidence to the Tribunal. Part of the First Applicant's evidence was given at the CMD and recorded in the notes of the CMD. Otherwise the oral evidence is noted below under the issues to which it related.

12. The Tribunal found the First Applicant credible in her oral evidence both at the CMD and at the hearing. She gave her evidence in a clear and straightforward fashion. Equally the Tribunal found the Respondent credible in her oral evidence at the hearing. The Tribunal accepted the evidence from both ladies for the purposes of its findings in fact.

13. Both the Applicants' representative and the Respondent were given opportunities to cross-examine the Respondent and the First Applicant respectively but these opportunities were not taken up.

Findings of Fact

14. Having considered all the evidence, the Tribunal found the following facts to be established:-

- (a) The Property is a flat in Ardrishaig, Argyll. The Applicants are the owners of the Property.**
- (b) By tenancy dated 27 January 2015 the Applicants granted a tenancy of the Property to the Respondent. The tenancy agreement was a 15 page document. It was accepted by all parties. The Respondent took entry to the Property on 27 January 2015 with the Second Respondent. The tenancy was for 6 months. It was a month to month tenancy from 26 July 2015 relocating tacitly (renewing automatically) on the 26th day of each month;**
- (c) The unpaid rent is as set out below;**
- (d) The Respondent continues to reside at the Property;**
- (e) The Applicants have notified the Argyll and Bute Council of their prospective application under section 11 of the Homelessness (Scotland) Act 2003;**
- (f) The application to the Tribunal was made on 10 June 2019.**

Reasons for Decision

15. The Tribunal required to decide :

- (A) whether the Respondent agreed to the written terms in the draft short assured tenancy agreement document lodged with the Tribunal;**
- (B) if the answer to issue (A) was “yes”, whether grounds of possession 8, 11 and 12, had been satisfied by the Applicants;**
- (C) (in any event) whether the notice to quit lodged with the Tribunal was valid;**
- (D) (in any event) whether the Applicants complied with the requirements of section 19 of the 1988 Act with regard to the content and timing of the notice of proceedings (form AT6).**

The terms of the tenancy between the parties

16. The Applicants relied on the tenancy as being comprised in the fifteen page Short Assured Tenancy Agreement, a signed and page-numbered copy of which had been sent to their solicitors by Argyll & Bute Council on Friday 4 October 2019. Their representative submitted that this document was signed by both the First Applicant (on behalf of both Applicants) and the Respondent.

17. The Respondent accepted, candidly, that she had signed this document on the same day that she had received it namely 27 January 2015 and that this was the day that she had taken entry to the Property. She explained that the alteration of the month in the date of signature was something that had been done by her to correct an incorrect figure. She had signed it in January rather than February 2015.

18. Accordingly the Tribunal found that a tenancy had been entered into in terms of the 15 page document signed by the parties on 27 January 2015. Furthermore that document had within in clause 18.4 which provided that the landlord could end the tenancy by giving notice in the statutory format of an intention to commence proceedings and then subsequently obtaining an order for recovery of possession on among other grounds, grounds 8, 11 and 12 of the Housing (Scotland) Act 1988. Clause 18.4 then set out these grounds in full.

Grounds of Possession

19. The Applicants relied on ground 8 of schedule 5 to the 1988 Act. Their representative disclaimed reliance on grounds 11 and 12. Ground 8 provides as a ground for repossession :

“Both at the date of 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.”

20. The tenancy provided that rent of £420 per month was due on the 27th day of each month, in advance. By letter to the Respondent dated 23 February 2019 the First Applicant had stated that rent was outstanding for August, October, November and December 2017 and for January 2019. She informed the Tribunal that the rent had in fact been outstanding for August, October, November and December 2018 and for January 2019. There had been an error in the year as set out in the letter. She supported this with reference to bank statements of the Applicants showing payments of rent from the Respondent which were made and which were missing for those months. That amounted to five months.
21. Referring to the bank statement, the First Applicant accepted that the instalments of rent due in February, March and April 2019 had all been paid. That left five months’ arrears (£2,100) as at the service of the section 19 (AT6) notice on 28 April 2019. There had been no payment at all since the end of April 2019. That meant that a further five months’ arrears had accrued up to and including 27 September 2019. This gave 10 months’ arrears in total at the date of the hearing (£4,200).
22. The Respondent accepted that rent of £420 per month was due on 27th of each month and that 5 months’ arrears had accumulated as the giving of the AT6 notice and 10 months’ as at the date of the hearing. In those circumstances the Tribunal found ground 8 satisfied.

Notice to Quit

23. The Applicants’ representative submitted that it was unnecessary for the Tribunal to consider the notice to quit. Given that the application was made under section 18 of the 1988 Act it could be relevant only if the tenancy was not in terms of the 15 page document. Given that the tenancy was in that form and the Respondent had been warned in that document of the possibility of recovery of possession for non-payment of rent under ground 8, the notice to quit was unnecessary to bring the tenancy to an end. She accepted that if the Tribunal found that the tenancy was not in terms of that document, the notice to quit would be invalid as it would require the tenant to remove prior to the ish (end date) of the tenancy under a year to year lease.
24. The Respondent had no submission on the notice to quit. The Tribunal accepted the submission of the Applicants’ representative. It observed that the Tribunal did not require to consider the notice to quit given the tenancy being in the 15 page document. However in any event, on the basis of that document, it was valid. Had the tenancy not been contained in that document it would have been invalid as premature (as the end date of the tenancy would have been 27th January of each year).

Section 19 of the 1988 Act : the AT6 form

25. A copy of the AT6 form was produced to the Tribunal. The First Applicant told the Tribunal that she had arranged to meet with the Respondent at the end of April 2019. She had produced the notice to quit and the AT6 form in advance. She thought it best to be accompanied by a witness and Mrs Mary Semple had agreed to go with her. She duly went to the Property on 28 April 2019 and handed over the AT6 form and notice to quit to the Respondent. The Respondent thanked her for this but there was no conversation. This was witnessed by Mrs Semple.
26. The Respondent confirmed that the delivery of the AT6 to her was as spoken to by the First Applicant. There was another lady there although she did not know her name.
27. The First Applicant confirmed that the AT6 form was accompanied by two attached documents being a page headed "Grounds for Repossession as stated in Part 2" and a page being a photocopy of a bank statement without its heading but covering dates 27 April 2018 to 26 April 2019 and with handwritten additions.
28. The Applicants' representative submitted that the AT6 form complied with the statutory requirements of section 19 of the 1988 Act. The Tribunal accepted that submission.

Cause of Arrears

29. The Tribunal raised with the parties the question of the cause of the arrears. The Respondent indicated that she had required to leave her employment in 2018 due to mental health difficulties. She had started another job in 2019 but in March 2019 had suffered a further deterioration which meant that she was unable to continue with it. She had not been able to function in the form of dealing with people, dealing with correspondence and the like. Only in the past month had she been able to regain her ability to act with the assistance of a community psychiatric nurse. She had applied to housing benefit and universal credit and been awarded two months' rent. However this was not backdated and the Respondent accepted that this still left 8 months' outstanding. She had been unable to obtain any further benefit payments to cover these arrears.

Expenses

30. The Tribunal was invited by the Applicants' representative to award expenses against the Respondent. She submitted that the Respondent had behaved unreasonably in not producing the 15 page document in response to the Tribunal's direction dated 23 July 2019. Paragraph 3 of that direction required the Respondent to provide to the Tribunal any tenancy agreement which she had or over which she had control by no later than 14 August 2019. The Applicants' representative submitted that

the Respondent accepted that she had the original of the 15 page document at home but had not produced it. That was unreasonable behaviour in the conduct of the case by the Respondent. Had the document been produced under the direction the application could have been decided at the CMD and no hearing would have been necessary.

31. The Respondent accepted that the tenancy agreements had been copied by the Council and that the originals had been returned to her. She accepted that they had been in the Property. She had assumed that the First Applicant would pick up one of the originals at some point. She didn't know why that had not happened. When the direction had been made she was not in a frame of mind to receive any correspondence or to respond to it. She had suffered from very bad mental health.
32. The Tribunal found that given the Respondent's state of mental health her failure to respond to the direction was not unreasonable behaviour. She was entirely helpful and candid at the hearing. Her mental health is entirely explicable for the non-response to the direction. In any event the essential cause of the non-availability of the 15 page document was the Applicants' failure to uplift it from the Respondent at the outset of the tenancy or at any time thereafter. The First Applicant had prepared two copies for just that purpose but had failed to follow through her intention. It should have been apparent to her solicitors at the outset of the application that evidence of the Respondent's assent to the agreement would be required. Had the steps taken by the Applicants in the week prior to the hearing been taken at the outset the hearing would not have been necessary regardless of the direction. Accordingly the application for expenses was refused.

Outcome and Decisions

33. The Tribunal allowed the Applicants to lodge copies of the tenancy agreement dated 27 January 2015 and the key retention agreement dated 27 and 30 January 2015 with it, albeit late.
34. The Tribunal found that sections 18 and 19 of the 1988 Act had been complied with and that the Applicants were entitled to recover possession of the Property from the Respondent.
35. The Tribunal found that the Respondent was not liable to the Applicants for the expenses of any part of the application process.
36. The decisions of the Tribunal were unanimous.

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 this decision was sent to them.

NOTE: This document is not confidential and will be made available to other First-tier Tribunal for Scotland (Housing and Property Chamber) staff, as well as issued to tribunal members in relation to any future proceedings on unresolved issues.

David Bartos

8 October 2019

Legal Member

Date