



**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/20/0768

Re: Property at 12A Woodburn Road, Woodburn, EH22 2AT (“the Property”)

Parties:

Mr Waqas Malik, 5 Keppock Crescent, Prestonpans, EH32 9FN (“the Applicant”)

Ms Lesley Gibson, 12A Woodburn Road, Woodburn, EH22 2AT (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatridge (Legal Member)

Decision

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

- 1.** The Case Management Discussion (CMD) took place on 6 November 2020 by telephone call. Taking part were Mr Gardiner, solicitor on behalf of Huma Malik and Waqas Malik, Catriona Smith for Huma Malik and Lesley Gibson, the Respondent.
- 2.** The application history is set out in the CMD notes of 13 August 2020 and 29 September 2020. These are referred to for their terms and held to be incorporated herein.
- 3.** The application for an order for repossession in terms of Rule 65 of the First -tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 as amended (the Procedural Rules) was dated 28 February 2020 and had been made on 4 March 2020 by Catriona Smith as representative of Mrs Huma Malik. At the CMD on 29 September 2020 it had become clear that the Applicant may not be correctly identified and that the property may have changed hands prior to the application having been made.

4. On 22 October 2020 Mr Waqas Malik wrote to the Tribunal advising he had purchased the property on 26 November 2019 and should now be the Applicant..
5. On 30 October 2020 Mr Gardiner of Lindsays Solicitors wrote to the Tribunal advising he was instructed by Mr Waqas Malik and Mrs Huma Malik. He made detailed written submissions regarding the substitution of the Applicant and the material considerations of the case. The correspondence from Mr Gardiner and the attachments to his submissions are referred to for their terms and held to be incorporated herein.
6. On behalf of Mrs Malik and Mr Malik he made an application in terms of Rule 32 (1) (a) and (3) of the Procedure Rules to substitute Mr Waqas Malik for the original Applicant Mrs Huma Malik.
7. He made an application in terms of S 19 (1) (b) of Housing (Scotland) Act 1988 (the 1988 Act) for the Tribunal to dispense with the need for a notice under S 19 of said Act and advised that the application will only be pursued on Grounds 11 and 12 of Schedule 5 of the 1988 Act. Ground 10 was no longer insisted upon.
8. He also sought to update the amount of the rent arrears figure to £6,772 in terms of Rule 13 of the Procedural Rules.
9. On 5 November 2020 the Tribunal received a copy of a formal assignation of all demands due to the original Applicant to Mr Waqas Malik dated 3 November 2020 together with cover letter and proof of service of said documentation on the Respondent signed for on 5 November 2020.
10. The supporting documents lodged with the application and during the course of the case process are referred to for their terms and held to be incorporated herein, so are the CMD notes and the Directions issued. .
11. The Tribunal first dealt with the matter of substitution of the Applicant. Ms Gibson, the Respondent, confirmed that she accepted that the property had been sold by the original Applicant Mrs Huma Malik to Mr Waqas Malik on 26 November 2019 as shown in the email from Mr Ivan Ralph of 22 October 2020 (document 4 of the bundle lodged on 30 October 2020. She had advised the Tribunal at the last CMD on 29 September 2020 that it was her understanding that the property had changed hands. She had no opposition to the change in Applicant given the sale of the property to Mr Waqas Malik.
12. The Tribunal thus in terms of Rule 32 (1) (b) of the Procedural Rules allowed the amendment of the application to replace the original Applicant Mrs Huma Malik with the correct Applicant Mr Waqas Malik as it was satisfied that this correctly reflected the position in regard to the property and the lease. .
13. Mr Gardiner further set out the Applicant's position regarding the application as stated in the submissions of 30 October 2020. In particular it was accepted by the Applicant that no proper Notice to Quit, AT6 Notice or S 33 Notice had been served on the Respondent in this case. The argument made by the Applicant was that the defective notices served did make it clear to the Respondent that the landlord sought to terminate the tenancy, latterly on grounds of rent arrears and consistent non payment of rent.
14. Ms Gibson challenged the submissions in so far as they related to the sum of rent arrears, reminding the Applicant's solicitor that at the CMD on 29 September 2020 the then parties had agreed that the sum of rent arrears outstanding at 1 September 2020 was £4,433.82. Ms Smith had taken part in that CMD and confirmed that this had been agreed but also referred to some IT issued she had at that time. Mr Gardiner on behalf of Mr Waqas Malik advised the Tribunal that if

a figure had been agreed at the last CMD he would not challenge that agreement and would accept the sum of £4,433.82 as the amount due on 29 September 2020. Both he and Ms Gibson stated that nothing had been paid since 29 September 2020 and that thus a further £1,000 representing rent due on 1 October 2020 and 1 November 2020 of £500 per month as stated in clause 1.10 of the tenancy agreement of 1 January 2017 would be added to the agreed sum, bringing the sum of arrears to £5,433.82 as of the date of the CMD.

15. The Tribunal allowed the amendment of the sum stated as outstanding in the case documents to £5,433.82 in terms of Rule 13 of the Procedural Rules.
16. Ms Gibson agreed that no payments had been made at all since the last payment on 29 January 2020 and that some arrears had been in place since the commencement of the lease.
17. Ms Gibson confirmed she had received the assignment document. She took no issue with the Applicant's representations that in terms of the assignment document served on her the now Applicant would be entitled to payment of any outstanding arrears and that the rent, going forward, would have to be paid to him.
18. Ms Gibson further advised that she was currently not working and was awaiting an operation. After that has taken place she would be willing and able to clear the arrears. However, she is currently not in a position to afford the rent for the property and to make payments towards any rent arrears.
19. She reminded the Tribunal that the matter had now been pending since March 2020 and that her position regarding arrears was getting worse every month. She is in receipt of Universal Credit. She stated she had been in limbo since the application had been made and would wish to have the matter dealt with sooner rather than later as further time would only make the rent arrears position worse. She currently had no solution to the increase in the arrears each month.
20. Mr Gardiner for Mr Waqas Malik stated that he would consider it likely that his client would be flexible in accepting reasonable proposals for repayment of the outstanding sums once the Respondent was in a position to make such a proposal and the Legal Member advised the Respondent of the options to seek time to pay arrangements under the Debtor (Scotland) Act 1987, however, the Respondent was not in a position to apply for a time to pay direction at the date of the CMD and stated she would apply for a time to pay order once her employment situation had improved.

Findings in Fact:

1. The property is let on a Short Assured Tenancy, which commenced on 1 January 2017 between the Respondent and Scotbet Ltd.
2. The owner of the property was Huma Malik, the original Applicant, until the property was sold to Mr Waqas Malik on 26 November 2019. The current owner of the property is the Applicant Mr Waqas Malik..
3. Mrs Huma Malik had entered into a commercial lease with Scotbet Ltd, which was renounced by Scotbet Ltd on 1 June 2017 as per the email correspondence of 20 March 2017 from Stephen Webster to Stewart Geddes and the letter concluding the bargain from Messrs Morton Fraser to Urquharts Solicitors of 30 May 2017. It is agreed between the parties that the original Applicant became the landlord of the Respondent in any event on or around 1 July 2017 .

4. Scotbet Ltd had entered into a tenancy agreement with the Respondent commencing on 1 January 2017 with an end date on 1 January 2020 and a monthly rent of £500.
5. Mrs Huma Malik was the landlord for the Respondent until the property was sold to Mr Waqas Malik on 26 November 2019.
6. In terms of the assignation of rental income and arrears dated 3 November 2020 Mrs Huma Malik has assigned to Mr Waqas Malik all her title and interest in any rental income from the property currently outstanding or to become due.
7. The agreed rent is £500 to be paid in advance with the due date on the first day of the month in terms of Clause 1.10 of the tenancy agreement.
8. The rent arrears due as of the date of the CMD are agreed by the parties as being £5,433.82.
9. Since the payment of £450 on 29 January 2020 no further payments of rent have been made.
10. A S 11 notice was sent to the relevant local authority on 30 October 2020.
11. Although instructions had been issued by the original Applicant in October 2019, no Notice to Quit, S 33 Notice and AT6 notice had been validly served on the Respondent at that time.
12. The Respondent had been aware since about October 2019 that the landlord wished to terminate the tenancy agreement.
13. The original Applicant had issued a AT6 notice on grounds 10, 11, 12 of Schedule 5 of the 1988 Act, a Notice to Quit and a Notice in terms of S 33 of the 1988 Act on the Respondent by Sheriff Officers on 28 January 2020.
14. At that point the original Applicant was no longer the landlord for the property.
15. The Notice to Quit was issued to 12 February 2020. 12 February 2020 was not an ish date of the lease.
16. The Notice under S 33 of the 1988 Act dated 27 January 2020 for a date of 12 February 2020 did not give the required notice period of 2 months.
17. The AT6 notice was not issued by the correct landlord.
18. The AT6 notice lists under part 3 as reasons Grounds 10, 11 and 12 and refers to persistent delay in paying rent and some rent remaining unpaid.
19. The Tenancy Agreement had not made explicit reference to Ground 10 of Schedule 5 of the Housing (Scotland) Act 1988 but narrated Grounds 11 and 12 in full as reasons for which the tenancy could be terminated.
20. As at the date of the CMD on 6 November 2020 the tenancy agreement had not been terminated.

Legal Submissions and Reasons for Decision:

The Tribunal considered that the material facts of the case were not disputed. 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:

Power to determine the proceedings without a hearing

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.

1. The documents lodged are referred to for their terms and held to be incorporated herein.
2. The Tribunal did not consider that there was any need for a hearing as the essential facts of the case were sufficiently evidenced to make the relevant findings in fact to determine the case. Both parties wished the matter to be dealt with at the CMD.
3. The Tribunal makes the decision on the basis of the documents lodged by the former Applicant, the current Applicant and the Respondent and the information given at the 3 CMDs.
4. 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.
5. In this case the AT6 document served on 28 January 2020 by the former landlord provided clear information to the Respondent that due to the

continuing build up of rent arrears for the property, the tenancy was to be terminated. It was argued by the Applicant's solicitor that in this case it would be reasonable to dispense with the need for the AT6 notice in terms of S 19 (1) (b) of the 1988 Act because the purpose of the AT6 notice was achieved by the AT6 document served on 28 January 2020.

6. The Tribunal considered that in this case the Respondent had been aware since the Notices served in October 2019 that the landlord may wish to terminate the tenancy. At the latest since receiving the AT6 notice on 28 January 2020 and the rent statement attached to the AT6 document, the Respondent was aware that due to persistent and increasing rent arrears the landlord would wish to end the tenancy agreement. The Notice to Quit sent with the AT6 notice may not have been valid but again confirmed that intention. The Respondent was aware of the rent arrears and certainly since February 2020, at which point payments had stopped completely, knew that the rent arrears were increasing and that the former landlord was seeking an order for possession.
7. In this case the Tribunal considers that it is reasonable to dispense with that requirement in terms of S 19 (1) (b) of the Act. The Respondent was fully aware of the intention to raise proceedings. The main reasons for the application were Grounds 11 and 12, which only require a 2 week notice period for the AT6 documents. The former landlord was said to have been acting as an agent for an undisclosed principal, the current landlord and from the perspective of the Respondent the AT6 notice gave all the relevant information and offered the Respondent the opportunity to rectify the situation should she wish to do so. The Tribunal considered that the Respondent was fully aware of the relevant facts relating to the intention of the landlord to apply for possession of the premises.
8. In terms of S18 (6) of the 1988 Act The [F18First-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.
9. In this case the tenancy continues as a contractual tenancy which had not been validly terminated. However, Grounds 11 and 12 are specifically referred to in the tenancy agreement and thus the Tribunal considers S 18 (6) (b) of the 1988 applies. In the representations of 30 October 2020 the Applicant had confirmed that Ground 10, which was referred to in the original application and in the AT6 document served on 28 January 2020 was no longer insisted upon.
10. The Tribunal had regard to S 18 (4) A of the 1988 Act and noted that the Respondent is already in receipt of Universal Credit. The Respondent had not made any payments at all since January 2020. She did not put forward

information that would show that there are outstanding payments due to her for the arrears from other sources.

11. The Tribunal 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 was submitted were stated to be £1,233. The Applicant accepted that whilst no further payments had been made, various items listed in the original rent statement, such as late payment fees etc. should have been deducted. It is agreed between the parties that no payments have been made since 29 January 2020 and that as of the date of the CMD the outstanding rent amounts to £5,433.82, a sum which will increase by the rent amount of £500 each further month as the Respondent is not in a position to pay the rent or any payments towards the arrears. Both grounds 11 and 12 of Schedule 5 of the Act were notified to the Respondents in the AT6 document. The Respondent is aware of the arrears and no rent at all has been paid in over 9 months. The Respondent stated she was not in a position to suggest any way forward with regard to future rental payments and the clearing of the arrears due to her current financial situation at present.
12. 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.
13. 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 in terms of S 18 of the Housing (Scotland) Act 1988 on Grounds 11 and 12 of Schedule 5 of said 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

Petra Hennig McFatridge
Legal Member

9 November 2020
Date