



**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/21/3089

Re: Property at 6 Pinebank, Livingston, West Lothian, EH54 6EU (“the Property”)

Parties:

**Newport Asset Management Limited, Firth Road, Houston Industrial Estate,
Livingston, EH54 5DJ (“the Applicant”)**

**MR DAMIAN MROTEK, MISS JUSTYNA HAMBERG, 6 Pinebank, Livingston,
West Lothian, EH54 6EU (“the Respondents”)**

Tribunal Members:

Fiona Watson (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondents)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that order is granted against the Respondents for
possession of the Property under section 18 of the Housing (Scotland) Act
1988.**

- Background
 1. An application was submitted to the Tribunal under Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), seeking a repossession order against the Respondents in relation to an assured tenancy agreement.
- The Case Management Discussion
 2. A Case Management Discussion (“CMD”) took place on 25 February 2022. The Applicant was represented by Ms Morrison of TC Young, solicitors. There was no appearance by or on behalf of the Respondents. The application had been intimated on the Respondents by Sheriff Officer on 19 January 2022. The Tribunal was accordingly satisfied that the Respondents had been duly notified

of the date and time of the CMD and that the CMD could proceed in the Respondents' absence.

3. Ms Morrison submitted that the parties had entered into an assured tenancy agreement which commenced 6 July 2017. Under said tenancy agreement the Respondents agreed to pay a monthly rent of £575. Nothing had been paid since February 2020. The contractual tenancy was terminated on 8 July 2021 by way of service of a notice to quit. A Form AT6 was also served, relying on Grounds 8, 11 and 12 under Schedule 5 to the 1988 Act. The arrears of rent stood at £8,875 at the date of service of the notices, which equated to more than three months' arrears. Those arrears have continued to rise and at the date of the CMD stood at £14,050.
4. The Applicant's representative submitted that the Pre-Action Requirements ("PARs") had been complied with in terms of the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. A letter dated 17 June 2021 had been lodged and which highlighted the arrears due and signposted the Respondents to various advice agencies for help and support with financial matters. It was submitted that further correspondence has been issued to the Respondents both in English and in Polish, but the Respondents had failed to respond or engage with the Applicant.
5. It was submitted that the Property had previously been used as an unlicensed tattoo parlour, which had been closed down by the Police. The Property was not being kept in a satisfactory condition, with inadequate heating and ventilation, and there were signs of cannabis cultivation in the Property. Both of the Respondents were believed to be in employment. There were no known special housing needs or disabilities, nor children. It was submitted that it was reasonable to grant the order in the circumstances.

- Findings in Fact

6. The Tribunal made the following findings in fact:

- (i) The parties entered into an Assured Tenancy Agreement ("the Agreement") which commenced 6 July 2017;
- (ii) A Notice to Quit and Form AT6 under section 19 of the 1988 Act were served on the Respondent on 28 May 2021 by Sheriff Officer;
- (iii) The Notice to Quit terminated the contractual tenancy as at 8 July 2021;
- (iv) The Form AT6 under section 19 of the 1988 Act relied on grounds 8, 11 and 12 under Schedule 5 to the 1988 Act;
- (v) The Form AT6 issued under section 19 of the 1988 Act advised that proceedings would not be raised before 29 November 2021;
- (vi) The Respondents have failed to remove from the Property and continued to reside therein.

- Reasons for Decision

7. Section 18 of the 1988 Act states as follows:

18 (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.

8. Ground 8 of Schedule 5 to the 1988 Act states as follows:

Both at the date of the service of the notice under section 19 of this Act relating to the proceedings for possession and at the date of the hearing or the date of the case management discussion, whichever is the earlier, at least three months' rent lawfully due from the tenant is in arrears.

9. Ground 11 of Schedule 5 to the 1988 Act states as follows:

Whether or not any rent is in arrears on the date on which proceedings for possession are begun, the tenant has persistently delayed paying rent which has become lawfully due.

10. Ground 12 of Schedule 5 to the 1988 Act states as follows

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.*

11. The Tribunal was satisfied that the grounds relied upon in the Form AT6 had been met. At the date of service of the AT6 on the Respondent, there were rent arrears of £8,875. The monthly rent was £575. At the date of the CMD, the arrears stood at £14,050. Accordingly, both at the date of service of the AT6 and at the date the case called before the Tribunal, there were at least three months of arrears due. Further, in terms of Ground 11 the Tribunal was satisfied that the Respondents had persistently delayed paying rent which has become lawfully due. Accordingly, the Applicant was entitled to the Order for Repossession as sought.

12. The Tribunal was satisfied that it was reasonable to grant the Order. No rent had been paid since February 2020. The arrears now stood at £14,050, being the equivalent of over 24 months of rent. This is a substantial sum. Assistance and signposting to advice organisations has been provided by the Applicant but the Respondents have failed to engage. They have failed to respond to the application when served on them, and have failed to attend the CMD to give any explanation as to why no rent has been paid for a period of two years. The Tribunal is satisfied that the current situation cannot reasonably be allowed to continue.

- Decision

13. The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondents for possession of the Property under section 18 of the Housing (Scotland) Act 1988.

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/Chair

Date: 25 February 2022