



**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/22/2597

Re: Property at 34 West Forth Street, Cellardyke, Fife, KY10 3HL (“the Property”)

Parties:

Mrs Francine Rough, 20 Shaston Road, Stourpaine, Dorset, DT11 8TA (“the Applicant”)

Mr Steven Carleschi and Michelle Carleschi, 34 West Forth Street, Cellardyke, Fife, KY10 3HL (“the Respondent”)

Tribunal Member:

Melanie Barbour (Legal Member) and David Fotheringham (Ordinary Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it should grant an order for eviction in favour of the Applicant against the Respondent for possession of the property; but the order shall not be executed for a period of 6 months from the date of the order.

BACKGROUND

1. An application had been received under Rule 65 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order for eviction of an assured tenancy.
2. The application contained: - a copy of the tenancy agreement; a copy of the AT6 for Steven Carleschi dated 23 June 2022; a copy of the AT6 for Michelle Carleschi dated 23 June 2022; a copy section 11 Notice; a copy of the Respondents’ rental statement showing arrears; continuation of assured tenancy dated 30 August 2017; continuation

of assured tenancy dated 10 September 2018; and recorded delivery track and trace for AT6 notices

3. The Applicant's agent, Ms Heggarty from Rollos Law LLP and the Respondents' agent, Ms Watson from Frontline Fife appeared.
4. This application had been continued from a case management discussion which took place on 9 January 2023 reference is made to the terms of that case management discussion note. A direction was issued by the tribunal during the case management discussion. Both parties complied with the terms of that Direction. Both parties submitted written representations in relation to the question of reasonableness. Both parties submitted productions in support of their position. Both parties gave evidence as witnesses at the hearing.
5. We note that at the case management discussion, the Applicant's agent advised that she was seeking an order for eviction. She advised on the following matters:-
 - a. The rent arrears were currently £800.
 - b. The reason that eviction was sought notwithstanding that the arrears had decreased was given that there had been arrears since 2019, and not only since 2021 (as shown in the arrears referred to in the rent statement attached to the AT6).
 - c. The landlord did not consider that the payment plan proposed by the respondent was acceptable given the ongoing arrears consistently due and which had been outstanding for a number of years.
6. The respondent's agent had confirmed that the respondents were opposed to the order being granted. The basis of the opposition was that:-
 - a. The arrears had reduced and there was just over 1 month's rent outstanding.
 - b. They did not consider that the applicant had followed the pre-action requirements.
7. The Respondent accepted that there were arrears outstanding. They were also not challenging the competency of the AT6 Notices or other procedural matters.
8. The application proceeded to a hearing to determine if the terms of grounds 8, 11 or 12 were met; and if any of those grounds were met, to consider if it would be reasonable to grant an order for eviction.

THE HEARING

The applicant - Mrs Rough

9. Ms Rough gave evidence that she and her late husband had purchased the property in 1992 with the intention that the couple and their children would retire to the property, and use it place to come to see her husband's family who resided in the local area prior to retirement. Her late husband had been in the army and they had moved around a lot. They had wanted a base to see family and so bought the property. In the fullness of time, they intended to retire to Scotland. This was no longer her plan. Her husband had been killed in an accident in 2006. Her sons were now young adults, and the applicant and her sons were settled in Dorset, and she no longer intended to move to Scotland.
10. She advised that she will come to Fife a couple of times a year and visit family members to celebrate special family occasions. There was no frequency in her coming to Scotland. She did not visit often.
11. She advised that this affected her letting out the property, it was inconvenient. She had to use letting agents. She was not involved in the management in any way. If she comes to Scotland she may go and see the property and its condition, and visit the letting agent to see if there are any issues.
12. She advised that there had been problems with the property. There had been dampness in the house 3 years ago. She had gone to the property and met the builder. They did the repair work to the roof and the chimney. The tenants had complained about the redecoration work. She had gone to the house to see about that too and she said that she discovered that the issue was not due to poor workmanship, but lack of care by the children in the tenants' family. This was the current tenants.
13. She advised that there had been significant maintenance needed for the property since the tenants had stayed there. It was not necessarily due to neglect by the tenants, however, it is a very old property and it needs ongoing care and attention. The maintenance is ongoing and she thought that there were increased requirements to ensure that she complied with her legal obligations as a landlord. A lot of work had been done to the house and then, further repairs were needed. By way of example,

she advised that the tenants had taken the smoke alarms out and she had to replace them with upgraded ones.

14. There had been times when she had to carry out the maintenance works, but this was difficult when the tenants were in arrears, and the money for repairs has to come out of her own pocket. She was asked if she made an income from renting and she stated a very small amount, by the time she had paid the letting agents and paid for maintenance works. She advised that there was very little gain and a lot of correspondence going on in the meantime. She advised that the ongoing rent arrears had affected her. She has had to find money to pay for the costs of the house herself when no rent had been coming in.
15. She referred to the rent account statement and explained that the rent arrears started in 2019 and went on until 2021. With the help of the repayment plan, they had been cleared but then they started to accrue again in 2021. Although she advised that she did acknowledge that the tenants has made payments and were not now in debt. She was asked how long had there been arrears. She advised for a significant time on 2 occasions. She said that she had to contact the letting agents and discuss how the rent could be repaid. The tenants have struggled to pay the rent at times and she never knows how much will be paid into the account, and at the same time there were significant calls for maintenance to be carried out and she has had to pay for this personally.
16. She was asked how she had coped. She advised it had caused her stress. She said that she was so far away it was hard to keep in touch with the letting agents and she doesn't know how much income is going to come in. She advised that she does not own other properties. She said that she never intended to be a landlord, her and her family had lived in the house for 4 years and they had intended to retire to it when her late husband retired.
17. In cross-examination Miss Watson put to the applicant that she had stated that there had been a persistent delay in the rent and this was agreed by the respondent, however, the respondents are in a better position now to avoid rent arrears occurring again. She noted that the letting agents had given the respondents a reference in April 2021 which stated that all rent was paid promptly and the property was maintained to an acceptable condition, and payment plans had been offered and accepted by the

landlord. In response, the applicant advised that she had discussed with the letting agents and she assumed that they accepted the repayment plans on her behalf. She was asked if a landlord should make a reasonable agreement. She explained that a payment plan has been agreed by her agents.

18. The applicant advised that the property was mortgage free. She also advised that she planned to sell the property. She was asked if the fact the arrears were now cleared changed her wish to seek an order for eviction. She said no, this was the second time she had asked for an eviction order. The first time she did not pursue the eviction as the respondents had said that they were having problems finding anywhere to live. She felt that she had given the respondents plenty of time to try and find something else. Given that covid had been an issue she was prepared to give them time to find another property.

19. She advised that she had financial obligations, and there were personal matters that she wanted to be able to assist her family with and maintain her own property. She was asked about the fact that 4 notices had been served on the respondents. She advised that she had given 2 instructions to leave. Initially, she had advised that she would like to sell the house, and had asked for notice to be given to the tenants, She advised that no eviction order was ever granted, it was a request to leave and she had agreed to give them time to look for other accommodation. She advised that she had great sympathy for their child who had autism. She understood the difficulty of moving such a child however she did not think that it was reasonable for her to wait until the child was able to move, that would be a very long time and she felt she had been patient enough.

Mr Carleschi - Respondent

20. He advised that he lives at the property address with his family. He had previous arrears and these had been cleared. He advised there had been little support offered by the landlord. He had corresponded verbally with the letting agents and proposed various payment arrangements. He thought it was very disappointing that the landlord had failed to apply for and access covid payments which would have reduced the arrears.

21. He said that he had received 4 different notices, the first in October 2020; the second a week later (the second one due to the wrong lease being referred to); the letting agents had told him that if nothing happened the landlord would have to reapply and

send another notice after 6 months. The condition of the property was never mentioned in any of these notices.

22. He advised that if an order for eviction was granted it would affect him greatly. He appreciated that the applicant understands this. He advised that his children were aware of the 4 eviction notices which had been served. He said there was a constant threat that they may have to move. It had been a long process.
23. He advised that he had cleared the rent arrears. He had contacted the letting agent and asked them if they have contacted the landlord about the rent arrears being paid, he did not think that they always did, He had offered to pay rent and arrears at £1000 and ended up paying £1100. This has been a strain on his family, but he accepted that he needed to deal with these issues. He had put various repayment plans to the letting agents and he did not think they were always put to the landlord.
24. He advised that no repayment plans were ever offered to him from the letting agents. He advised that they have maintained that the property must be sold. He advised that he could provide evidence to show that he could make the payments. He advised that this application had affected him and his family. He said that the repayment had been a strain on him, his wife and his son.
25. In cross-examination he was referred to the productions lodged, page 2 rent statement. He agreed that the first arrears were in June 2019. He advised that his financial problems began due to being furloughed. He submitted that the rent account from 2020 to the present was submitted for the first hearing, He had addressed the reasons for the rent arrears from 2020. He then received a further rent statement going back to 2017 and he was able to explain these earlier arrears.
26. He advised that he previously dealt with rent arrears by contacting the letting agents. The first notice was dated 2020 and the second was issued in October. The landlord stated in the notice that she wanted to move into the property. His middle son is autistic. They had worked hard to make payments to the arrears and they had reduced in January 2020. Then the covid outbreak happened and the hotel he and his wife worked in reduced their hours and then they were both furloughed in 2020. He received less than full wage and his wife applied for benefits to put towards the arrears.

27. Once hospitality reopened their autistic son struggled to go to school, and his wife gave up work to care for him. The respondent had taken relief delivery driver work. They had registered with Fife Council in October 2020 to get another house. The letting agent had given them a reference. The letting agent had explained they would be happy to give a reference to them. The time frame for the landlord to evict them then lapsed, and they had lost housing points from the council. The letting agents advised that they had received no further instructions from the landlord. He advised that it was stressful waiting to see if they would be evicted.
28. He confirmed that there were rent arrears before they were furloughed. That there had been repayment of the arrears in March 2021 and then they had accrued more arrears later in 2021. He agreed that it was difficult for the landlord to be confident that there would be no further arrears. He agreed that the notice to quit had been served on 22 June 2022.
29. From that period in June 2022, he was asked what steps had he taken to look for other properties. He advised that he had registered in 2020 with Fife Council. There was not a lot of property available, and after 6 months he advised that the notices cannot be relied on and they lose their homeless points. He submitted that he is put back at the bottom of the housing list after 6 months. He advised that they have also applied for properties through housing associations. He advised that he is also registered with the various letting agents.
30. He submitted that he was not in a better position to get a property due to these proceedings. He advised that he has the option to get temporary accommodation but this would not be suitable for his son. He advised that he had made a wide area search for houses, including out with areas of his children's school catchment. He was looking for properties every day.
31. He confirmed that rent was due on the 12th of each month. He was asked when he had paid March's rent. He advised that he had paid £1100 in February and paid the rent yesterday, and he will pay the next rent on 12 April. He had paid £650 yesterday. He advised that he has three sons, 7, 12 and 19. His 19-year-old is at college but comes back at weekends. He was asked by the tribunal if, when the first notice was served, did the landlord agree to give him time to look for property. He advised that she had indicated at that time that she had wanted to sell the property. He believed that one of the landlord's sons was getting married and she wanted to give him some money.

When the notice was first issued the landlord visited the respondents and told them she wanted to sell the property, and she had mentioned spring 2021. He advised that the landlord had told them she would give them time to find somewhere.

Closing Submissions

32. The landlord's agent submitted that the respondent had been in arrears since 2019 and cleared in March 2021 and then fell back into arrears. The rent arrears had only been cleared today, and the rent was late this month. It is appreciated that these are difficult financial times, but due to the late payments and consistent late payments, the landlord cannot be confident there will not be future rent arrears. Therefore, it would be reasonable to grant the order for eviction given the personal circumstances of the applicant. The respondents have no intention to move out. It was stressful for the landlord managing the property and due to the arrears caused by the respondent, she had to make payments out of her own pocket, and therefore the respondent had caused the applicant financial loss. It was reasonable to grant the order for eviction.
33. The respondent's agent submitted that based on the evidence provided, there were no reasonable grounds on which to grant the order; she asked that the tribunal find that the respondent was in a better financial position now; the rent arrears had been repaid; and the letting agents had previously provided the respondent with a reference.

FINDINGS IN FACT

34. The tribunal has found the following facts to be established:-
35. A tenancy agreement was entered into between the Applicant and the Respondent for the Property and exists between the parties.
36. It commenced on 12 May 2017 until 11 November 2017.
37. Clause 2 in the tenancy agreement provides that monthly rent is £650.
38. That the rental statement attached to the AT6 Notice showed rent arrears outstanding on 12 June 2022 being £3,250.

39. The AT6 Notice was dated 23 June 2022. It confirmed the first date for raising proceedings would be 9 July 2022. It referred to grounds 8,11 and 12. There was evidence of service of that notice.
40. The section 11 notice appeared to have been served on the local authority.
41. There was evidence showing that the pre-action requirement had been complied with, being copy letters and emails dated 12 January, 11, 18 and 22 February, 4 March, 42. 1, 11 and 22 April, 13, 20, 22 and 27 May, and 24 June all days in 2022.
43. That there had been arrears on the rent account from July 2019 until March 2021; and from September 2021 until March 2023.
44. That the rent arrears were £2,550 when the application was lodged with the tribunal on 25 July 2022.
45. That the rent arrears were £800 when the case management discussion took place on 9 January 2023.
46. That there were no rent arrears when the hearing took place on 29 March 2023.
47. That the landlord had to complete maintenance works on the property.
48. That the landlord had advised the tenants that she wished to sell the property since around 2020.
49. That the landlord and her late husband had originally planned to retire to the property, however, her husband had died. The landlord no longer planned to retire to live in the property.
50. The landlord lived in Dorset near her grown-up family.
51. The landlord did not rent out any other properties.
52. There was no mortgage over the property.
53. The landlord had served previous AT6 Notices on the tenants.

54. The landlord had previously agreed with the tenants that they could have time to find other accommodation.
55. The tenants have three children, one of whom (LC) has autism, ADHD and learning difficulties.
56. A medical letter regarding the child LC stated that he would have anxiety regarding the change, that he would struggle with moving property at short notice, and that any move would require a period of preparation over months as opposed to days or weeks.
57. The tenants had been looking for other property, including to the local council and housing associations.

REASONS FOR DECISION

58. The tenancy agreement created contractual obligations, one of which is a duty on the tenants to pay rent. There was evidence before the tribunal of a valid AT6 Notice having been served on the respondents. The tenancy agreement contained a schedule of conditions which included Condition 14 which allowed for grounds for termination of tenancy. In that condition grounds 8,11, and 12 were narrated in full and the tribunal considers that the terms of section 18 (6) of the Housing (Scotland) Act 1988, therefore, apply in this case.
59. The grounds of recovery were 8,11 and 12, as set out in Schedule 5 of the Housing (Scotland) Act 1988 which were in the following terms when the notice was served:-

Ground 8 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][1](#) , at least three months rent lawfully due from the tenant is in arrears.

Ground 11 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.

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.

60. The Tribunal considered that the terms of grounds 11 and 12 were met in this application, there were rent arrears when the AT6 Notice had been served, there were rent arrears when the application was accepted by the tribunal, and there remained some rent arrears when the case management discussion took place. Other than from March 2021 until September 2021 there had been rent arrears on the recent account from July 2019 until March 2023. This is a period of nearly 4 years and during that time there had only been 6 months when the account was not in arrears. The tribunal finds that the tenants had persistently delayed paying rent which had become lawfully due. The tribunal was not advised that the rent arrears was due to a delay or failure to pay a relevant housing benefit.

61. The tribunal did not find that terms of the ground 8 were met. At the date of the case management discussion, it did not appear to the tribunal that there were three months' rent arrears outstanding.

62. As we find that Grounds 11 and 12 have been established, we must now proceed to consider whether or not it would be reasonable to grant the order for eviction. While these grounds of recovery relate to the non-payment or delay in paying rent, issues of reasonableness are wide-ranging, and we do not consider that they are restricted to considering only matters relating to rent arrears.

63. We found this a difficult case to decide as both parties have compelling reasons for adopting the position that they did, however on balance we have found that more weight should be placed on the landlord's reasons for seeking an order for eviction. We note that both parties appeared to have a degree of sympathy for the other party's position.

64. The tribunal found the applicant to be credible and reliable to in her evidence and her reasons for wanting the order granted. The tribunal found the respondent to be credible in his evidence, however on occasion, we found him less reliable. For example, the respondent was focused on seeking to rely on the fact that four AT6 notices had been served and for different reasons. The tribunal considered that there appeared to have been a reasonable explanation for the service of several notices, including that the landlord had agreed at the respondents' request to give them time to find other accommodation, and this fact would have likely necessitated new notices being served.
65. By the time that this application was heard at the hearing, the respondents had worked hard to clear the arrears. The respondents also explained why some arrears had accrued. It did not appear however that his explanation explained why all arrears had accrued and it did not explain why it had taken so long to repay the arrears. The tribunal accepted that the covid pandemic had placed additional financial pressures on tenants and this had impacted on the tenants' ability to pay rent in some cases, and we accept that the respondents may have been affected by the pandemic in terms of paying some of their rent. However, the respondents had repaid their arrears in March 2021 one year after the lockdown had commenced. After September 2021 the arrears accrued again rising to £3,900 in May 2022. It appears to the tribunal that it was only once the AT6 Notice was served and then the application lodged with the tribunal that the respondents began in earnest to repay the rent arrears. There were also rent arrears which had preceded the covid pandemic and rent arrears which have continued after the pandemic. There have been ongoing rent arrears for most of the 4 years and we accept that the ongoing arrears would have caused the landlord anxiety and stress. We also accept that she may be concerned that arrears would accrue in the future if no order is granted.
66. We note that the respondents reside in the property with their three sons, one of whom, has additional support needs. We note that any move from the property will require planning over a period of time, it appears however that a planned move would be something that LC could be prepared for and would be able to manage. We appreciate that this may be more difficult for the respondents to achieve, as they would need to have arrangements in place from the new landlord. It would be better if they were provided with real support from the local authority or a housing association to achieve a planned move that minimises any disruption to their son, LC.

67. Against the circumstances affecting the respondents, the tribunal placed greater weight on the fact that the landlord only rented out the property as a temporary measure. We note that the property was not bought to be part of a rental business, but was to be a home for herself and her late husband. Unfortunately, her husband had been killed and the landlord's plans had changed. She did not have any other properties that she rented out. She lived in Dorset and did not appear to have a strong connection with the Fife area. She appears to have wished to sell the property for a number of years. It appears that she plans to use the proceeds of sale in part to support herself financially and also for her grown-up children.
68. Renting the property out appeared to have, at least at times, cost her money. We note that the landlord had already provided additional time to the respondents for them to try and find other accommodation for their family. We find that the landlord had acted reasonably in her dealings with the tenants. She had given them fair notice of her desire to end the tenancy and sell the property.
69. She is entitled to rely on Grounds 11 and 12 in seeking an order for eviction even if her longer-term intention is to sell the property and taking into account all of the issues relating to reasonableness we consider that it would be reasonable to grant the order for eviction.
70. It is a concern that the respondents have been unable to find other property but this, in itself, we do not find to be a sufficient reason to refuse the order for eviction. We have however placed weight on the medical letter submitted by the Respondents, and in that regard, we will order that the eviction order can not be enforced for a period of 6 months in order that the Respondents have time to secure a new property for their family and there can then be a planned move to their new home. We hope that this will allow LC to be prepared for this move. We would hope that the local authority housing department will take due cognisance of the needs of this child when considering the respondents' application for a home.
71. Accordingly, the tribunal is prepared to make an order for eviction under Grounds 11 and 12.

DECISION

72. The Tribunal grants an order for eviction in favour of the Applicant against the Respondent 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.

M Barbour

13 April 2023

Legal Member

Date