



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 (“the 1988 Act”)

Chamber Ref: FTS/HPC/EV/22/3210

Re: Property at 90 Don Drive, Livingston, EH54 5LP (“the Property”)

Parties:

Ms Dana Hamlin, C/o Matriix Property Management Limited, 132 St Stephen Street, Edinburgh, EH3 5AA (“the Applicant”)

Ms Jolee De'Pares, 90 Don Drive, Livingston, EH54 5LP (“the Respondent”)

Tribunal Members:

Alastair Houston (Legal Member) and Gordon Laurie (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession of the Property be made in terms of paragraphs 8, 11 and 12 of Schedule 5 of the 1988 Act.

1. Background

- 1.1 This is an application under Rule 65 of the Chamber Rules whereby the Applicant seeks an order for recovery of possession let on a short assured tenancy agreement in terms of section 18 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Applicant seeks the said order on the basis of grounds 8, 11 and 12 of schedule 5 of the 1988 Act.
- 1.2 The application was accompanied by copies of the notice under section 19 of the 1988 Act, the written tenancy agreement between the parties and a rent statement. A previous Case Management Discussion on 3 March 2023 had been continued to a further Case Management Discussion to allow for a conjoined application, reference FTS/HPC/CV/22/3200, to be intimated to the guarantor who had been added as a Second Respondent to that application.

1.3 No representations had been received from the Respondent. The Applicant had lodged an up to date rent statement with the Tribunal on 20 April 2023.

2. The Case Management Discussion

2.1 The Case Management Discussion took place on 27 April 2023 by teleconference. The Applicant was represented by Mr Gardiner, solicitor. The Respondent was neither present nor represented.

2.2 Mr Gardiner confirmed that the application was insisted upon and wished to proceed in the Respondent's absence. The Tribunal noted that intimation of the Case Management Discussion had been made to the Respondent and elected to proceed as permitted by Rule 29 of the Chamber Rules.

2.3 The Tribunal heard submissions from Mr Gardiner as to why it would be reasonable to grant an order for recovery of possession. He confirmed that no payment of rent had been made by the Respondent since July 2022. The arrears were now £7859.81. The rental due was £600.00 per calendar month. There had been discussions between the Respondent and the letting agent responsible for managing the Property following this date to apparently attempt to resolve benefit issues that the Respondent was having. These did not bear fruit. Further unsuccessful efforts had been made to contact the Respondent by email. The Respondent had contacted Mr Gardiner in November 2022 to advise that no further payment of rent would be forthcoming and she was seeking alternative accommodation in the social sector. There had been no further contact with the Respondent. Mr Gardiner understood that she had been reliant on welfare benefits and occupied the Property with children however, he did not have details of these benefits nor the number and ages of the children. The Property was the sole rental property of the Applicant and her husband.

3. Decision

3.1 There was an ongoing short assured tenancy between the parties. An order for recovery of possession was therefore sought in terms of section 18 of the 1988 Act. The Tribunal noted that the written agreement made provision for such an order to be granted in terms of grounds 8, 11 and 12 of schedule 5 of the 1988 Act.

3.2 The Applicant had given the required notice in terms of section 19 of the 1988 Act to the Respondent that an order for recovery of possession was to be sought. Given the terms of the rent statement lodged by the Applicant, it was clear that each of the three grounds relied upon were established. In terms of the 1988 Act, as amended, The Tribunal therefore required to consider whether it was reasonable to grant an order for recovery of possession.

3.3 Section 18(4A) of the 1988 Act required the Tribunal to have regard to:-

- (a) *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, and*
- (b) *the extent to which the landlord has complied with the pre-action protocol specified by the Scottish Ministers in regulation.*

Although Mr Gardiner had made reference to the Respondent having experience issues with benefits, there was no material before the Tribunal to suggest that these were in relation to a relevant housing benefit or universal credit. Accordingly, the Tribunal placed little weight on these. The Respondent had apparently failed to respond to efforts by the Applicant's agents to contact her to resolve matters. There was nothing to suggest the Applicant had failed in an effort to comply with the pre-action protocol.

3.4 Beyond those limited prescribed factors, the Tribunal approached the issue of reasonableness in accordance with the case of *Barclay v Hannah* 1947 SC 245 whereby the Tribunal was under a duty to consider the whole facts and circumstances in which the application was made. The Tribunal placed considerable weight on the extent of the arrears, which were in excess of twelve months rental payment. The Respondent had failed to make further contact with the Applicant and had lodged no representations as to why it would not be reasonable to grant an order for recovery of possession. Accordingly, the Tribunal deemed it reasonable, on the basis of the material accompanying the application and the submissions made by Mr Gardiner, to grant such an order.

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.

Alastair Houston

**Alastair Houston
Legal Member/Chair**

**27 April 2023
Date**