



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/22/3478

Re: Property at Flat 8, 2 Moreland View, Edinburgh, EH12 8NS (“the Property”)

Parties:

Places For People Scotland Limited, 1 Hay Avenue, Edinburgh, EH16 4RW (“the Applicant”)

Mrs Cheryl Gardner, Flat 8, 2 Moreland View, Edinburgh, EH12 8NS (“the Respondent”)

Tribunal Members:

Andrew Upton (Legal Member) and Mary Lyden (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted against the Respondent in favour of the Applicant.

STATEMENT OF REASONS

1. This Application called for its Case Management Discussion by teleconference call on 9 January 2023, together with the related application CV/22/3479. The Applicant was represented by Miss Wilson, solicitor. The Respondent was neither present nor represented.
2. In this Application the Applicant seeks an eviction order. The Applicant contends that the Property was let by the Applicant to the Respondent under a Short Assured Tenancy Agreement. The Applicant says that notice to quit was served by sheriff officer and given to the Respondent on 14 April 2022, in terms of which the contractual tenancy was to terminate on 16 June 2022. The Applicant also contends that it gave notice to the Respondent in terms of section 19 of the Housing (Scotland) Act 1988 (“the 1988 Act”) in form AT6

that proceedings for possession would follow due to the Respondent's non-payment of rent, and in particular under grounds 8, 11 and 12 of schedule 5 to the 1988 Act. That notice was also given on 14 April 2022 by sheriff officer. The Applicant says that the Respondent remains in arrears of rent, and that it is reasonable to grant an eviction order.

3. In terms of rule 17(4) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules"), the Tribunal may do anything at a CMD that it may do at a Hearing including make a decision. In terms of rule 2, the Tribunal must have regard to the overriding objective to deal with proceedings justly when making a decision. The overriding objective includes the need to avoid unnecessary delay in proceedings.
4. In terms of the 1988 Act:-

"18. Orders for possession.

(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.

[...]

(4) If the First-tier Tribunal is satisfied that any of the grounds in Part I or 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.

(4ZA) In deciding under subsection (4) whether Ground 1A in schedule 5 is established, evidence tending to show that the landlord has the intention mentioned in the Ground includes (for example)—

- (a) a letter of advice from an approved money advisor or a local authority debt advice service,
- (b) a letter of advice from an independent financial advisor,
- (c) a letter of advice from a chartered accountant,
- (d) an affidavit stating that the landlord has that intention.

(4ZB) In deciding under subsection (4) whether it is reasonable to make an order for possession on Ground 8A in schedule 5, the First-tier Tribunal is to consider—

- (a) whether the tenant being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit,
- (b) the extent to which the landlord has complied with the pre-action protocol specified by the Scottish Ministers under subsection (4A)(b) (and continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022).

(4ZC) For the purpose of subsection (4ZB)—

- (a) references to a relevant benefit are to—
 - (i) a rent allowance or rent rebate under the Housing Benefit Regulations 2006 (S.I. 2006/213),
 - (ii) a payment on account awarded under regulation 93 of those Regulations,
 - (iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,
 - (iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,
- (b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.

(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 —

- (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 regulations.

- (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 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 subsection (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.

- (9) Regulations under subsection (4A) (b) may make provision about—
- (a) information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),
 - (b) steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,
 - (c) such other matters as the Scottish Ministers consider appropriate.
- (10) Regulations under subsection (4A)(b) are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)).

19.— Notice of proceedings for possession.

- (1) The First-tier Tribunal shall not entertain proceedings for possession of a house let on an assured tenancy unless—
- (a) the landlord (or, where there are joint landlords, any of them) has served on the tenant a notice in accordance with this section; or
 - (b) the Tribunal considers it reasonable to dispense with the requirement of such a notice.
- (2) The First-tier Tribunal shall not make an order for possession on any of the grounds in Schedule 5 to this Act unless that ground and particulars of it are specified in the notice under this section; but the grounds specified in such a notice may be altered or added to with the leave of the Tribunal.
- (3) A notice under this section is one in the prescribed form informing the tenant that—
- (a) the landlord intends to raise proceedings for possession of the house on one or more of the grounds specified in the notice; and
 - (b) those proceedings will not be raised earlier than the expiry of the period of two weeks or two months (whichever is appropriate under subsection (4) below) from the date of service of the notice.
- (4) The minimum period to be specified in a notice as mentioned in subsection (3)(b) above is—

- (a) two months if the notice specifies any of Grounds 1, 1A, 2, 5, 6, 7, 8A, 9 and 17 in Schedule 5 to this Act (whether with or without other grounds); and
 - (b) in any other case, two weeks.
- (6) Where a notice under this section relating to a contractual tenancy—
- (a) is served during the tenancy; or
 - (b) is served after the tenancy has been terminated but relates (in whole or in part) to events occurring during the tenancy,
- the notice shall have effect notwithstanding that the tenant becomes or has become tenant under a statutory assured tenancy arising on the termination of the contractual tenancy.
- (7) A notice under this section shall cease to have effect 6 months after the date on or after which the proceedings for possession to which it relates could have been raised.

Sch.5, 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 , at least three months rent lawfully due from the tenant is in arrears.

Sch.5, 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.

Sch.5, 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.”

5. The Respondent has been afforded an opportunity to attend the CMD and dispute the matters referred to in the Application and the Applicant’s Representative’s email of 5 December 2022. She has chosen not to avail herself of that opportunity. The Tribunal is therefore satisfied that the Respondent does not dispute the terms of the Application, and in particular that she is in arrears of rent of £14,651.47 (c.f. Written Decision with Statement of Reasons dated 9 January 2023 in respect of CV/22/3479), that the contractual tenancy has terminated, or that notice in form AT6 was validly given to her. It follows that the requirements of section 19 and Grounds 8, 11

and 12 are met. All that remains is for the Tribunal to determine whether it is reasonable to grant the eviction order, as required by section 18(4).

6. The Respondent did not appear at the CMD to provide an account of her circumstances. The Tribunal is grateful to Miss Wilson for providing such information as she was able to. She confirmed that the tenant is 42 years old and lives at the Property with her two adult sons, both in their early twenties. She is believed to be in employment. She has no known health issues, and the Property has not been adapted for her use. She is believed to have a new partner, and to be splitting her time between his residence and the Property.
7. In all of the circumstances, the Tribunal is satisfied that it is reasonable to grant an eviction 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.

Andrew Upton

9 January 2023

Legal Member/Chair

Date