



**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/23/0611**

**Re: Property at 14 Springhill Gardens, Dundee, DD4 6JF (“the Property”)**

**Parties:**

**Nusrat Rashid, 9 Kinlock Park, Dundee, DD2 1EF (“the Applicant”)**

**Sarah Houston, 14 Springhill Gardens, Dundee, DD4 6JF (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order**

- 1 By application to the Tribunal the Applicant sought an order for repossession against the Respondents under section 18 of the Housing (Scotland) Act 1988, as amended, on the basis of grounds 8, 11 and 12. In support of the application the Applicant provided a copy Short Assured Tenancy Agreement between the parties, Form AT6 and proof of service, Section 11 Notice and proof of service, rent account and copy correspondence between the parties.
- 2 By email dated 26 May 2023 the Applicant sought permission to amend the application to include ground 8A, dispensing with the requirement to include this within the Form AT6. The Applicant then submitted an additional List of Documents containing various bank statements.
- 3 By email dated 13 June 2023 Dundee Law Centre submitted a response to the application on behalf of the Respondent. In summary the Respondent’s position was that she resided in the property with her

partner and four children. She accepted the arrears were due, however she had not paid rent due to the disrepair in the property. She had not withheld the rent and did not have any proposals for repayment. She could not consent to the order being granted, however she required to oppose the granting of the order due to homelessness intentionality legislation.

### **Case Management Discussion**

- 4 The Case Management Discussion took place on 23 June 2023. The Applicant was represented by Ms Barbara Collie, Solicitor. The Respondent was represented by Ms Rebecca Falconer, Solicitor. Neither parties were in attendance themselves.
- 5 Ms Collie confirmed that the Applicant sought an eviction order. The arrears were £12,378.03. The Respondent had never made the Applicant aware of any repairs required. Ms Colley noted that there were no proposals for payment, and no rent had been withheld. She confirmed that the Applicant was not seeking recovery of the amount due, simply the eviction order. No rent had been paid this year so far.
- 6 Ms Falconer confirmed that the Respondent had no formal defence and did not oppose the granting of an eviction order. The Respondent had no explanation for why rent had not been paid, other than the alleged disrepair.

### **Findings in Fact**

- 7 The parties entered into a Short Assured Tenancy Agreement dated 31 March 2013. The tenancy was a Short Assured Tenancy as defined by section 32 of the Housing (Scotland) Act 1998 (“the 1988 Act”).
- 8 The Respondent has been served with Form AT6 dated 16<sup>th</sup> November 2022 citing grounds 8, 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988 as the grounds upon which the Applicant seeks repossession. The Form AT6 was served upon the Respondents by Sheriff Officers on 18 March 2022 and states that proceedings will not be raised any earlier than 1 October 2022.
- 9 The Form AT6 complies with the requirements of section 19 of the Housing (Scotland) Act 1988 and is in the prescribed form.
- 10 The Applicant has requested amendment of the application to include ground 8A of Schedule 5 of the Housing (Scotland) Act 1988.

- 11 The rent due under the said Tenancy Agreement is £650 per month.
- 12 As at the date of the Case Management Discussion arrears in the sum of £12,378.03 were outstanding.
- 13 The arrears of rent are not due to any failure to pay housing benefit or its equivalent.

### **Reasons for Decision**

- 14 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. There was no dispute between the parties that required a hearing to be fixed.
- 15 The Applicant sought an order under section 18 of the Housing (Scotland) Act 1988 and had served the Respondent with a Form AT6 notice of their intention to raise proceedings for possession under section 19 of the said Act. Ground 8A had not been included in the Form AT6, on the basis that it was not yet in force at that time. In view of the level of arrears, which were not disputed by the Respondent, the Tribunal considered it would be reasonable to dispense with the requirement to include ground 8A in the Form AT6 and allow amendment of the application to introduce the ground.
- 16 In terms of ground 8A, the Tribunal must satisfied that the tenant has accrued rent arrears under the tenancy in respect of one or more periods, and the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of six months rent when the Form AT6 is served or, if dispensed with, when proceedings are raised for an order of possession.
- 17 The Tribunal accepted based on the Applicant's written submissions that the rent due under the terms of the tenancy agreement between the parties was £650 per month and that at least six months rent was unpaid when the Form AT6 was served. The Tribunal further accepted based on the submissions from the Applicant's representative at the Case Management Discussion that the arrears had now increased to £12,378.03. There was no evidence before the Tribunal to suggest that the arrears of rent were due to any failure to pay housing benefit or its equivalent. They had arisen over a prolonged period of time as a result of the Respondent's failure to make the payments due, without any plausible explanation. The Respondent had not sought to contradict any of the

information put forward by the Applicant therefore the Tribunal accepted it as fact. The Tribunal therefore found that ground 8A had been met.

18 The Tribunal then had to consider the reasonableness of granting the order. The level of arrears was so significant that it would be difficult for the Tribunal to conclude that an eviction order was unreasonable in the particular circumstances of this case. In any event the Respondent's position, having sought legal advice, was that she did not oppose the granting of the order. Accordingly the Tribunal determined to make an eviction order.

19 The decision of the Tribunal was unanimous.

### **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.**

**23 June 2023**

**Legal Member/Chair** \_\_\_\_\_

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**Date**