



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Sections 18 and 33 of the Housing (Scotland) Act 1988

Chamber Refs: FTS/HPC/EV/22/2650 and FTS/HPC/EV/22/2651

Re: Property at Flat 1/1, 73 Strathblane Gardens, Glasgow, G13 1BL (“the Property”)

Parties:

Places for People Homes Limited, 2 Crescent Office Park, Clarks Way, Bath, BA2 2AF (“the Applicant”)

Brian McKernan, Flat 1/1, 73 Strathblane Gardens, Glasgow, G13 1BL (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member) and Eileen Shand (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

1. These are two conjoined applications by the Applicant each for an order for possession. The first is in relation to an assured tenancy in terms of rule 65 (EV/22/2650) and the second in relation to termination of a short assured tenancy in terms of rule 66 (EV/22/2651), both rules being of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”). The tenancy in question was a Short Assured Tenancy of the Property by Applicant to the Respondent commencing on 25 July 2013.
2. Both applications were dated 2 August 2022 and lodged with the Tribunal on that date.

3. Both applications relied upon a Notice to Quit dated 14 January 2022, providing the Respondent with notice that the Applicant sought to terminate the Tenancy by 24 March 2022. The rule 65 application further relied a notice in terms of section 19 (also known as an “AT6”) of the Housing (Scotland) Act 1988 dated 14 January 2022. The rule 66 application further relied upon a notice in terms of section 33 of the Housing (Scotland) Act 1988 dated 14 January 2022 providing the Respondent with notice that the Applicant sought to have the Respondent vacate by 14 July 2022. Evidence of service of each of the three notices by Sheriff Officer on 14 January 2022 was included with the application.
4. In regard to rule 65, the said AT6 relied upon three grounds under Schedule 5 to the 1988 Act; Grounds 8, 11 and 12. These grounds relied upon rent arrears of £3,075 being outstanding as at the date of the AT6. The lease for the Tenancy, lodged with the application, disclosed a monthly rent of £550 but, from a rent statement lodged with the application (supported by submissions made at the CMD) we could see that the rent had been increased to £615 per month. There was thus five months of rent arrears said to be due as at the date of the AT6.
5. Evidence of a section 11 notice dated 29 July 2022 in terms of the Homelessness Etc. (Scotland) Act 2003 served upon Glasgow City Council was provided with the application.

The Hearing

6. On 10 November 2022 at 10:00, at a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting remotely by telephone conference call, we were addressed by the Applicant’s agent, Kenneth Caldwell, solicitor, of Patten & Prentice. As of 10:05, there was no appearance by the Respondent (that is, neither he nor anyone on his behalf had dialled in).
7. Prior to the CMD, email correspondence had been sent to the Tribunal on the Respondent’s behalf by a Social Care Worker from Glasgow City Health and Social Care Partnership (whom we shall refer to as S). S explained that the Respondent was currently living in respite care due to an alcohol-related issue and the Respondent was satisfied to see the eviction order made against him. Further comment on this is made below. The Applicant’s agent confirmed that S had been in touch with his office since 4 October 2022 (being when the papers were served at the Property) and S had similarly commented that the Respondent did not intend to return to the Property. We were thus satisfied that there was no appearance by the Respondent but that the emails (and prior contact between S and the Applicant’s agent) explained the reason for non-attendance. In the circumstances, we were satisfied to consider the application in full at the CMD in the absence of the Respondent.
8. In regard to the content of the emails from S (of 4 November and then a longer email of 9 November in response to a request for information that we had issued), the details were:
 - a. The Respondent had begun “drinking problematically” around three years ago, around the time he had lost his job and vehicle.

- b. S first became involved in April 2022, following concerns raised by the Respondent's GP. S found that the Respondent was failing to care for himself properly at the Property, with the Property very untidy and unsanitary.
 - c. The Respondent was in receipt of benefits but had not at April 2022 applied for the housing benefit element of Universal Credit.
 - d. The Respondent's drinking had progressed to the point where he appeared to be suffering from a neurological ailment and he was moved to the "place of safety" where assessments could occur.
 - e. The Respondent had no desire to return to the Property and did not object to an eviction order.
 - f. S was of the view that an eviction order would not prejudice the Respondent's rights to be supported by the public authorities (unlike if he voluntarily surrendered the Tenancy).
 - g. S was of the view that a clean break from the Property, with more suitable accommodation being sourced for the Respondent, was in the Respondent's best interests.
9. In consideration of the Respondent's apparent consent to the order (albeit through a health worker who lacked a formal written consent from the Respondent and therefore was not officially a representative of the Respondent before the Tribunal), the Applicant's representative had no contrary submissions. He explained that he was contacted by S on 4 October 2022 further to the Tribunal's papers being served on that day. (The Applicant's agent did not know how S had obtained the papers, but presumably they had been collected from the Property.) The Applicant's agent and S had been in touch ever since and S had been very cooperative on the Respondent's behalf. The information provided in S's emails was consistent with what S had told the Applicant's agent. Following 4 October, the Applicant's letting agent had attended at the Property and found that the door had been forced by police and then the locks changed (with the keys retained by the police). The explanation obtained was that an alarm had been going and neighbours had contacted the police. No one on the Applicant's behalf had thus yet gained entry (so the Applicant had no information on the condition of the Property) but the Applicant shared the view that the Respondent was not in occupation and he had long been told by S that the Respondent did not intend to return to the Property.
10. The Applicant's agent stated that he understood the Respondent was a 57 year old man who lived alone with no dependents. (We noted that no information to the contrary was contained in S's emails.)
11. The Applicant's agent provided an updated rent statement, showing arrears to the period ending 30 November 2022 now amounted to £9,225. The Applicant's agent confirmed that, to the best of his knowledge, all rent increases would have been properly administered by the Applicant's letting agents, and the Respondent had paid all increased rental up until August 2021 when payments ceased. No payment had been made against rent since a payment on 13 August 2021 clearing the arrears as of that date. There were now 15 months unpaid rent.
12. No order for expenses was sought.

Findings in Fact

13. By written lease dated 25 July 2013 the parties agreed a lease with a start date of 25 July 2013 until 24 January 2014 “and after that on a Calendar Monthly basis” (“the Tenancy”).
14. Under the Tenancy, the Respondent was to make payment of £550 per month in rent in advance to the Applicant on the 1st of each month.
15. The Applicant had increased the rent using the appropriate procedures and the rent was increased to £615 per month by 1 March 2019.
16. The Tenancy was a Short Assured Tenancy in terms of the Housing (Scotland) Act 1988 further to the Applicant issuing the Respondent with a notice under section 32 of the 1988 Act (an “AT5”) on 25 July 2013, prior to commencement of the Tenancy.
17. On 14 January 2022, the Applicant’s agent drafted a Notice to Quit in correct form addressed to the Respondent, giving the Respondent notice that the Applicant wished him to quit the Property by 24 March 2022.
18. 24 March 2022 is an ish date of the Tenancy.
19. In any event, clause 8.2 of the Tenancy makes provision for the Tenancy being brought to an end on Grounds 8, 11 and 12 of Schedule 5 to the 1988 Act while it is still an assured tenancy in terms of that Act.
20. On 14 January 2022, the Applicant’s agent drafted a Section 33 Notice under the 1988 Act addressed to the Respondent, giving the Respondent notice that the Applicants required possession of the Property by 14 July 2022.
21. On 14 January 2022, the Applicant’s agent drafted an AT6 form in correct form addressed to the Respondent, giving the Respondent notice in terms of section 19 of the 1988 Act of an intention to raise proceedings for possession in terms of Grounds 8, 11 and 12 of Schedule 5 to the 1988 Act, all based on there being rent arrears at that date of £3,075 (being five months of rent arrears) as at the date of the AT6. The AT6 gave the Respondent notice that proceedings would not be raised before 15 July 2022.
22. On 14 January 2022, a Sheriff Officer acting for the Applicant competently served each of the notices upon the Respondent. The Respondent was thus provided with sufficient notice of the Applicant’s intention that the Tenancy was to terminate on 24 March 2022, that the Applicant sought vacant possession by 14 July 2022, and that the Applicant sought to evict under the grounds set out in the AT6.
23. On 2 August 2022, the notice period under the Notice to Quit and AT6 having expired, the Applicant raised proceedings for an order for possession with the

Tribunal, under rule 65, relying on the arrears still being outstanding; and that it was reasonable to make the order.

24. Further, on 2 August 2022, the notice period under the Notice to Quit and Section 33 notices having expired, the Applicant raised separate proceedings for an order for possession with the Tribunal, under rule 66, the grounds of which being that the Tenancy had reached its end; that tacit relocation was not operating; that no further contractual tenancy was in existence; that notice had been provided that the Applicants required possession of the Property all in terms of section 33 of the 1988 Act; and that it was reasonable to make the order.
25. On 29 July 2022, the Applicant's agent provided the Respondent with a pre-action letter in terms of the relevant regulations, providing the Respondent with details as to his arrears, along with sources of advice and support.
26. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon Glasgow City Council on 29 July 2022 on the Applicant's behalf.
27. On 4 October 2022, a Sheriff Officer acting for the Tribunal intimated the two applications and associated documents upon the Respondent, providing the Respondent with sufficient notice of the CMDs for both applications of 10 November 2022.
28. The Applicant seeks to recover the Property in consideration that it is unoccupied and there are substantial unpaid arrears.
29. The Respondent no longer lives at the Property and does not intend to return to it.
30. The Respondent is receiving public support towards being rehoused in accommodation more suitable for his treatment and recovery.
31. When residing at the Property, the Respondent resided alone there without any dependents.

Reasons for Decision

32. The first application (EV/22/2650) was in terms of rule 65, being an order for possession in relation to assured tenancies. We were satisfied, on the basis of the application and supporting papers, and the oral submissions provided by the Applicant's agent at the CMD, that a valid AT6 had been issued on the Respondent; that this had expired without the breaches being resolved; and that the non-payment of rent remained unaddressed as at the CMD. As at the date of the CMD, the total arrears now amounted to fifteen months of rent arrears.
33. Though the Respondent was said to have failed to obtain fuller benefits, we were satisfied from S's emails (uncontradicted by the application, supporting papers, or submissions from the Applicant's agent) that there were no known issues of

failure or delay in benefit. It was thus appropriate to grant an order in terms of Ground 8 of Schedule 5 to the 1988 Act subject to the tests of reasonableness discussed below, which apply in any case to Grounds 11 and 12 but currently now further apply to Ground 8 and the rule 66 application.

34. The second application (EV/22/2651) was in terms of rule 66, being an order for possession upon termination of a short assured tenancy. We were satisfied on the basis of the application and supporting papers that the necessary notices had been served with sufficient notice (in terms of the temporary amendment of the 1988 Act), the Respondent was extending no defence or dispute to the notices, and thus the requirements of the 1988 Act had been complied with.
35. We require, in terms of the 1988 Act as temporarily amended, to consider whether it is reasonable to make an order for possession under Ground 8 or further to Section 33. We require in any case to consider whether it is reasonable to grant any order in terms of Grounds 11 and 12 of Schedule 5 to the 1988 Act. There were no material circumstances brought to the Tribunal's attention that would suggest it would be unreasonable in the circumstances of fifteen months arrears and no payments by the Respondent since August 2021. Further, particularly considering S's emails and the Respondent's evident desire not to reside at the Property any further (and S's view that new accommodation was likely to be to the Respondent's benefit), we were satisfied that it was reasonable to grant the application.
36. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. We were thus satisfied to grant an order for possession under each of the grounds relative to rule 65 as well, in any case, under rule 66.

Decision

37. In all the circumstances, we make the decision to grant an order against the Respondent for possession of the Property under sections 18 and 33 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.

Joel Conn

10 November 2022

Legal Member/Chair

Date