



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/23/2631

Re: Property at Flat 8, 6 Ashcroft Lane, Edinburgh, EH14 3JT (“the Property”)

Parties:

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

Mr Kirk Cockburn, Flat 8, 6 Ashcroft Lane, Edinburgh, EH14 3JT (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Helen Barclay (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, 8A, 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, Notice to Quit and proof of service, Section 11 Notice and proof of service, rent account and copy correspondence from the Applicant's representative to the Respondent in compliance with the pre-action requirements.
- 2 The Applicant's representative subsequently emailed the Tribunal to provide an updated account of the rent arrears.
- 3 By Notice of Acceptance of Application the Legal Member with delegated powers from the Chamber President confirmed that there were no grounds

to reject the application and referred the matter to a Case Management Discussion. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion with instructions for joining the teleconference was intimated upon the Respondent by Sheriff Officers.

Case Management Discussion

- 4 The Applicant was represented at the Case Management Discussion by Mr Kenneth Caldwell of Patton and Prentice Solicitors. The Respondent was in attendance.

- 5 Mr Caldwell advised that the arrears now stood at £10309.35. The Applicant sought an eviction order. Mr Caldwell outlined the payment history, confirming that arrears had begun to accrue in 2020. He believed there may have been issues with the Respondent's employment as a result of the coronavirus pandemic. The Respondent had agreed payment arrangements with the Applicant and these had been maintained in part, but he had later defaulted which resulted in the arrears continuing to accrue. Mr Caldwell confirmed that the Respondent had engaged with the Applicant throughout the process and had kept them updated as to any changes to his circumstances. The Applicant had given him opportunities to sustain his tenancy. However the arrears had now reached an intolerable figure and the Applicant was seeking an eviction order. Mr Caldwell did note that the arrears had decreased since the application was raised as a result of the Respondent having made efforts to pay £250 per week towards the rent of £720.78 and the arrears. This was not a payment arrangement that had been agreed with the Applicant however if payments were to continue on that basis the Applicant would not take steps to enforce the eviction order. Notwithstanding they required the protection of same in light of the level of arrears and the payment history. Mr Caldwell confirmed that his firm had sent correspondence to the Respondent in compliance with the pre-action requirements and copies of those letters had been lodged with the application. Mr Caldwell advised that he believed the Respondent to be 39 years old.

- 6 The Respondent advised that he did not dispute anything that Mr Caldwell had said. He appreciated the Applicant's patience in this situation. He confirmed that he had faced difficulties with his employment and had faced some health issues which had impacted on his ability to maintain payments towards the rent. He was now in employment on a temporary basis with the Royal Mail but was hoping in the next couple of weeks to be given a permanent contract. He was willing to keep making payments of

£250 per week. The Respondent confirmed that he resided alone in the property but his daughter stayed with him on a regular basis. In response to questions from the Tribunal he advised that he had not sought any advice regarding his situation.

Relevant Legislation

- 7 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Housing (Scotland) Act 1988, as amended by the Coronavirus (Scotland) Act 2020, the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020 and the Coronavirus (Extension and Expiry) (Scotland) Act 2021:-

“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.

(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.

(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) 15 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 20 continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022).

(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, 2, 5, 6, 7, 9 and 17 in Schedule 5 to this Act (whether with or without other grounds); and

(b) in any other case, two weeks.

(5)

(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.

Schedule 5

Ground 8A

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 6 months' rent under the tenancy 15 when notice is served under section 19 on this ground or, if dispensed with, when proceedings are raised for an order of possession on this ground.

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.

Ground 8 of Schedule 5 of the 1988 Act was repealed by the Coronavirus (Recovery and Reform) (Scotland) Act 2022. It should also be noted that the Cost of Living (Tenant Protection) (Scotland) Act 2022 is also relevant to this application in event of an order being made under grounds 11 or 12 in terms of offering the statutory protection from eviction.

Findings in Fact and Law

- 8 The parties entered into a Short Assured Tenancy Agreement dated 14th October 2016. The tenancy was a Short Assured Tenancy as defined by section 32 of the Housing (Scotland) Act 1998 (“the 1988 Act”). The Tenancy Agreement makes provision for the tenancy to be terminated on the grounds set out in Schedule 5 of the 1988 Act.
- 9 The Respondent has been served with Form AT6 dated 23 February 2023 citing grounds 8, 8A, 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 23 February 2023 and states that proceedings will not be raised any earlier than 24 April 2023.
- 10 The Form AT6 complies with the requirements of section 19 of the Housing (Scotland) Act 1988 and is in the prescribed form.
- 11 The rent due under the said Tenancy Agreement is £720.78 per month.
- 12 The Respondent began to accrue rent arrears following the onset of the pandemic in 2020.
- 13 The Applicant had made efforts to assist the Respondent in sustaining his tenancy by agreeing payment arrangements which have not been maintained by the Respondent.
- 14 The Applicant had offered advice and support to the Respondent.
- 15 As at the date of service of the Notice to Leave arrears in the sum of £11,485.30 were outstanding.

- 16 As at the date of the Case Management Discussion arrears in the sum of £10309.35 were outstanding.
- 17 The Respondent is currently making payments at the rate of £250 per week.
- 18 The Respondent is 39 years old and is the sole occupant of the property, albeit with overnight visits from his daughter.
- 19 The arrears of rent are not due to any failure to pay housing benefit or its equivalent.
- 20 The provisions of grounds 8A of the Housing (Scotland) Act 1988 have been met.
- 21 It is reasonable to grant the eviction order.

Reasons for Decision

- 22 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.
- 23 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 been included in the Form AT6. Ground 8A is excluded from the application of the current suspension on the enforcement of an eviction order under the Cost of Living (Tenant Protection) (Scotland) Act 2022.
- 24 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.
- 25 The Tribunal accepted based its findings in fact that the rent due under the terms of the tenancy agreement between the parties was £720.78 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 now stood at £10309.35. 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. 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 the first part of ground 8A had been met.

- 26 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. Whilst the Tribunal had sympathy for the Respondent's situation and the issues he had faced, it noted that the Applicant had shown patience in its efforts to assist him in managing his arrears which had now reached a significant level. Accordingly the Tribunal determined to make an eviction order. However the Tribunal noted the Respondent's ongoing payments and the Applicant's undertaking not to enforce the eviction order whilst those payments were maintained and determined to suspend the enforcement of the order until 31st January 2024 to give the Respondent a final opportunity to sustain his tenancy.
- 27 For the avoidance of doubt the Tribunal, having concluded that ground 8A had been met, did not require to consider the remaining grounds 11 and 12.
- 28 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.

Ruth O'Hare

10 November 2023

Legal Member/Chair

Date