



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for eviction/ possession of a Rented Property in terms of Rule 65 of the Procedure Rules.

Chamber Ref: FTS/HPC/EV/23/1857

Re: 26E Summerfield Terrace, Linksfield, Aberdeen, AB24 5JH ("the Property")

Parties:

Ms Carol Edmond ('the Applicant')

Stonehouse Lettings, NeoSpace, Riverside Drive, Aberdeen, AB11 7LH ('the Applicant's Representative')

Raymond Chisom Adibe ('the Respondent')

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal')

Tribunal Member: Jacqui Taylor (Legal Member) Ann Moore (Ordinary Member)

Background

1. The Applicant applied to the Tribunal for eviction/ possession of the Rented Property in terms of Rule 65 of the Procedure Rules. The application was dated 6th June 2023 and was received by the Tribunal on 8th March 2023. The application concerns eviction proceedings in relation to a short assured tenancy in terms of section 18 of the Housing (Scotland) Act 1988 and was in the following terms:

'Ground 8A: At least 6 months' rent is in arrears on the date on which the notice of proceedings was served, or if the notice is dispensed with by the Tribunal on the date when proceedings are raised.

Ground 11: The tenant has persistently delayed paying rent.

Ground 12: Some rent is unpaid at the start of court proceedings and at the time of serving of the notice of proceedings.

The tenancy started on 24.07.2017 between the Applicant and the Respondent with a Short Assured Tenancy Agreement. When the tenancy started the Property was managed by another agent called Geraghty-Gibb which Stonehouse acquired in November 2022. From November 2022 Stonehouse became the managing agent for the Property. The Respondent fell into rent arrears in April 2021. Once Stonehouse

acquired the Property it came to light Geraghty-Gibb had not completed any of the Pre-Action Requirements, Stonehouse picked this up and the documents were emailed to the Tenant on the 19th of January 2023. A rent visit was conducted on the 23rd of January 2023 to hand deliver the documents to ensure the Respondent received a copy. The Respondent was home during this visit, advised the agent he contacted Marlene from Geraghty-Gibb the day before with an update. He confirmed he has not been working. The Respondent advised he had some recent agency work and would pay something the next couple weeks but this was a one off payment and the value of rent kept accumulating. The Applicant asked we serve Notice to Quit to bring the tenancy to an end. This was served by email and also Sherriff Officer on the 8th of March 2023. The Tenant failed to vacate by the 25th of May 2023 as requested. Therefore the Applicant is seeking an Eviction Order to bring the tenancy to an end. As per the rent statement attached, the Tenant has accumulated 24 months of rent arrears.’

2. Documents lodged with the Tribunal were:-

2.1 The Short Assured Tenancy Agreement between the parties dated 22nd March 2017. The period of the tenancy was from 24th March 2017 to 25th September 2017 and month to month thereafter.

2.2 Form AT6 dated 8th March 2023 giving notice to the Tenant to vacate the Property on or before 25th May 2023 under Grounds 8A, 11 and 12 and advising that proceedings would not be raised before 26th May 2023.

2.3 A copy of the Notice to Quit dated 8th March 2023 giving the Tenant formal notice to quit the Property by 25th May 2023.

2.4 A Certificate of Service by Gary McLean, Sheriff Officer confirming that he served the AT6 and Notice to Quit on the Respondent on 10th March 2023.

2.5 A copy of the Section 11 Notice addressed to Aberdeen City Council.

2.6 An email dated 14th June 2023 sending the section 11 notice to Aberdeen City Council.

2.7 Rent statements which showed that the rent arrears started in May 2021 and they amounted to £6490 on 24th February 2023 and £7390 on 24th May 2023.

2.8 A copy of the preaction requirement letter sent to the Respondent dated 19th January 2023.

3. By Notice of Acceptance by Alan Strain, Convener of the Tribunal, dated 11th August 2023, he intimated that he had decided to refer the application (which application paperwork comprises documents received between 6th June 2023 and 28th July 2023) to a Tribunal.

4. Case Management Discussion

4.1 This case called for a Case Management Discussion (CMD) Conference call at 14.00 on 3rd November 2023.

Neither party joined the Conference Call at 14.00. The Tribunal clerk telephoned both parties. The Applicant's representative Mrs Paige Wilson apologised for her delay and joined the Conference Call late. The Respondent did not answer the Tribunal clerk's telephone call.

The Applicant did not attend but her representative Mrs Paige Wilson of Stonehouse Lettings, attended on her behalf.

The Respondent did not attend. The Respondent had been served with notice of the CMD by Roderick Stevenson, Sheriff Officer on 29th September 2023. The Tribunal were satisfied that the requirements of Tribunal Rule 29 had been met.

4.2 No written responses had been received from the Respondent.

4.3 Mrs Paige Wilson made the following oral representations to the Tribunal:

4.3.1 The Tenant still resides in the Property. He has made no rent payments. The current rent arrears amount to £8890. She has tried to engage with the Tenant in relation to the rent arrears. She has sent the Tenant the preaction letter. She received no response from the Tenant. She confirmed that the rent statements show that the rent reduced to £300 on 24th April 2021. This was before Stonehouse Lettings took over the management of the lease. She does not know the reason for the reduction in rent.

4.3.2 It is reasonable for the Tribunal to grant the eviction due to the amount of the rent arrears. The Tenant has not explained the reason for the arrears and has not corresponded with Stonehouse Lettings about the arrears. She does not know if the Landlord has a mortgage over the Property. She confirmed that the Landlord leases two properties, numbers 26E and 26F Summerfield Terrace. As far as she is aware the Tenant resides in the Property alone and he has no disabilities. It is reasonable for the Tribunal to grant the eviction. The Tenant has not been in touch at all and has made no effort to make any payment towards the arrears.

4.3.3 She has no reason to believe that the rent arrears are due to a difficulty in the payment of a benefit to the Respondent.

5. The Tribunal made the following findings in fact:

5.1 The Applicant is owner of the Property and the disposition in her favour was recorded in the General Register of Sasines on 30th October 2013..

5.2 The Landlord named on the lease and the Registered Landlord of the Property is Carol Edmond.

5.3 The Tenant named on the short assured tenancy agreement is Raymond Chisom Adibe.

5.4 The original term of the Tenancy was from 24th March 2017 to 25th September 2017 and month to month thereafter.

5.5 The rent due in terms of the lease was £420 per calendar month. The rent reduced to £300 per month on 24th April 2021.

5.6 The rent arrears amounted to £6490 on 24th February 2023 and £7390 on 24th May 2023.

5.7 The Notice to Quit and AT6 were served on the Respondent on 10th March 2023.

6 Requirements of Section 65 of the Procedure Rules.

(a) The Tribunal confirmed that the application correctly detailed the requirements of section 65 of the Procedure Rules namely:-

- (i) the name, address and registration number of the Landlord.
- (ii) the name and address of the Landlord's representative.
- (iii) the name and address of the Tenant.

(iv) the possession grounds that apply.

(b) The Tribunal confirmed that the application had been accompanied by the documents specified in Section 65(b) of the Procedure Rules:

(i) The Tenancy Agreement.

(ii) A copy of the AT6.

(iii) A copy of the notice to quit served by the Landlord on the Tenant.

(iv) A rent statement showing transactions from 24th March 2017 to 24th May 2023 was provided. The statement showed that the Tenant's rent arrears exceeded six months rent (£1800).

(v) The required notice giving Aberdeen City Council notice of the proceedings under section 11 of the Homelessness etc Scotland Act 2003.

The Tribunal were satisfied that the AT6 and the Notice to Quit were valid. The AT6 gave the Respondent in excess of the required period of two months notice and the Notice to Quit gave the Respondent in excess of forty days notice. The Notice to Quit was in correct form and gave the Respondent notice that the lease was terminating at the ish date (25th May 2023).

(c) The Tribunal confirmed that the application form had been electronically signed and dated by the Landlord's agents as required by Section 65(c) of the Procedure Rules.

7. Requirements of Section 18(1) of the Housing (Scotland) Act 1988

This section states that the Tribunal will not make an order for possession of a property let on an assured tenancy except on one or more grounds set out in Schedule 5 of the Act.

The application stated that the application for the eviction/ order for possession was based on the following grounds of Schedule 5 of the 1988 Act:-

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 six months rent under the tenancy 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.

The Tribunal found that at the date of service of the AT6 (10th March 2023) and at today's date the Respondent had rent arrears in excess of £1800 (being the amount of

six months rent) and the arrears extended over a period of twenty nine months. The Tenant has delayed in paying the rent legally due over this period.

8. Requirements of Section 18(4) of the Housing (Scotland) Act 1988.

The Tribunal accepted the oral evidence of the Applicant to the effect that the rent arrears is not due to the failure or delay in payment of a benefit.

The Tribunal were mindful of the decision of Lord Greene in the case of *Cummings v Dawson* (1942) 2 All ER 653 on matters to consider when determining reasonableness:

'In considering reasonableness... it is my opinion, perfectly clear that the duty of the judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad, common sense way as a man of the world, and to come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or more weight, others may be decisive.'

The Tribunal found that it was reasonable for the eviction order to be granted given the considerable amount of the rent arrears owing; the fact that the arrears have been ongoing since May 2021; the fact that the Letting Agents had issued a preaction letter to the Respondent and also the fact that the Respondent has not engaged with the Letting Agents regarding the rent arrears and he has not provided any written representations.

9. Requirements of Section 19 of the Housing (Scotland) Act 1988

The Tribunal determined that a valid AT6 notice had been served on the Respondent and the required period of two months notice had been given.

10. Requirements of Section 19A of the Housing (Scotland) Act 1988

The Tribunal determined that a valid notice of the raising of proceedings had been served on the Local Authority.

11. Decision

The Tribunal determined that the requirements of section 18 of the Housing (Scotland Act) 1988 had been complied with and made an order for possession of the Property.

12. The Tribunal noted that the provisions of the Cost of Living (Tenant Protection)(Scotland) Act 2022 in relation to delaying evictions do not apply to this application as the Order for Possession is granted on the basis of the application of Ground 8A of the 1988 Act.

13. 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.



Legal Member

3rd November 2023