

Housing and Property Chamber

First-tier Tribunal for Scotland



Decisions with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014 and Section 18 of the Housing (Scotland) Act 1988.

Chamber Ref: FTS/HPC/EV/23/2229

Re: Property at Flat 2/1 Raglan Street, Dundee, DD4 6NU (“the Property”)

Parties:

Mr Joginder Singh Athwal, 9 Gilston Place, Broughty Ferry, Dundee, DD5 3JB (“the Applicant”); and

Gilson Gray LLP, 29 Rutland Square, Edinburgh, EH1 2BW (“the Applicant’s Representative”); and

Dr Alexander Chisholm, Flat 2/1, 6 Raglan Street, Dundee, DD1 6NU (“the Respondent”)

Tribunal Members:

G McWilliams- Legal Member

L. Forrest - Ordinary Member

Decision:

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determines to grant the Application.

Background and Case Management Discussion on 14th November 2023

1. This Application has been brought in terms of Rule 65 (Application for an order for possession in relation to assured tenancies) of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the 2017 Rules”).

2. The parties entered into a short assured tenancy agreement with a commencement date of 8th March 2017. The tenancy agreement's monthly rental payment amount is £360.00. The Applicant, Mr Athwal, through his Representative, served a Notice to Quit the Property, no later than 8th April 2023, upon the Respondent on 31st January 2023. Mr Athwal, through his Representative, issued a Notice of Intention to raise Proceedings for Possession of the Property on 18th April 2023. The latter Notice stated that proceedings were to be raised on the basis of Ground 8A in Schedule 5 to the Housing (Scotland) Act 1988 ("the 1988 Act"), namely that the Respondent Dr. Chilsholm had incurred substantial rent arrears of £6,888.00 at 8th April 2023. Mr Athwal subsequently lodged this Application with the Tribunal.
3. A Case Management Discussion ("CMD") proceeded remotely by telephone conference call, at 10.00am on 14th November 2023. The Representative's Mr D. Gray attended as did the Respondent Dr Alexander Chisholm.
4. Mr Gray submitted that the rent arrears outstanding at 5th November 2023 were in the sum of £9,408.00. He stated that no rent had been paid since January 2022, and almost two years' rent was outstanding. He said that Mr Athwal and the co-owner of the Property, his wife, were not commercial landlords and this was the only property that they rent. He stated that they were having to make payment of the mortgage for the Property themselves and that this situation was unsustainable for them. He submitted that it was reasonable, in all the circumstances that an order for recovery of possession of the Property be granted.
5. Dr. Chisholm acknowledged that the rent arrears referred to by Mr Gray were owing. He said that his occupation was medical writer and that he had had difficulties obtaining regular work for a number of years. He said that he was last in work for a period of one month at the beginning of 2023. He acknowledged that he had not been able to pay rent at that point and had not paid rent to the Applicant for almost two years. He stated that if he gains employment he should be able to pay rent and something towards arrears. He said that after receiving the Application he was considering moving to reside with family or to further his career abroad. Dr. Chisholm also referred to issues with the condition of the Property which had not previously been raised.

Findings in Fact and Law

6. The parties have a tenancy agreement which began on 8th March 2017.
7. Dr. Chisholm was in substantial arrears of rent, of £6,888.00 on 8th April 2023 and currently in the amount of £9,408.00. He has not made payment of rent to Mr Athwal for almost 2 years. Dr. Chisholm has no proposals to make for payment of rent and/or arrears at this time.

8. Mr Athwal and his wife are making the mortgage repayments in respect of the Property from their own funds. They are not commercial landlords.
9. Dr. Chisholm is considering moving to reside with family or to reside abroad to further his career.
10. The Ground upon which the Application proceeds, namely Ground 8A in Schedule 5 to the 1988 Act, is satisfied. It is reasonable that an order for possession is granted. Accordingly, the Application is granted.

Reasons for Decision

11. Section 16 of the Housing (Scotland) Act 2014 provides as follows:

“16. Regulated and assured tenancies etc.

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal -

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

12. Accordingly, the Tribunal now has jurisdiction in relation to claims by landlords, such as Mr Athwal, against tenants, such as Dr Chisholm, for possession relating to a tenancy agreement, such as the parties' tenancy agreement.

13. In terms of Section 18 of the 1988 Act the Tribunal shall not make an order for possession of the house let on the tenancy except on one or more of the grounds set out in Schedule 5 to the 1988 Act.

14. Ground 8A in Schedule 5 to the 1988 Act provides that it is an eviction ground that the tenant has accrued arrears of rent and the cumulative amount of those arrears equates to, or exceeds, the equivalent of 6 months' rent when Notice of Intention to raise Proceedings is served or, if dispensed with, when proceedings are raised for an order for possession on this ground.

15. Accordingly, the Tribunal has jurisdiction in relation to claims by a landlord, such as the Applicant, for an eviction order in respect of a tenancy such as the tenancy agreement of the parties.

16. The Tribunal considered all of the written and oral submissions.

17. Having considered and weighed the available evidence, and taken account of Mr Gray and Dr. Chisholm's submissions, the Tribunal found, on a balance of probabilities, that there are substantial arrears of rent owing, currently in the sum

of £9,408.00, which represents outstanding rent owing in a cumulative amount exceeding the equivalent of 6 months' rent. The Tribunal further found, on a balance of probabilities, that Dr. Chisholm will be able to move to other accommodation, either with family or abroad. Dr. Chisholm stated that he has not paid rent for almost 2 years, cannot make any proposal for payment of rent or arrears at this time and that he has options for moving to alternative accommodation, with family or in another country. The Tribunal also found, on a balance of probabilities, that Mr Athwal is not a commercial landlord and that he and his wife are having to make payment of the mortgage for the Property themselves. Mr Gray submitted that this was the case and Dr Chisholm did not contradict him.

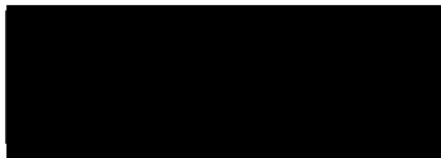
18. Rule 17(4) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the 2017 Rules") provides that the Tribunal may do anything at a CMD which it may do at a Hearing, including making a decision. Having considered and weighed the available evidence, submissions, the Tribunal was satisfied that Ground 8A in Schedule 5 to the 1988 Act was met and that it was reasonable that Dr. Chisholm's continuing occupation of the Property, without payment of rent to Mr Athwal, be brought to an end. This will stop the accrual of further rent arrears and Dr Chisholm can, as he stated, move to alternative accommodation.

Decision

19. The Tribunal grants the Application. This order is not to be enforced before 12 noon on 14th December 2023.

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.



14th November 2023

Legal Member

Date