



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, as amended (“the 1988 Act”) and Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations”)

Chamber Ref: FTS/HPC/EV/23/2283

Re: Property at 43 Muirside Drive, Tranent, EH33 2JT (“the Property”)

Parties:

Mr Niel Jorgensen, c/o Matrix Property Management Limited, 132 St Stephen Street, Edinburgh, EH3 5AA (“the Applicant”)

Ms Cherelle Knox, Mr Mark Ure, 43 Muirside Drive, Tranent, EH33 2JT (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Angus Lamont (Ordinary Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession of the property be granted.

Background

1. By application received on 10 July 2023, the Applicant applied to the Tribunal for an order for recovery of possession of the property in terms of Section 18 of the 1988 Act, as amended. The application stated that the Respondent owed the sum of £4,614.96 in respect of unpaid rent for the property and sought possession on Grounds 11 and 12 (persistent delay in paying the rent and some rent lawfully due) of Schedule 5 to the 1988 Act. Copies of the tenancy agreement, AT5, AT6/and proof of service of same), statement of rent account; Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 and other documentation were submitted in support of the application. A separate application (FTS/HPC/CV/23/2284) was submitted together with this application in respect of a payment order sought in respect of the rent arrears and both applications are being dealt with together.

2. On 29 August 2023, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. On 11 October 2023, a copy of the application and supporting documentation was served on both Respondents by Sheriff Officer at the property address. Parties were notified of the date, time and location of the Case Management Discussion (“CMD”) and notified that any written representations in respect of the application should be submitted to the Tribunal by 30 October 2023. Written representations were received from the First Respondent, Ms Cherelle Knox, by email on 23 October 2023. No representations were received from the Second Respondent.
4. On 1 November 2023, the Applicant’s representative emailed the Tribunal with some written submissions in response to the representations lodged by Ms Knox, an updated statement of rent account and advising of an increase in the rent arrears owing to £5,513.41.

Case Management Discussion

5. The application called before the Tribunal for a CMD on 14 November 2023 at 10am. In attendance were Mr Adam Gardiner, Solicitor, of Messrs Lindsays, solicitors on behalf of the Applicant and Ms Kaytlin Irvine, also of Lindsays, as an observer only. The Legal Member delayed the commencement of the CMD for around 10 minutes to give an opportunity for any of the Respondents to join the CMD late but they did not do so.
6. Following introductions and introductory remarks by the Legal Member, Mr Gardiner was asked to address the application, in terms of the technical aspects of the application, the grounds for eviction relied upon and also reasonableness. The written representations from the Respondent, Ms Knox were also referred to and Mr Gardiner was also asked to comment on those. Mr Gardiner made reference to the supporting documentation lodged with the application and subsequently on behalf of the Applicant and confirmed that the arrears now amount to £5,513.41. He stated that it can be seen from the rent statement produced that there is a long history of rent arrears but that they appeared to become more significant from June 2020 when the Applicant had increased the monthly rent from £670 to £820. There has been no corresponding increase in the rent payments being received by way of Ms Knox’s benefits which have always been paid directly to the Applicant, at the Respondent’s request. The arrears have now reached an unmanageable level and this is the reason that an eviction application is being sought. Mr Gardiner is aware that Ms Knox is stating in her representations that she was unaware that her rent had been put up. He made reference to the letter dated 20 April 2020 sent by the Applicant regarding the rent increase and explained that this was sent personally by the Applicant by ordinary post so there is no proof of posting that can be produced. However, he stated that this process for increasing the rent is in accordance with the terms of the lease and made the

point that Ms Knox has, by her own admission, been aware of the rent increase and the rent arrears situation since at least June 2022 and has failed since then to do anything to address it. She has stated in her representations that she can inform the benefits authorities of a rent increase to increase the amount being paid by way of benefits but appears not to have done so as the payments being made into the rent account have not increased. The Applicant cannot resolve this matter with the benefits authorities directly as the tenant has to do that themselves. Mr Gardiner stated that it is clear from Ms Knox's representations that she does not dispute that the full rent is not being met and has not stated any clear defence to the matter. He stated that Ms Knox's comments regarding the alleged repair issues affecting the Property are not relevant here as she has not claimed to be withholding rent for this reason nor followed the proper processes for retention of rent or seeking an abatement of rent. Nor does she appear to have sought assistance from the Tribunal by way of a Repairs application. In his view, Ms Knox has been on notice for over a year at least regarding the level of arrears and that the Applicant was taking action but has failed to address the matter or provide any explanation for her failure to do so. From her representations, it appears that Ms Knox has sought advice from the local authority but has basically been advised that she just has to wait for an eviction order to be granted before she will be considered for local authority housing. He is not aware of her contacting the Applicant directly or engaging with him and nor has there been any contact from the Second Respondent, Mr Mark Ure. Although he is believed no longer to be residing in the Property, Mr Gardiner explained that the eviction order is having to be obtained against both Respondents as Mr Ure remains a joint tenant. Mention was also made of the existence of a guarantor, Mr Simon Ure, in respect of this tenancy and that the separate payment application has the guarantor as a Third Respondent. Mr Gardiner advised that there has been no contact from the guarantor in respect of the rent arrears side of things either. He submitted that it was reasonable in all the circumstances for the Tribunal to grant an eviction order today, on grounds 11 and 12, in respect of rent arrears.

7. In response to questions from the Tribunal Members, Mr Gardiner stated that the technical aspects of the eviction application have been properly carried out and referred to the supporting documentation lodged. He referred to the AT6 which was properly served on the Respondent by Sheriff Officer and gave the appropriate amount of notice. He advised that a Notice to Quit was not required in terms of this application due to these grounds for eviction being narrated in the lease itself and in terms of the provisions of the 1988 Act which makes it competent to terminate the tenancy by way of an AT6 only. The AT6 gives an opportunity to the tenant to resolve the arrears situation but the Respondent here has not done anything in that regard. As to the Applicant's attempts to contact the Respondent regarding the rent arrears previously and, in terms of the pre-action requirements, Mr Gardiner advised that some communications have been lodged with the Tribunal papers. He referred to letters dated 24 June 2022 and 23 March 2023 from the Applicant's agents and an email from the Applicant himself to Ms Knox dated June 2022 which she refers to in her representations too. He explained that there were two previous AT6s served on the Respondent, coinciding with the correspondence referred to but that the Applicant was a pragmatic person and had not proceeded with earlier action as

he had thought from his communications with Ms Knox around June 2022 that there was going to be a possible resolution to the rent arrears situation. Mr Gardiner advised that he was not aware of any steps taken by the Applicant or his agents at an earlier stage regarding the historical rent arrears. Nor was he aware of whether a separate letter increasing the rent from June 2020 had been sent by the Applicant to the Second Respondent, Mr Ure, at the same time as the letter produced to the Tribunal addressed to Ms Knox. He did not think that the Respondent would have routinely been issued with copies of the rent account but stated that the correspondence mentioned did advise of the levels of arrears at the relevant time. As to reasonableness, Mr Gardiner advised that from the Applicant's perspective, the arrears situation is clearly impacting on the Applicant's finances, both in terms of there having been a shortfall in the monthly rental payments being made for some considerable time and in terms of the significant level the arrears have now reached. The Applicant currently has six rental properties but he is looking to sell a fair proportion of these at the present time. That would likely involve this property too but that is not part of the grounds for eviction being relied on here. As to the Respondent's circumstances, Mr Gardiner advised that he is not aware of the personal circumstances of the Second Respondent and only knows the circumstances of Ms Knox in terms of what she has included in her representations to the Tribunal. She refers to Mr Ure as being her former partner and to having two children living with her but Mr Gardiner does not know their ages or details. He does not know if she is working but appears to have limited income, given the terms of her representations and the fact that she has been in receipt of housing benefit throughout the tenancy. Mr Gardiner summed up and invited the Tribunal to find that the grounds for eviction are established and that it is reasonable for an order to be granted today.

8. The Tribunal adjourned briefly to consider matters and, on re-convening, the Legal Member advised that the Tribunal had decided that it was appropriate for the eviction order sought to be granted today. Mr Gardiner and Ms Irvine were thanked for their attendance and the CMD concluded.

Findings in Fact

1. Applicant is the owner and landlord of the Property.
2. The Respondent is the joint tenant of the Property by virtue of a short assured tenancy which commenced on 1 August 2013.
3. The Respondent (or at least the First Respondent) still occupies the Property.
4. The rent in terms of the lease was initially £650 per calendar month which was increased during the tenancy, most recently, as from 1 June 2020, to £820 per calendar month.
5. There has been a pattern of rent arrears occurring throughout the tenancy but rent arrears have particularly increased since June 2020 as the rental payments have not risen to reflect the increase in rent.

6. Payments towards rent are continuing to be made directly to the Applicant from the Respondent's Housing Benefit at the rate of around £670 per month.
7. The rent arrears owing as at 1 November 2023 amount to £5,513.41.
8. The tenancy agreement specifies Grounds 11 and 12 of Schedule 5 to the 1988 Act as grounds for the tenancy to be brought to an end.
9. An AT6 dated 17 May 2023, specifying Grounds 11 and 12, was served on each of the Respondents by way of Sheriff Officer on 18 May 2023, at which point the rental arrears owing were £4,498.45.
10. The Tribunal Application was submitted on 10 July 2023, at which time the rent arrears amounted to £4,614.96.
11. The Respondent has been called upon to make payment of the rent arrears but has failed to do so.

Reasons for Decision

1. The Tribunal considered all of the background papers, including the application and supporting documentation and the oral submissions made by the Applicant's representative at the CMD. The First Respondent submitted written representations to the Tribunal but did not attend the CMD, having been properly and timeously notified of same. The Second Respondent did not submit written representations or attend the CMD. The Tribunal noted the terms of the First Respondent's representations and queried the Applicant's agent in relation to the various issues she had raised.
2. The Tribunal was satisfied that Grounds 11 and 12 of Schedule 5 to the 1988 Act are specified in the tenancy agreement as grounds for the tenancy being brought to an end and that there was accordingly no requirement for a Notice to Quit to be served on the Respondent; that the AT6 was in correct form, specified Grounds 11 and 12 as grounds for recovery, was served timeously and gave the requisite minimum period of notice of 2 weeks applicable to these grounds of recovery; and that these Tribunal proceedings were thereafter brought after the effective date specified in the AT6 (2 June 2023). Accordingly, the requirements of Section 19 of the 1988 Act had been met.
3. The Tribunal was also satisfied from the information contained in the application and supporting documentation, together with the oral submissions made by the Applicant's agent at the CMD that Grounds 11 and 12 had been met, in that the Respondent had persistently delayed paying rent (Ground 11) and that some rent was unpaid at the start of the Tribunal proceedings and at the time the Respondent was served with the AT6 (Ground 12). The Tribunal was also satisfied that it was reasonable, having regard to the above, the substantial level of the arrears and to the circumstances of the case, to grant an order for

possession of the property on these grounds in terms of Section 18 of the 1988 Act. The Tribunal had no material before it to suggest that any delay or failure to pay rent by the Respondent was as a consequence of delay or failure in the payment of Housing Benefit or Universal Credit. The Tribunal noted that some correspondence had been issued to the Respondent in terms of the 'pre-action requirements' on behalf of the Applicant by his agents and that the Applicant himself had appeared to have had some, albeit limited, contact with the Respondent around June 2022. The Tribunal considered the issues raised by the First Respondent in her representations, particularly that she claimed not to have been aware of the rent increase which had been applied from June 2020 until June 2022. However, the Tribunal noted the terms of the copy letter from the Applicant addressed to the Respondent and dated 20 April 2020 regarding the rent increase which had been produced on behalf of the Applicant in response to the First Respondent's representations. The Tribunal also noted the terms of clause 7 of the tenancy agreement setting out the process for rent increases which, on the face of it, had been complied with here by the Applicant. The Tribunal considered that, even if the First Respondent had not known about the rent increase prior to June 2022, she had, by her own admission, known about it and the extent of the arrears since then but appeared not to have taken steps to address the arrears and Housing Benefit situation. As to the repairs issues raised by the First Respondent, the Tribunal agreed with the Applicant's agent's submissions that this was a separate matter to the rent arrears as there was no assertion by the First Respondent that the arrears have arisen or partly arisen as a consequence of her formally withholding rent due to repair issues. As the First Respondent had not attended the CMD, the Tribunal had been unable to explore these issues in more detail with her. In considering reasonableness, the Tribunal took into account the length of the tenancy and the First Respondent's personal and financial circumstances as outlined by her in her representations. In particular, the Tribunal noted that she had advised that she is a single-parent, has two children, limited finances, is suffering from stress and is anxious about the prospect of being made homeless with her children. Whilst sympathising with the First Respondent's circumstances, the Tribunal noted that she had already been in contact with the local authority and that assistance with obtaining alternative accommodation was likely to be available to her and may, in fact, be prioritised if an eviction order is granted. The Tribunal was also aware that this application is subject to the Cost of Living (Tenant Protection) (Scotland) Act 2022 and that the enforcement of any order would therefore be subject to at least a 6 month delay, which would provide the First Respondent with some time to secure alternative accommodation. Given the financial consequences for the Applicant of the shortfall in rent payments he has been experiencing over a lengthy period of time and the significant level of arrears, which arrears are steadily increasing, and having regard to all the background circumstances as outlined above, the Tribunal was satisfied overall that it was reasonable for the eviction order sought to be granted.

4. The Tribunal concluded that, in the circumstances, the application does not require to go to an Evidential Hearing and that an order could properly be made at the CMD today.

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.

N Weir

Legal Member/Chair

14 November 2023
Date