



Decision 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/23/3102

Re: Property at 25 Station Road, Kelty, KY4 0BL (“the Property”)

Parties:

Mr William Russell, La Plechade, 25 Chemin de Chapelier, Luby Betmont, France, 65220, France (“the Applicant”)

Ms Lorna Stewart, 25 Station Road, Kelty, KY4 0BL (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and John Blackwood (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at 25 Station Road, Kelty, KY4 0BL under Section 33 of the Housing (Scotland) Act 1988 be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with his goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same.

Background

- 1. By application dated 5 September 2023, the Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for recovery of possession the Property in terms of Rule 65 the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”). The action is based on the Respondent’s substantial rent arrears.**

2. The application was accompanied by a copy of a Short Assured tenancy dated 26 May 2017, an AT5 dated 26 May 2017, a rent statement to 30 September 2023, a Notice to Quit dated 26 September 2022 with Recorded Delivery proof of service dated 21 September 2022, a letter dated 30 April 2023 addressed to the Respondent, an AT6 dated 16 May 2023 together with Sheriff Officer's Execution of Service also dated 16 May 2023 and a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 with covering email to Fife Council dated 5 September 2023.
3. On 13 October 2023 the Tribunal accepted the application under Rule 9 of the Regulations 2017.
4. On 16 November 2023 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 7 December 2023. The Tribunal advised parties that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 12 January 2024. This paperwork was served on the Respondent by William Wywalec, Sheriff Officer, Kirkcaldy on 17 November 2023 and the Execution of Service were received by the Tribunal administration.
5. The Tribunal issued a Notice of Direction for the Applicant to lodge an up to date rent statement together with correspondence with the Respondent regarding the arrears. The Applicant's solicitor responded accordingly.

Case Management Discussion

6. The Tribunal proceeded with a CMD on 12 January 2024 by way of teleconference. The Applicant was represented by Mr Jarvie from Bannatyne Kirkwood France, solicitors. The Respondent was not present or represented despite the Tribunal starting 5 minutes late to allow the Respondent time to join. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded in her absence. The case was heard together with an arrears action under reference FTS/HPC/CV/23/3105.
7. Mr Jarvie asked the Tribunal to grant an Order for eviction and submitted it was reasonable to grant the order for possession under Ground 8A of Schedule 5 of the Housing (Scotland) Act 1988 ("the 1988 Act"). The arrears were substantial and currently stood at £7200 having increased since the rent statement showing arrears of £6800. There had been no payment since 7 October 2022. The Respondent's non-payment was affecting the Applicant considerably. There was a mortgage on the Property and without payment for rent the Applicant was paying for the Respondent to live there. Although he owns other rental properties, the Applicant is due to retire and use these properties as part of his retirement plans. The Respondent lived on her own. There had been no contact with the Respondent since 24 August 2023. The Tribunal noted this message stated the Respondent had no money and no where else to live. Mr Jarvie advised there was a suspicion she may no longer be living in the Property. They had sign posted her to support agencies in their

letter of 30 April 2023, but without any contact from the Respondent there was little more the Applicant could do. He was not aware of there being any benefits issues.

Reasons for Decision

8. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the oral submissions made by Mr Jarvie at the CMD. The Tribunal concluded that the Applicant was entitled to seek repossession of the Property under Section 18 of the Housing (Scotland) Act 1988. The Tribunal was satisfied that the statutory provisions of Section 18 of the 1988 Act had been met by service of the Notice to Quit and the AT6. The Tribunal were also satisfied that the Respondent was in substantial rent arrears of over six months both when the AT6 was served and at the date of the CMD. The Tribunal noted that a pre-action letter had been sent to the Respondent on 30 April 2023 together with various text messages regarding the arrears and that a Section 11 Notice had been sent to Fife Council 5 September 2023.
9. The Applicant also has to satisfy the Tribunal that it is reasonable to evict. In determining whether it is reasonable to grant the order the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal considered that the amount of the arrears which had not been disputed were substantial at £7200. The monthly rent was £400 which equated to 18 months arrears. It appeared to the Tribunal that the Respondent had not engaged at all with the Applicant other than to say she had no money. The Tribunal gave weight to the fact she had not entered into any repayment arrangement with the Applicant. On the other hand, the Applicant was still having to pay a mortgage on the Property. On balance the Tribunal did not feel that it was reasonable to expect the Applicant to continue to bear the ongoing loss of rent in light of the fact that the arrears were substantial and that it appeared the Respondent was not in a position to pay ongoing rent let alone try to reduce the arrears. The balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order.
10. In the circumstances the Tribunal considered that Ground 8A of Schedule 5 of the Act had been established and that it was reasonable to grant an eviction order.

Decision

11. The Tribunal granted an order for repossession. 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.



Legal Chair

Date: 14 January 2024