



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18 Housing (Scotland) Act 1988 (“the 1988 Act”)

Chamber Ref: FTS/HPC/EV/23/3810

Property at 15/1F, Clarendon Crescent, Edinburgh, EH4 1PU (“the Property”)

Parties:

Ms Denise Donovan (Formerly Rafferty), 5 Spencer Villas, Glenageary, CO Dublin, A96 A6K6, Ireland (“the Applicant”)

Mr Peter Wilkinson, 15/1F, Clarendon Crescent, Edinburgh, EH4 1PU (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted against the Respondent in favour of the Applicant.

Background

- 1.** The Applicant seeks an order for possession in terms of Section 18 of the Housing (Scotland) Act 1988 (“the 1988 Act”) A copy tenancy agreement, Notice to Quit, AT6 Notice, Sheriff officer certificates of service, Section 11 Notice, Pre Action Protocol letters and a rent statement were lodged in support of the application. The application and AT6 state that recovery of possession is sought on ground 8A of schedule 5 of the 1988 Act.
- 2.** A copy of the application and supporting documents were served on the Respondent by Sheriff Officer. Both parties were advised that a Case Management Discussion (“CMD”) would take place on 14 February 2024 at 2pm by telephone conference call. They were provided with a telephone

number and passcode and advised that they were required to participate. On 26 January 2024, the Applicant's solicitor lodged an updated rent statement and a request to amend the sum claimed in a related application (CV/23/3811) to £17,400.

3. The CMD took place on 14 February 2024. The Applicant was represented by Ms Callaghan. The Respondent did not participate and was not represented. He did not contact the Tribunal in advance of the CMD or lodge written representations.

Case Management Discussion

4. Ms Callaghan told the Tribunal that the Respondent is still occupying the property. Access was allowed for a valuation of the property in October 2023 and a gas safety check in November 2023. There has been no access to the property since then, although the Applicant has asked for access to inspect the property. The photographs taken at the valuation indicate that the property is in poor condition, with water damage in the bathroom from an unreported leak. The Applicant recently sent a letter to the Respondent asking for access on 13 January, but he did not respond. In response to questions from the Tribunal, Ms Callaghan stated that the Respondent is 59 years of age and employed as a geometric engineer. The rent was paid in full until February 2023. The Applicant does not know whether he has claimed or is entitled to benefits. When the payments to the rent account stopped the Applicant contacted the Respondent on several occasions. She was told that he was waiting for payment of an invoice, then that he had been out of the country. He also advised that he was trying to sell an asset to put him in funds. However, no rental payments were forthcoming. The Applicant then issued pre action protocol information and served the notices. The Respondent lives at the property alone and the Applicant is not aware of any health issues or disabilities. The rent arrears have increased to £17400. The Applicant has a young child and wishes to reduce her working hours to look after her child but is unable to do so while covering the monthly mortgage payment of £1075 for the property from her earnings. She seeks recovery of possession of the property and intends to sell it.

Findings in Fact

5. The Applicant is the owner and landlord of the property.
6. The Respondent is the tenant of the property in terms of an assured tenancy agreement.
7. The Respondent is due to pay rent at the rate of £1450 per month.
8. The Respondent owes the sum of £17,400 in unpaid rent to the Applicant.

9. The Applicant served an AT6 Notice and Notice to Quit on the Respondent.
10. The Applicant has issued letters in compliance with the Rent Arrears Pre Action Protocol.
11. The Respondent resides at the property alone. He has made no payments to the rent account since January 2023. He is understood to be in employment.

Reasons for Decision

12. The application was submitted with an assured tenancy agreement. The initial term of the tenancy was 25 August 2008 until 25 February 2009, with a provision that it would continue on a two monthly basis thereafter, if not terminated at the end of the initial term. The Applicant also submitted a Notice to Quit and AT6 Notice, with Sheriff Officer certificates of service. These establish that the Notice to Quit was served on 23 June 2023 and the AT6 on 24 August 2023. The Notice to Quit called upon the Respondent to vacate the property on 25 October 2023, an ish date. It contains the information prescribed by the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 and complies with Section 112 of the Rent (Scotland) Act 1984. The Tribunal is therefore satisfied that the Notice to Quit is valid and that the tenancy contract has been terminated. The AT6 Notice is in the prescribed format and specifies ground 8A of schedule 5 of the 1988 Act. It states that the earliest date that proceedings can be taken is 25 October 2023, giving the Respondent two months notice, as required by Section 19(4) of the 1988 Act. A copy of a section 11 Notice has also been lodged, with evidence that it was sent by email to the Local Authority. The Tribunal concludes that the Applicant has complied with Sections 19 and 19A of the 1988 Act.
13. Section 18 of the 1988 Act (as amended by the Cost of Living (Scotland) Act 2022) states:-
 - (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 the Act.
 - (4) If the First-tier Tribunal is satisfied that any of the grounds in Part i or Part 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.

(4ZB) In considering, for the purposes of subsection (4) above, whether it is reasonable to make an order for possession on ground 8A in schedule 5 the First-tier Tribunal is to consider-

 - (a) 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.

14. Ground 8A of Schedule 5 states, “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 when the notice is served under section 19 on this ground or, if dispensed with, when proceedings are raised for an order for possession on this ground.”
15. From the application form, the documents submitted by the Applicant, and the information provided at the CMD, the Tribunal is satisfied that the Respondent has been in arrears of rent since February 2023 and owed the sum of £8700 at the date of service of the AT6 notice. He currently owes the sum of £17, 400 in unpaid rent. The Applicant is therefore entitled to rely on ground 8A of the 1988 Act.
16. The Tribunal proceeded to consider whether it would be reasonable to grant the order for possession and noted the following:-
- (a) The Applicant has issued several letters in compliance with the Rent Arrears Pre Action Protocol These letters appear to provide all of the information specified in the protocol. The Applicant has also made other efforts to engage with the Respondent in relation to the arrears of rent.
 - (b) The Respondent did not attend the CMD or provide any information to the Tribunal. The Tribunal noted that there is no evidence to indicate that the arrears are due to a delay or failure in the payment of a relevant benefit, such as housing benefit or universal credit. The Respondent is understood to be in employment and paid his rent in full each month until February 2023.
 - (c) The rent arrears are substantial and are increasing.
 - (d) The Respondent is understood to live at the property alone.
 - (e) The Applicant intends to sell the property.
 - (f) The Applicant is currently having to meet mortgage payments of £1075 per month from her earnings and is unable to reduce her working hours to spend time with her daughter because of the rent arrears.
 - (g) The Applicant has concerns about the condition of the property having received photographs taken during a valuation which indicated that there is water damage due to an unreported leak.
17. Having regard to the factors listed in (a) to (g) above, the Tribunal is satisfied that it is reasonable to grant an order for possession of the property.
18. As the Applicant has complied with the requirements of the 1988 Act, and as the Tribunal is satisfied that it would be reasonable to grant the order, the Tribunal determines that an order for possession should be granted.

Decision

19. The Tribunal determines that an order for possession of the property should be granted against the Respondent.

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.

J. Bonnar

Josephine Bonnar, Legal Member

14 February 2024