



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

Chamber Ref: FTS/HPC/EV/23/3782

Re: Property at 19 Gleneagles Gardens, Bishopbriggs, Glasgow, G64 3EE (“the Property”)

Parties:

Mr Ewan Thomson, 21 Netherhouse Avenue, Lenzie, Glasgow, G66 5NF (“the Applicant”)

Mr David Dalziel, Mrs Marie Dalziel, 19 Gleneagles Gardens, Bishopbriggs, Glasgow, G64 3EE (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it should grant an order for eviction.

Background

1. An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under rule 65 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order for recovery of possession in relation to an assured tenancy under the Housing (Scotland) Act 1988 by the Applicant against the Respondent in relation to the property.
2. The application contained,
 - a copy of the tenancy agreement;
 - copy of the AT6 form with evidence of service;
 - copy of a notice to quit;

- section 11 notice;
 - rent statement;
 - copies of letters to the respondent about the rent arrears
3. The applicant had also submitted prior to the CMD two further letters sent to the respondents about their arrears sent in January and February both 2022. The respondents had seen these letters.
 4. The Applicant appeared, together with his supporter, Mr Annan. Both Respondents also appeared.

The Case Management Discussion

5. The Applicant confirmed that he was seeking an order for eviction. He advised he did not wish there to be any animosity with the Respondents. He had discussed the matter with the respondents, he understood that they could not afford the property. They had discussed with him that they needed to find somewhere affordable to live. He advised that the respondents could not get any assistance from the council until such time as there was an order for eviction against them. He had contacted the council and they had confirmed that this was the case.
6. He advised that the current rent arrears were now over £24,000.00.
7. He advised that he had not initially pursued the arrears, however, his circumstances had changed and he could no longer afford for the rent and arrears to be unpaid. He had been aware of the changes to the legislation due to the COVID-19 pandemic and the cost of living crisis, and he had not been pursuing the arrears pre-September 2022. However he had to pursue the post-September 2022 arrears, and once there were more than six months of arrears he wished to raise proceedings.
8. He advised that there had been no payments since September 2023, when £400 had been paid at that time. He said that he understood that the respondents were in a difficult position but he could not afford to leave matters as there were. He would be happy to go to the council with them and discuss their situation if that assisted the respondents.
9. The respondents advised that they were not happy with their situation. They were in a very difficult position in finding suitable and affordable housing.
10. They accepted that they had been unable to afford the property, and they had advised the council of this. The council had advised them that they would not be able to assist them until such time as there was an order of eviction granted against them.

11. Given that advice they had not intended to oppose the order for eviction being granted, things had recently however taken a downward turn, as they had been told by the council last week that because they were not paying their rent, the council might consider them intentionally homeless and then not help them find any other accommodation. The respondent advised that they were both very worried about this new council advice and now felt that they had to oppose the order being granted as they were frightened that they would have nowhere to live and not be supported by the council in getting other accommodation. They advised that they also were worried as they would be unable to get a good tenancy reference.
12. They confirmed that they did not dispute the level of rent arrears that were due. They advised that they were opposing the order as they had nowhere else to live.
13. They advised that they had not paid rent as they could not afford it. They thought that they would be evicted, they had no belongings to move to a new home with, and they thought therefore that any spare money they did have should be kept by them to help them prepare for a new property.
14. They advised in terms of their income. Mr Dalziel did work and is due to change his work in March. He had however been off work with periods of ill-health, both his physical and mental health. He had been receiving statutory sick pay of £90 per week. Mrs Dalziel worked as a beauty therapist, she is not working on a full-time basis. They advised that the money they get has been used to feed themselves and their children. They had been advised that they were not entitled to universal credit.
15. Work had also been very challenging during COVID-19, as Mr Dalziel was given limited work. Mrs Dalziel also had worked fewer shifts and she was not entitled to a government grant. They accepted that during covid times their payments had been erratic.
16. They advised that their two children lived with them, their eldest was 23 years old, he did work but had recently injured his arm, and their youngest was 15 and sitting his national 5 exams this year.
17. They advised that Mr Dalziel was starting a new job in March and they could offer to pay £900 per month at that time. They advised that the landlord has already increased the rent twice. They have been looking for other houses in the area, other ones are all either the same price as the present one or more expensive.
18. They have sought support from their GP and have provided medical records in support of their position to the council. They advised that if the order was granted, they asked that they be allowed to stay in the property until the end of the school year.
19. The applicant advised that in the early stages of the tenancy, he had been employed and due to that, he had not pursued the missing rent payments as quickly as he might

otherwise have done. He was retired and this property is supposed to supplement his income. He has two daughters and his youngest is at university.

20. He has one other rental property, it is subject to a mortgage. He intends that it will provide a home in due course for his daughters.
21. He advised that it would be his intention to increase the rent, once he was able to do so. He considered that the current rent is £400 below the market rent for that area. He confirmed that he had increased the rent twice, once to £890, and then to £915. He believed that the market value was £1,350.
22. The applicant was asked about the notice to quit. It was pointed out that the *ish* date was incorrect and did not terminate the tenancy on the end date as specified in the lease which appeared to be the 8th of every month. It was also noted that it did not provide two months' notice as required in the lease. He accepted that the notice to quit was not valid.
23. The applicant was asked if he wished to proceed under grounds 11 and 12 only given that ground 8 was now repealed and ground 8A would require a valid notice to quit. He confirmed that he was asking the tribunal to proceed under grounds 11 and 12 only.
24. It was drawn to the applicant's attention that the AT6 Notice which had been lodged with the application referred to ground 8 only. He was asked if was asking the tribunal to dispense with the requirement for a valid AT6 Notice to have been served on the respondents. He confirmed that he was requesting the tribunal to dispense with service of this Notice.
25. The respondents were asked if they wished to comment on the request to dispense with an AT6 Notice. They advised that they had no objection to dispensing with the requirement for a valid AT6 Notice, as they considered that the reference to ground 8 was a simple mistake by the applicant. That confirmed that they had received a copy of the AT6 Notice.

Findings in Fact

26. The tribunal have found the following facts to be established:-
27. A tenancy agreement was entered into between the Applicant and the Respondents for the property.
28. It was commenced on 9 May 2015.
29. The property was 19 Gleneagles Gardens, Bishopbriggs, Glasgow.

30. The term was a period of 6 months and then it would continue on a monthly basis thereafter until terminated by either party giving no less than two months to the other party.
31. Clause 1.4 provides that rent of £850 per month was payable. There had been two rent increases and rent was now £915 per month.
32. Clause 3.7 provides that the landlord may seek recovery of possession under the grounds set out in Schedule 5 of the Housing (Scotland) Act 1988 and these grounds are thereafter set out in full in the tenancy agreement.
33. The rental statement showed that as at 16 November 2023 rent arrears were £21,315.
34. As at 27 February 2024 the rent arrears now exceed £24,000.
35. The last rental payment was £400 which had been made in November 2023.
36. The Applicant had sent numerous letters to the respondent asking them to engage in addressing the rent arrears.
37. The respondents had found paying the rent for the property to be unaffordable on a large number of occasions.
38. The respondents had two sons living with them at the property, the youngest was 15 and was due to sit his national 5 exams in 2024. The respondents were concerned that moving the child before he completed his exams would be detrimental to their son.
39. The arrears did not appear to have been caused by a failure or delay in the payment of relevant benefits.
40. The applicant had retired and wanted to obtain an income for the property to provide him with financial support. The respondent rented out one other property but that had a mortgage over it.
41. An AT6 Notice had been served by the recorded delivery on the Respondents, it referred to raising eviction proceedings under ground 8 of the 1988 Act, it also referred to the reason being due to substantial arrears. The respondents would have been aware that the reasons for the proceedings being raised were due to non-payment of rent.
42. A section 11 notice had been served on the local authority.

Reasons for Decision

Relevant sections of the 1988 Act are :-

Section 18.— Orders for possession.

(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 this Act.

(2) The following provisions of this section have effect, subject to section 19 below, in relation to proceedings for the recovery of possession of a house let on an assured tenancy.

(3)-(3A) [...] ²

(4) If the First-tier Tribunal is satisfied that any of the grounds in Part I or 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. ...

(4A) In considering for the purposes of subsection (4) above whether it is reasonable to make an order for possession on Ground 11 or 12 in Part II of Schedule 5 to this Act, the First-tier Tribunal shall have regard, in particular, to

(a) the extent to which any delay or failure to pay rent taken into account by the Tribunal in determining that the Ground is established is or was a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit, and

(b) the extent to which the landlord has complied with the pre-action protocol specified by the Scottish Ministers in regulations.] ⁵

...

(6) The First-tier Tribunal shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless—

(a) the ground for possession is [Ground 2 in Part I of Schedule 5] ⁶ to this Act or any of the grounds in Part II of that Schedule, other than Ground 9, Ground 10, Ground 15 or Ground 17; and

(b) the terms of the tenancy make provision for it to be brought to an end on the ground in question.

...

(8) In [subsection (4A)] ⁷ above—
(a) “relevant housing benefit” means—

(i) any rent allowance or rent rebate to which the tenant was entitled in respect of the rent under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971); or
(ii) any payment on account of any such entitlement awarded under Regulation 91 of those Regulations;

(aa) “relevant universal credit” means universal credit to which the tenant was entitled which includes an amount under section 11 of the Welfare Reform Act 2012 in respect of the rent;

(b) references to delay or failure in the payment of relevant housing benefit or relevant universal credit do not include such delay or failure so far as referable to any act or omission of the tenant.

[(9) Regulations under subsection (4A)(b) may make provision about—
(a) information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),
(b) steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,
(c) such other matters as the Scottish Ministers consider appropriate.

...

19.— Notice of proceedings for possession.

(1) The First-tier Tribunal shall not entertain proceedings for possession of a house let on an assured tenancy unless—

(a) the landlord (or, where there are joint landlords, any of them) has served on the tenant a notice in accordance with this section; or
(b) the Tribunal considers it reasonable to dispense with the requirement of such a notice.

(2) The First-tier Tribunal shall not make an order for possession on any of the grounds in Schedule 5 to this Act unless that ground and particulars of it are specified in the notice under this section; but the grounds specified in such a notice may be altered or added to with the leave of the Tribunal.

(3) A notice under this section is one in the prescribed form informing the tenant that—
(a) the landlord intends to raise proceedings for possession of the house on one or more of the grounds specified in the notice; and
(b) those proceedings will not be raised earlier than the expiry of the period of two weeks or two months (whichever is appropriate under subsection (4) below) from the date of service of the notice.

(4) The minimum period to be specified in a notice as mentioned in subsection (3)(b) above is— (a) two months if the notice specifies any of [Grounds 1, 1A, 2, 5, 6, 7, 8A, 9 and 17 in Schedule 5] ² to this Act (whether with or without other grounds); and
(b) in any other case, two weeks.

(5) [...] ³

(6) Where a notice under this section relating to a contractual tenancy—
(a) is served during the tenancy; or
(b) is served after the tenancy has been terminated but relates (in whole or in part) to events occurring during the tenancy,

the notice shall have effect notwithstanding that the tenant becomes or has become tenant under a statutory assured tenancy arising on the termination of the contractual tenancy.

(7) A notice under this section shall cease to have effect 6 months after the date on or after which the proceedings for possession to which it relates could have been raised.

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.

43. On the basis of all the evidence before the tribunal and hearing from both parties we find that an assured tenancy exists. We also find that at the date when the AT6 Notice was served on 17 September 2023, the arrears were already at a significantly high level. When the case came before the tribunal on 27 February 2024, the rent arrears now exceeded £24,000. We find that the respondents persistently delayed paying rent which was lawfully due. We also find that the rent was unpaid on the date when the proceedings for possession began, and the respondents were in arrears at the date of service of the AT6 Notice. We do not find that the arrears were due to delay or failure in paying relevant benefits.
44. As the tenancy agreement contained a full narration of the Schedule 5 grounds the applicant was not required to have terminated the contractual tenancy by serving a valid notice to quit.
45. With regard to the AT6 Notice the tribunal finds that it referred to Ground 8 which is now repealed, that said that ground is related to rent arrears, the AT6 referred to “substantial arrears”. There was evidence it had been served on the respondents. The tribunal is prepared to amend the AT6 Notice to include Grounds 11 and 12, and also, we would have been prepared to deal with this case without an AT6 Notice being served given that a notice had been served on the respondents confirming that the landlord was seeking recovery of the property due to rent arrears.
46. We also find that the applicant has complied with the pre-action protocol, there were a good deal of letters notifying the tenants about the rent arrears and attempts to engage

with the tenant to discuss the arrears. Accordingly, we find that the statutory requirements are satisfactorily met, and we find that grounds 11 and 12 are met.

47. We now require to consider if it would be reasonable to grant the order. We have decided in this case that the order for eviction should be granted. We place most weight on the fact that the arrears now exceed £24,000. We consider that this sum is very significant. We also place weight on the fact that the respondents recognise that they cannot afford the property, and while they indicated that they could begin paying £900 per month, this would not meet the full monthly rent due and would provide no repayment of the arrears.
48. We place weight on the fact that the landlord appears to have engaged regularly with the respondents to try and find a way of addressing the arrears, but his attempts have been without success.
49. We place weight on the fact that since the property was rented out, the applicant has now retired, and he is required to receive rental payment to provide support for his finances.
50. Reasons against the order being granted relate to the fact that there is a 15-year-old in the property who is about to sit national exams, we consider that this matter weighs against the order being granted, however, we do not consider that this factor outweighs the reason for granting the order.
51. We consider that some weight should be given to the fact that the respondents do not currently have alternative accommodation to move to. However again we consider that this reason does not outweigh the reasons for granting the order.
52. While granting the order we consider that the order should not be implemented until 31 May 2024 at the earliest, in order that the respondents' 15 years old child is able to complete his national 5 exams before the family has to vacate the property.
53. We find both grounds met. We consider that it would be reasonable to grant the order in relation to Grounds 11 and 12. Accordingly, we are prepared to make an order for eviction under Grounds 11 and 12.

Decision

54. The Tribunal grants an order in favour of the Applicant against the Respondent for possession of the property.

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.

M. Barbour

27th February 2024

Legal Member/Chair

Date