



**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/23/4255

Re: Property at 4 Tudsbery Avenue, Edinburgh, EH16 4GX (“the Property”)

Parties:

Places For People Scotland Ltd As Successors To Lothian Homes Ltd, 1 Hay Avenue, Edinburgh, EH16 4RW (“the Applicant”)

Mr Kenneth Caldwell, solicitor, Patten and Prentice LLP, solicitors, 2 Ardgowan Square, Greenock, PA16 8PP (“the Applicant’s Representative”)

Mr Syed Ahmad Mujtaba Shah and Mr Syed Ali Murtaza Shah, 4 Tudsbery Avenue, Edinburgh, EH16 4GX (“the Respondents”)

Tribunal Members:

Martin McAllister (Legal Member) and Ann Moore (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 of the Property be made.

Background

- 1. This application for a possession order was lodged with the Tribunal on 23 June 2023 and was accepted for determination on 30 November 2023 along with an associated application for a payment order (FTS/HPC/CV/23/4256)**
- 2. A case management discussion held by audio conferencing on 26 February 2024. The Applicant was not present but was represented by Mr Kenneth Caldwell, solicitor. The Respondents were not present. It was noted that intimation of the details of the case management discussion had been made by sheriff officer on 10 January 2024.**

Preliminary Matters

3. Mr Caldwell said that the application stated that there were rent arrears of £8145.30 and that an order of eviction under Grounds 8, 8A, 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988 (“the Act”) was being sought. Mr Caldwell conceded that Ground 8 was not applicable.
4. Mr Caldwell referred to the updated rent statement which he had lodged with the Tribunal immediately prior to the case management discussion. He said that the rent arrears had been reduced and that the current sum outstanding as brought out in the statement is £4984.26. He said that, although the sum due had been reduced, there was still a sufficient level of rent arrears to warrant an order of eviction.
5. Mr Caldwell said that his instructions were to seek an order of possession and that, if granted, his clients undertook not to enforce it as long as the Respondents paid £1000 on a monthly basis in respect of rent and reduction of the arrears. He said that the rent statement demonstrated that the Respondents had more or less been doing this over a period of months until January 2024. He said that one of the Respondents had advised that he was out of the country but that a payment would be made on 12 February 2024. He said that this did not occur.

The Law

Housing (Scotland) Act 1988

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.

(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) Part III of Schedule 5 to this Act shall have effect for supplementing Ground 9 in that Schedule and Part IV of that Schedule shall have effect in relation to notices given as mentioned in Grounds 1 to 5 of that Schedule.

(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 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

Schedule 5 Housing (Scotland) Act 1988

Ground 8A as introduced by Schedule 2, paragraph 5 of the Cost of Living (Tenant Protection) Act 2022

Ground 8A

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 notice is served under section 19 on this ground or, if dispensed with, when proceedings are raised for an order of possession on this ground.

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.*

6. Findings in Fact

- 6.1**The Applicant and Respondents are parties to a short assured tenancy agreement in respect of the Property dated 4 November 2015.
- 6.2**The term of the tenancy was from 4 November 2015 to 5 May 2016 and thereafter on a monthly basis until brought to an end.
- 6.3** The Applicant served a notice to quit and an AT6 on the Respondents on 29 March 2023 requiring vacation of the Property by 5 June 2023.
- 6.4**The Respondents remains in occupation of the Property.
- 6.5**On the date the Notice to Quit and AT6 were served, there were rent arrears of £8242.37.
- 6.6** On 29 March 2023, the monthly rent due by the respondents was £8242.37.
- 6.7** There are currently rent arrears of £4984.26.
- 6.8**The required notice in terms of the Homelessness etc. (Scotland) Act 2003 has been given to the local authority.

7 Findings in Fact and Law

- 7.1** The tenancy continued by tacit relocation from 5 May 2016 until it was brought to an end by service of the Notice to Quit and AT6 dated 29 March 2023.
- 7.2**The Applicant is entitled to recover possession of the Property because the rent arrears accrued at the date the Notice to Quit was served was in excess of six months' rent.
- 7.3**The Applicant is entitled to recover possession of the Property because the Respondents have persistently delayed paying rent which is lawfully due.
- 7.4**The Applicant is entitled to recover possession of the Property because some rent lawfully due by the Respondents was unpaid when the application was submitted to the Tribunal.

Reasons

- 8** The Tribunal considered the documents which had been lodged with the application:

(a) Copy of the short assured tenancy agreement dated 4 November 2015.

(b) AT5 Form relating to the short assured tenancy.

(c) Notice to Quit dated 29 March 2023 requiring the Respondent to leave the Property by 5 June 2023.

(e) AT6 form dated 29 March 2023.

(g) Copy of Notice to local authority under Section 11 of the Homelessness etc (Scotland) Act 2003.

(h) Updated Rent Statement brought down to 19 February 2024.

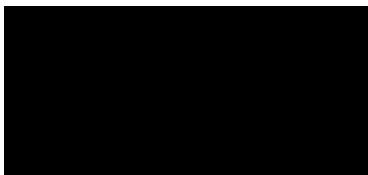
(i) Copies of correspondence to Respondents from Applicant's agents dated 29 March 2023 and 20 June 2023 with regard to the provision of information in respect of the pre-action protocol requirements.

- 9 The Tribunal noted that the term of the tenancy stated in the short assured tenancy agreement is from 4 November 2015 to 5 May 2016.**
- 10 The Tribunal noted that the tenancy had continued from 5 May 2016 on a monthly basis until the Notice to Quit had been served which brought tacit relocation to an end as at 29 March 2023.**
- 11 The tribunal was satisfied that the appropriate Notice to Quit and AT6 had been given to the Respondents and that the required notice had been given to the local authority under Section 11 of the Homelessness etc. (Scotland) Act 2003.**
- 12 The tribunal accepted that the level of rent arrears as at the date of the case management discussion was £4984.26. It noted that, in terms of the rent statement, the monthly rent due is £629.87. On the basis of the rent statement, it was self-evident that the requirements of Grounds 8A, 11 and 12 were met.**
- 13 The rent statement demonstrated a pattern of non payment or late payment of rent since 2010.**
- 14 The tribunal considered that it required to take a two stage approach in considering the application. Having determined that Grounds 8A, 11 and 12 were met, it then required to have regard to Section 18 (4) and (4A).**
- 15 The tribunal was satisfied that the Applicant's agent had sent the necessary communications in terms of the pre-action protocol.**

- 16 Mr Caldwell said that the Respondents were not in receipt of Benefits and, as far as he knew, had not been at any time during the tenancy.
- 17 Mr Caldwell said that the Respondents are brothers aged 30 and 29 and that they are the only occupants of the Property.
- 18 Mr Caldwell said that the Applicant is a social landlord and that the Property is let under the mid- market arrangements.
- 19 In considering whether or not it is reasonable to grant the order, the tribunal required to consider all the circumstances. It is a balancing exercise. The Respondents had chosen not to engage with the Tribunal process and had not submitted written submissions or participated in the case management discussion. The information the tribunal had about their personal situation was limited. The level of rent arrears was considerable notwithstanding that some efforts had been made to reduce them. The Respondents have a contractual obligation to pay rent and have allowed arrears to grow over a considerable number of months albeit that efforts had been made to address the issue.
- 20 The tribunal took into account the amount of the rent arrears, the period of time over which they had accrued and it also took into account that the Property is the home of the Respondents. In weighing matters, the tribunal considered that it was reasonable to grant the order of eviction.

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 Member
26 February 2024