



**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/23/4035

Re: Property at 13c Findale Street, Dundee, DD4 9LE (“the Property”)

Parties:

Mr Allister Knight, Ground Right Flat, 15 Findale Street, Dundee, DD4 9LF (“the Applicant”)

Ms Donna Spittal, 13c Findale Street, Dundee, DD4 9LE (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member) and Ann Moore (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is entitled to the Order sought for recovery of possession of the property.

Background

1. The Applicant submitted an application under Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The Applicant sought an order to evict the Respondent from the property.
2. By decision dated 5 December 2023, a Convenor of HPC having delegated power for the purpose, referred the application under Rule 9 of the Rules to a case management discussion (“CMD”).
3. The Tribunal intimated the application to the parties by letter of 10 January 2023 and advised them of the date, time and conference call details of today’s CMD. In that letter, the parties were also told that they required to take part in the discussion and were informed that the Tribunal could make a decision today on the application if the Tribunal has sufficient information and considers the

procedure to have been fair. The Respondent was invited to make written representations by 31 January 2024.

4. The Respondent's representative lodged written representations on behalf of the Respondent on 8 February 2024 and a copy was sent to the Applicant's representative the same day.

The case management discussion

5. The CMD took place by conference call. The Applicant was represented by Mr Calvin Gordon, solicitor and the Respondent was represented by Ms Vicky McLanders, solicitor. The Applicant's representative advised that rent arrears have increased to £11,500 and the Applicant has incurred legal fees arising out of these proceedings in the sum of £3,200. The Applicant is retired and has no savings. He was reliant on rental income which has not been forthcoming. He continues to pay the mortgage in respect of the rental property, albeit there are only a few more payments to be made to the mortgage account. The Applicant now intends to sell the property in which he is residing and to move back to the rental property. He has not yet marketed his current home for sale, pending the outcome of these proceedings. The Applicant believes that the Respondent's eldest child is employed in a hospital and the Respondent's middle child is employed as a window cleaner. The Applicant is aware of the Respondent's offer to pay rent plus £50 per month but the Applicant has rejected that offer. The Applicant's position was that grounds 1 and 1A have been established and that it is reasonable in the circumstances to grant an order for eviction of the Respondent.
6. As set out in the Respondent's written submissions, the Respondent opposed the application for an eviction order on the basis that it would not be reasonable to grant an order. The Respondent accepts that she has incurred rent arrears as stated by the Applicant. During the pandemic, the Respondent's income decreased and she incurred rent arrears. She is however in full time employment and offered to pay rent plus £50 per month towards rent arrears. The Respondent's representative explained that the Respondent is working with a money and debt adviser. She has not yet completed a statement of income and expenditure. The Tribunal enquired whether the Respondent is likely to be in a position to offer substantially more towards rent arrears. Although the Respondent's representative could not say what the likelihood of that was, she advised the Tribunal of the Respondent's net income. The Respondent has been in contact with the local authority homeless prevention team and has made an application for alternative accommodation. In relation to the grounds of eviction relied upon, the Respondent had no objection to the Applicant's motion to dispense with the notice required in terms of ground 1. The Respondent does not accept that the Applicant has demonstrated financial hardship. Although the Respondent did not dispute the Applicant's intention to move back into the property, her position was that it would not be reasonable to grant an order for eviction for the reasons set out in the written representations and referred to during the CMD.

Findings in Fact

7. The parties entered into a short assured tenancy, the initial term of which was 9 April 2013 to 9 April 2014.
8. Rent was payable by the Respondent at the rate of £570 per month.
9. The Applicants' representative served a Notice to Quit and the Notice in terms of Section 19 of the Housing (Scotland) Act 1988 on the Respondent by sheriff officer on 30 June 2023.
10. The Applicant intends to occupy the property as his only or principal home.

Reason for Decision

11. The Tribunal proceeded on the basis of the documents lodged and the submissions made at the CMD. There was no factual dispute between the parties. The Tribunal accepted that the Applicant intends to move back into the property and to occupy it as his principal home. The Respondent did not oppose the Applicant's motion to dispense with service of the notice as required in terms of ground 1 and the Tribunal granted the Applicant's motion. The Tribunal was satisfied that ground 1 had been established.
12. It was noted from the rent statement that the last payment of rent made by the Respondent was in March 2023. Although the Respondent made an offer to pay rent plus £50 per month towards rent arrears, the Tribunal concluded that the tenancy is not sustainable. At the rate offered, it would take in the region of 19 years to repay the rent arrears, which is an unreasonable period of time for the Applicant to wait for payment. Given the level of monthly income available to the Respondent, it did not appear likely that the Respondent would be able to increase her offer of payment substantially in relation to rent arrears. The Respondent has 2 non dependent adult children living with her and there does not appear to have been any contribution from them in relation to the liability to pay rent. The Notice of Proceedings was served on the Respondent 8 months ago and since that date, no payment has been made in relation to rent at all.
13. The Tribunal must balance both parties' interests. The Applicant is retired and has not received rent of £11,500 from the Respondent. On any view, this is a substantial sum in respect of rent arrears. In circumstances where the tenancy is not sustainable by the Respondent, the Tribunal was satisfied that it was reasonable to grant the order evicting the Respondent from 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.

Nicola Irvine

Legal Member/Chair

27 February 2024

Date