



**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**

Chamber Ref: FTS/HPC/EV/23/4407

Re: Property at 5 Cadham Villas, Glenrothes, KY7 6PQ (“the Property”)

Parties:

Mr James Stocks, 3 Church Street, Ladybank, KY15 7LA (“the Applicant”)

**Mr Robert Delaney and Mrs Diana Delaney, 5 Cadham Villas, Glenrothes, KY7
6PQ (“the Respondents”)**

Tribunal Members:

Shirley Evans (Legal Member) and Tony Cain (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondents for possession of the Property at 5 Cadham Villas, Glenrothes, KY7 6PQ 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 Respondents. The order will include a power to Officers of Court to eject the Respondents and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth 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. This is an application 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 Respondents’ substantial rent arrears and is based on Ground 8A of schedule 5 of the Housing (Scotland) Act 1988.

2. The application was accompanied by a copy of a Short Assured tenancy dated and commencing 2 May 2017, an AT5 dated 2 May 2017, letters to the Respondents dated 23 June 2023 and 14 August 2023 with registered post certificates, proof of delivery dated 24 June 2023 and 15 August 2023, an email dated 19 July 2023 from Mr Delaney to the Applicant's solicitor, emails dated 20 July 2023 from the Applicant's to Mr Delaney, emails dated 4 August 2023 between the Applicant's solicitor and Mr Delaney, an email dated 28 August 2023 from Mr Delaney to the Applicant's solicitor, an email dated 6 September 2023 from the Applicant's solicitor to Mr Delaney, Notices to Quit dated 6 September 2023, AT6s dated 6 September 2023, Sheriff Officer's executions of service dated 6 September 2023, an email dated 7 September 2023 from Mr Delaney to the Applicant's solicitor, an email dated 8 September 2023 from the Applicant's solicitor to Mr Delaney, emails dated 9 November 2023 between the Applicant's solicitor and Mr Delaney, emails dated 14 November 2023 between the Applicant's solicitor and Mr Delaney, a rent statement to December 2023 and a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 to Fife Council dated 5 December 2023 with execution of service dated 5 December 2023.
3. On 8 February 2024 the Tribunal accepted the application under Rule 9 of the Regulations 2017.
4. On 2 April 2024 the Tribunal enclosed a copy of the application and invited the Respondents to make written representations to the application by 23 April 2024. The Tribunal advised parties that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 9 May 2024. This paperwork was served on the Respondents by William Wywalec, Sheriff Officer, Kirkcaldy on 3 April 2024 and the Executions 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 and for the Respondents to lodge proof they have applied for financial assistance and medical evidence regarding their son. On 25 April 2024 the Applicant's solicitor lodged a rent statement to April 2024 showing arrears of £13 030. On 6 May 2024 Mr Delaney forwarded an email to the Tribunal in response to the Notice of Direction indicating he had been awarded Housing Benefit and offering to pay £1000 per month towards the rent and arrears.

Case Management Discussion

6. The Tribunal proceeded with a CMD on 9 May 2024 by way of teleconference. The Applicant was represented by Mr Gordon from Thorntons, solicitors. The Applicant was also in attendance. Mr Delaney appeared on his own behalf and on behalf of his wife Mrs Delaney.
7. The Tribunal had before it the Short Assured tenancy dated and commencing 2 May 2017, the AT5 dated 2 May 2017, letters to the Respondents dated 23 June 2023 and 14 August 2023 with registered post certificates, proof of

delivery dated 24 June 2023 and 15 August 2023, the email dated 19 July 2023 from Mr Delaney to the Applicant's solicitor, the emails dated 20 July 2023 from the Applicant's to Mr Delaney, the emails dated 4 August between the Applicant's solicitor and Mr Delaney, the email dated 28 August 2023 from Mr Delaney to the Applicant's solicitor, the email dated 6 September 2023 from the Applicant's solicitor to Mr Delaney, the Notices to Quit dated 6 September 2023, the AT6s dated 6 September 2023, the Sheriff Officer's executions of service dated 6 September 2023, the email dated 7 September 2023 from Mr Delaney to the Applicant's solicitor, the email dated 8 September 2023 from the Applicant's solicitor to Mr Delaney, the emails dated 9 and 14 November 2023 between the Applicant's solicitor and Mr Delaney, the Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 to Fife Council dated 5 December 2023 with execution of service dated 5 December 2023 and the rent statement to April 2024.

8. Mr Gordon moved the Tribunal to grant an order for eviction under Ground 8A of schedule 5 of the Housing (Scotland) Act 1988 due to the Respondents being in substantial rent arrears. With reference to the rent statement lodged to April 2024 which showed arrears of £13 030, Mr Gordon submitted another month's rent was now due bringing the arrears to £13 780. He submitted that candidly his client wanted to wind up being a Landlord, brought about by the stress of the current action. He just wanted to sell the Property. With reference to the items of correspondence lodged, Mr Gordon submitted that his client's trust and confidence in the Respondents had been eroded and he had no faith that he would ever be repaid what he was owed. Mr Gordon referred to a letter showing an award of Housing Benefit which had recently been made to the Respondents. The Tribunal indicated it had not seen this letter. Mr Gordon explained to the Tribunal that this showed the Respondents would get a weekly award of £145.25. However, he submitted there was still a shortfall in rent which was £750 per month. With reference to the Respondents' recent offer to pay £1000 per month rent and arrears he submitted this was vague and contained no information about the Respondents' income and outgoings. Accordingly, he submitted that it was reasonable to evict.
9. In response Mr Delaney explained that his wife had been awarded Housing Benefit starting on 29 April 2024. He explained there was a shortfall in rent but now that the costs of their electricity bill which had been reduced from about £1000 per month to £321 per month on a fixed deal they had more money available to them. He was confident that they could pay the Respondent £1000 and that he could sustain those payments until the arrears were cleared.
10. On being questioned by the Tribunal as to how he could afford to pay £1000 per month when with reference to the rent statement, no rent had been paid since April 2023, Mr Delaney explained that he was a self-employed music producer earning approximately £1500 per month. After rent and bills etc he was left with about £700 per month. His wife did not work. He had a 12 year old son who was home schooled. Their 22 year old son still lived with them as

he had learning difficulties and could not work. His son did not receive any sort of benefit. He had not received any specific benefit advice. His eldest son lived with his girlfriend and was not part of the household. On being further questioned by the Tribunal, Mr Delaney advised that he received child tax credit. Mr Delaney confirmed he accepted the rent arrears of £13 780. He also explained that he had applied for social housing when they first got into financial difficulties but had received no offers. They had been signposted to seek help from Frontline Fife in the event that an order to evict was made against them.

11. On being questioned by the Tribunal, Mr Gordon confirmed his client owed another two properties and due to the tax position he was looking to sell these gradually.

Reason for Decision

12. 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 both parties at the CMD. There was no dispute that the Respondents were in substantial rent arrears of £13 780 with the monthly rent of £750 and the last payment towards rent being made in April 2023. 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 Respondents were 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 there had been voluminous letters with the Respondents who had made various promises to pay and that a Section 11 Notice had been sent to Fife Council 5 December 2023.
13. 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 £13 780. The monthly rent was £750 which equated to over 18 months arrears. It appeared to the Tribunal that although the Respondents had engaged with the Applicant's solicitor and had offered to pay the rent and arrears at £1000 per month, they were simply not in a financial position whereby they could sustain payment of rent and arrears of £1000 over the next 4 years or so until the arrears were cleared. They had made previous promises to pay the arrears which they had not been able to keep. The Tribunal gave weight to the fact the household had a vulnerable young adult with learning difficulties. Moving would be difficult for him in particular. It appeared to the Tribunal that the Respondents and possibly their son were entitled to other benefits. The Tribunal gave weight to the fact that their son's needs would need to be assessed by the local authority if they presented as

homeless and that the Respondents should be given some time to seek help with their housing options in the hope of securing suitable alternative accommodation, bearing in mind Fife Council had recently declared a housing emergency. On balance however 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 Respondents may struggle to pay ongoing rent even with the award of Housing Benefit, let alone try to reduce the arrears, despite their very best intentions. The balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order. Due to the vulnerabilities within the household the order will be suspended for a period of three months to give the Respondents time to seek help and assistance with their housing options and benefits.

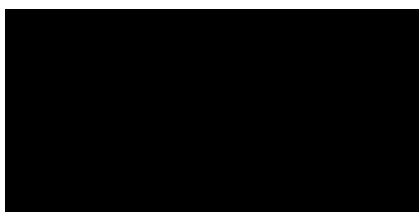
14. In the circumstances the Tribunal considered that Ground 8A of Schedule 5 of the 1988 Act had been established and that it was reasonable to grant an eviction order.

Decision

15. The Tribunal granted an order for repossession suspended for three months
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.



9 May 2024

Legal Member

Date