



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, as amended (“the 1988 Act”) and Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations”)

Chamber Ref: FTS/HPC/EV/23/4447

Re: Property at 9 Lennox Avenue, Coatbridge, ML5 1NN (“the Property”)

Parties:

Mrs Leigh Moffat, The Glen, 103 Glenmavis Road, Airdrie, ML6 0PQ (“the Applicant”)

Mr Philip Christie, Mrs Susan Christie, 9 Lennox Avenue, Coatbridge, ML5 1NN (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession of the property be granted.

Background

1. By application received on 11 December 2023, the Applicant applied to the Tribunal for an order for recovery of possession of the property in terms of Section 18 of the 1988 Act against the Respondent. The application sought recovery in terms of Grounds 11 (persistent delay in paying rent) and 12 (some rent lawfully due) of Schedule 5 to the 1988 Act. Supporting documentation was submitted in respect of the application, including a copy tenancy agreement, rent statement, the Notice to Quit and AT6/proof of service of same, the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003 and some information relating to the ‘pre-action protocol’. An application

for payment of rent arrears was submitted at the same time and was conjoined with this application.

2. Following initial procedure, on 1 March 2024, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. Notification of the application and details of the Case Management Discussion (“CMD”) fixed for 18 June 2024 was served on the Respondent by way of Sheriff Officer on 16 May 2024. In terms of said notification, the Respondent was given until 5 June 2024 to lodge written representations. No representations were lodged by that date.
4. On 4 June 2024, in connection with the payment application, the Applicant’s representative submitted by email an updated rent statement, together with a request to increase the sum claimed to £10,334.
5. On 10 June 2024, the Respondent emailed and requested a postponement of the CMD on the basis that the second-named Respondent had a hospital appointment on the morning of the CMD. A copy of the appointment letter was produced in support. Several subsequent emails were submitted by both parties regarding the postponement request, which the Applicant was opposed to. The Tribunal determined that cause had not been shown for the CMD to be postponed but, to accommodate the Respondent, the start time of the CMD was moved from 2pm to 3pm.
6. Some of the emails from the Respondent regarding the postponement request also contained written representations from the Respondent, particularly in relation to the eviction application. In addition, a letter from CAB on behalf of the Respondent was submitted by the Respondent by email on 15 June 2024 but was only circulated to the Tribunal Members and Applicant’s representative shortly before the CMD. Essentially, the Respondent appeared to be admitting the rent arrears and not opposing the eviction, but were seeking an extension of time in respect of any eviction order to allow them more time to secure alternative accommodation and vacate the Property.

Case Management Discussion

7. The Case Management Discussion (“CMD”) took place by telephone conference call on 18 June 2024 at 3pm, attended by Miss Jennifer Anderson, Solicitor, of Clarity Simplicity Ltd on behalf of the Applicant and by both Respondents, Mr Philip Christie and Mrs Susan Christie.
8. After introductions and introductory remarks by the Legal Member, there was discussion regarding the applications. Mr and Mrs Christie confirmed that they accepted that the increased sum of £10,334 in rent arrears was admitted. Mr Christie stated that he used to work for the Applicant’s haulage company and had a period of absence from work through ill health which involved him having three weeks in hospital. He eventually resigned from the job in April 2024. He

was embarrassed about the rent arrears and the fact that he had not been able to pay off the arrears previously. He had been struggling to get a job since because he had been off work for a year and had also not been able to get benefits because he resigned from his employment. Mrs Christie provided some details regarding her health difficulties and confirmed that she is in receipt of Universal Credit and PIP.

9. Both Mr and Mrs Christie confirmed that they knew the present situation could not go on and understood the Applicant's position. They were not, accordingly, opposing the eviction. They have been in contact with the local authority but have been told that local authority housing is in short supply and they currently have 12,000 housing applications. The local authority is aware of Mrs Christie's disability and the fact that she has a care dog and is currently using a wheelchair. They have told her that it may take longer than usual to find her suitable temporary accommodation that meets her needs. She thinks that her housing application may also be suspended due to rent arrears situation. Mrs Christie explained that she has serious problems with her ankle and legs and that she nearly had a leg amputation previously. She had a fall down stairs which exacerbated the situation. Her hospital appointment earlier today was to consider whether there would be an amputation or whether she would have an operation to have plates and pins inserted. The outcome today was that she would be referred to an ankle specialist and the proposal is that she will undergo an operation to fuse her ankle permanently in a particular position. Mrs Christie explained that her mobility issues would obviously mean it would take them longer than normal to empty the house. For these reasons, they were seeking an extension of a month before any eviction order would take effect, as per the letter Mrs Christie had submitted from their adviser at CAB.
10. Mr Christie explained that their immediate plan is to move into a caravan but that they would need to find somewhere to place the caravan and arrange storage for their additional possessions which would not fit into the caravan. They will also have to find someone to tow the caravan for them. Mr Christie stressed that they only needed a month to make these arrangements, although Mrs Christie thought it was more realistic within a timeframe of two months from now.
11. Miss Anderson then confirmed the Applicant's position in relation to the matter. She mentioned the 30-day appeal period and the additional time required for a Charge being served by Sheriff Officers and stated that this meant that, in practical terms, an eviction order is not enforceable immediately. The Applicant would accordingly prefer for an extension not to be added in terms of any order, although, if this is what the Tribunal was minded to do, that would be preferable to an order not being granted today at all. Miss Anderson made reference to the very high level of arrears and the length of time the arrears have existed, as well as the length of time the eviction process has taken. The Applicant requires to recover the Property as soon as possible to relieve the financial pressures caused by the arrears situation, which has also caused the Applicant stress and anxiety and difficulty sleeping. Miss Anderson explained that the Applicant does not yet know what they will do with the Property. They may sell it or, depending on its condition, they may require to renovate the Property. She

confirmed that there is a mortgage over the Property, although she did not know the exact figures. The Applicant also has a substantial property portfolio and the haulage company that Mr Christie used to work for, but, again, Miss Anderson stated that she did not have more details on these matters. She conceded that the Applicant probably does not require to recover the Property immediately, in terms of their financial position, but reiterated the level of debt owing and the financial and other pressures being caused to the Applicant. She stated that the Applicant has tried to be flexible and reasonable over the years with the Respondent and the arrears situation but that they eventually had no other choice but to proceed with eviction

12. Mrs Christie commented, in summing-up, that she and Mr Christie have also had stress and sleepless nights over their finances and the rent arrears. They would like more time to hopefully obtain suitable accommodation. Mr Christie reiterated that they needed an end to the stress and that he will be arranging the caravan meantime.
13. The Tribunal briefly adjourned to consider the application in private and, on re-convening, the Legal Member confirmed that the eviction order would be granted today, with an extension of one month added to the usual timeframe which, in effect would mean a two month timeframe in terms of enforcement. It was explained to Mr and Mrs Christie that if they were in a position to vacate the Property earlier they could arrange to do so, before the date stated on the eviction order. Parties were thanked for their attendance.

Findings in Fact

1. The Applicant is the joint owner and landlord of the Property.
2. The Respondent is the joint tenant of the Property by virtue of an Assured Tenancy which commenced on 18 November 2016.
3. There was a Private Residential Tenancy (PRT) agreement lodged by the Applicant, signed by the first-named Respondent only, but the tenancy was deemed to be an Assured Tenancy due to its date of commencement pre-dating the PRT regime coming into existence.
4. The first-named Respondent was employed by the second-named Applicant when the tenancy arrangement was entered into.
5. The first-named Respondent's employment with the second-named Applicant ended in April 2004 but the tenancy is ongoing.
6. The respondent remains in occupation.
7. The rent in terms of the tenancy is £120 per week.

8. Rent arrears started to accrue during 2018 and amounted to £9,109 when this Tribunal application was lodged.
9. A Notice to Quit and AT6, both in proper form and giving the requisite periods of notice were served on the Respondent by Sheriff Officer on 14 September 2023 and 24 November 2023 respectively, bringing the contractual tenancy to an end on an ish date (18 November 2023) in terms of the tenancy, with the notice period in terms of the AT6 ending on 9 December 2023.
10. The Tribunal application was submitted on 11 December 2023.
11. The rent arrears now amount to £10,334.
12. The Respondent admits the amount of arrears and does not oppose the eviction.
13. The Respondent is currently on a limited income, consisting only of the second-named Respondent's state benefits.
14. The Respondent cannot afford to continue renting the Property.
15. The second-named Respondent has a serious medical condition, is awaiting an operation and has mobility issues, currently uses a wheelchair and has a care dog.
16. The Respondent has taken steps to obtain alternative accommodation.
17. The Applicant is owed a substantial amount of money in rent arrears owing by the Respondent, which rent arrears have existed since 2018.
18. Previous payment arrangements with the Respondent have broken down.
19. The Applicant requires to recover the Property to relieve financial pressures arising from the rent arrears situation.

Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, the written representations from the Respondent and their adviser, and the oral information given at the CMD on behalf of the Applicant by Miss Anderson and by both Mr and Mrs Christie.
2. The Tribunal found that the application was in order, that a Notice to Quit and AT6 in proper form and giving the correct period of notice had been served on the Respondent and that the application was made timeously to the Tribunal,

all in terms of the tenancy agreement and the relevant provisions of the 1988 Act.

3. The application was under Grounds 11 and 12 of Schedule 5 to the 1988 Act, which are as follows:-

“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.”

The Tribunal considered that all elements of the grounds of eviction were met. There was no dispute that the Respondent had persistently delayed paying rent that was lawfully due. The rent was substantially in arrears both when notice was served on the Respondent and when these proceedings were begun.

4. The Tribunal was also satisfied, with reference to the requirement of Section 18(4) of the 1988 Act that it was reasonable, having regard to all of the circumstances, to grant the eviction order sought. The Tribunal had regard to the Applicant’s current circumstances and the financial pressures on them as a result of the long-standing rent arrears and the amount of the rent arrears which now exceed £10,000. The Tribunal also took into account the current financial circumstances of the Respondent and the medical and mobility issues of the second-named Respondent. The Tribunal was of the view that all parties have experienced stress as a result of the arrears situation and did not consider that the current situation could continue. The steps taken by the Respondent to secure alternative accommodation were also encouraging. In any event, the Respondent, having sought advice on the matter, did not oppose the eviction. Both Respondents had stated several times during the CMD that they wished the situation resolved so that they could move on and that they fully understood the Applicant’s position in wishing to recover the Property. Their main concern was concerning the timescale for the eviction taking place and they sought an extension of time to allow them to secure alternative accommodations and make the necessary arrangements for vacating the Property. In all the circumstances, the Tribunal considered it reasonable to grant the eviction order today, subject to a one month extension being added to the normal timeframe

for enforcement. The earliest date for the eviction to be carried out in terms of the order will accordingly be stated as 19 August 2024.

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 Weir

Legal Member/Chair

18 June 2024
Date