



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/24/0030

Re: Property at 26 Iona Court, Dreghorn, Irvine, KA11 4JL (“the Property”)

Parties:

Mr Richard Clyde, 49 Brone Road, Coleraine, Co Londonderry, Northern Ireland, BT51 4EQ (“the Applicant”)

Miss Lorna Carey, 26 Iona Court, Dreghorn, Irvine, KA11 4JL (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Gordon Laurie (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. On 4th January 2024 the Applicant lodged an Application with the Tribunal under Rule 665 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondent from the property.
2. Lodged with the application were: -
 - i. Short Assured Tenancy Agreement dated 7th March 2017 and initially running from 29th March 2017 to 28th March 2018 and monthly thereafter, and with monthly rent of £450;
 - ii. AT5 Notice dated 7th March 2017;
 - iii. Notice to Quit dated 23rd June 2023 for 28th August 2023;
 - iv. AT6 dated 23rd June 2023 for 28th August 2023;

- v. Proof of Service of c and d;
- vi. Section 11 Notice;
- vii. Pre Action Requirement letters;
- viii. Rent Statement
- ix.

3. The Application was served on the Respondent by Sheriff Officers on 20th March 2024.

Case Management Discussion

- 4. The Case Management Discussion (“CMD”) took place by teleconference. The Applicant was represented by Mr Ferry of Wallace Hodge, Solicitors. There was no attendance by the Respondent, nor any representative on her behalf.
- 5. The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. The Chairperson explained that the Applicant needed to provide sufficient evidence to establish the ground of eviction, and also that it was reasonable for the Tribunal to grant the order.
- 6. Mr Ferry sought an order for eviction in terms of sections 18 and 19 of the Housing (Scotland) Act 1988. He said that Notice to Quit had been served and tacit relocation was not operating. The rent arrears exceeded 6 months’ payments and therefore Ground 8A had been met.
- 7. As far as reasonableness is concerned Mr Ferry said that the late payment of rent received from the Respondent was in January 2023. The arrears currently stand at £8500, which equates to 18 months of missed payments. The Respondent did have a job at the outset of the tenancy but she lost it. She is again in employment. She lives in the property with her eleven year old son. The letting agent last had contact with her three weeks ago. The Respondent keeps making promises to pay but makes no payments.
- 8. The Tribunal were satisfied that the ground had been established and that it was reasonable to grant the eviction order.
- 9. The Tribunal had, however, noticed that the section 11 Notice had been served on the wrong local authority. The Tribunal therefore decided to continue the CMD, but not fix a fresh date, and issue a Direction for the Applicant to serve the section 11 Notice on the correct local authority. Once proof of this has been received the Tribunal will be prepared, in terms of Rule 18, to deal with it without the necessity of a hearing.

Subsequent to CMD

- 10. The Tribunal issued a Direction to the Applicant, directing that a section 11 Notice be served on the correct local authority.

11. On 1st July 2024 the Applicant's solicitor emailed to the Tribunal a copy of the Section 11 Notice sent to North Ayrshire Council and proof of service.

Findings In Fact

- a. The parties entered in to a Short Assured Tenancy Agreement dated 7th March 2017, initially running from 29th March 2017 to 28th March 2018 and monthly thereafter, and with monthly rent of £450;
- b. There was an AT5 Notice dated 7th March 2017;
- c. Notice to Quit dated 23rd June 2023 for 28th August 2023 was served timeously and correctly;
- d. AT6 dated 23rd June 2023 for 28th August 2023 was served timeously and correctly;
- e. Section 11 Notice was served on the correct local authority;
- f. The Pre Action Requirements were complied with;
- g. At the time the Notice to Quit and AT6 were served the rent arrears were £3100, being over six months' rent;
- h. At the time the application to the Tribunal was made the arrears were £6250, being over six months' rent;
- i. Rent arrears stand at £8500, equivalent to eighteen months' missed payments;
- j. The Respondent lives in the property with her eleven year old son;
- k. The letting agent has had contact on several occasions with the Respondent;
- l. The Respondent has made promised to pay but has not made payment.

Reasons For Decision

12. The Tribunal were satisfied that the ground of eviction was established as there were rent arrears in excess of six months' rental payments both when the notices were served and when the application was lodged with the Tribunal.

13. Section 44 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022 states:

Assured tenancies: discretionary eviction grounds

(1) The Housing (Scotland) Act 1988 is modified as follows.

(2) In section 18 (orders for possession)—

(a) subsections (3) and (3A) are repealed,

(b) in subsection (4), for "Part II" substitute "Part I or II",

(c)in subsection (6)(a), the words “or Ground 8” are repealed,

(d)in subsection (8), for “subsections (3A) and (4A)” substitute “subsection (4A)”.

(3)In section 19 (notice of proceedings for possession), subsection (5) is repealed.

(4)In section 20 (extended discretion of First-tier Tribunal in possession claims)—

(a)in subsection (1), for “Subject to subsection (6) below, the” substitute “The”,

(b)subsection (6) is repealed.

(5)In section 33(1) (recovery of possession on termination of a short assured tenancy)—

(a)in the opening words, for “shall” substitute “may”,

(b)after paragraph (b), the word “and” is repealed,

(c)after paragraph (d) insert “, and

“(e)that it is reasonable to make an order for possession.”.

(6)In schedule 5 (grounds for possession of houses let on assured tenancies)—

(a)in Part I, Ground 8 is repealed,

(b)the heading of Part I becomes “Certain grounds on which First-tier Tribunal may order possession”,

(c)the heading of Part II becomes “Further grounds on which First-tier Tribunal may order possession”.

14. The Tribunal now has to decide if it is reasonable to grant the eviction order. The Tribunal therefore had to exercise its discretion in applying the facts to decide if it is reasonable to grant the order. In the absence of challenge from the Respondents the Tribunal accepted that the rent arrears stood at £8500 and there had contact between the letting agent and the Respondent prior to the Tribunal. The fact that the rent arrears were substantial The Tribunal considered the fact that the rent arrears were substantial, being eighteen months of missed payments, made it reasonable in and of itself grant the order.

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.

Alison Kelly

07/07/2024

Legal Member/Chair

Date