



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 19 of the Housing (Scotland)
Act 1988**

Chamber Ref: FTS/HPC/EV/24/0823

Re: Property at 39 Whitehill Grove, Dalkeith, EH22 2LJ (“the Property”)

Parties:

Mrs Pornpan Hay, 34 Clarinda Gardens, Dalkeith, EH22 2LW (“the Applicant”)

Ms Mhairi Munro, 39 Whitehill Grove, Dalkeith, EH22 2LJ (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Mrs F Wood (Ordinary Member)

Background

1. This is an application received in the period between 20th and 21st February 2024 and made in terms of Rule 65 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (‘the Rules’). The Applicant representative lodged a copy of a short assured tenancy agreement that commenced on 19th December 2016 with a weekly rent of £185, Confirmation in respect of the estate of the late Graeme Hay, section 11 notice and evidence of service, notice to quit and Form AT6, and pre-action requirement correspondence. The Applicant is seeking an order for possession under ground 8A and 11 of the Housing (Scotland) Act 1988 (“the 1988 Act”)

The Case Management Discussion

2. A Case Management Discussion (“CMD”) took place by telephone conference on 10th July 2024. The Applicant was represented by Ms Seaward, Solicitor. The Respondent was in attendance.
3. Ms Seaward moved the Tribunal to grant an order for possession. No rent has been paid for over two years and the current level of arrears is £22,940. There has been no communication from the Respondent.
4. The Respondent said she was not challenging the order. She explained that her rent was previously covered in full by housing benefit. She paid this to the landlord. When the landlord passed away, she was told the rent could not be

paid to his executor as she was not a registered landlord. The Respondent said she asked for the name of the executor, who was the wife of the landlord, but was not given it. She told the local authority to stop paying her housing benefit, and she had received no further payments. There had been some discussion with the solicitor dealing with the executry, and the Respondent said she had told the solicitor that the executor had to register as a landlord before the rent could be paid.

5. Ms Seaward said her firm was first instructed in or around March 2023 and had served a notice to quit at that time, however, the notice was invalid and a further notice had to be served. The Respondent, therefore, had the details of the Applicant's solicitor's firm from March 2023 and no contact had been made. Ms Seaward was unaware of whether the Applicant is a registered landlord. The Applicant is keen to finalise the executry. Ms Seaward confirmed there was an email on file from the executry solicitor dated May 2023 which detailed a discussion with the Respondent and confirmed the account the Respondent had given, in that she had informed the executry solicitor that she had asked the local authority not to pay her housing benefit, and acknowledged the arrears. She had also stated that the local authority had told her not to move out at that time.
6. The Respondent said she has been in discussion with the local authority and she has been told she will not be allocated social housing without an eviction order. She has a meeting with the local authority on 15th July 2024 to inform them of the outcome of the CMD. The Respondent explained her family circumstances, and said she would prefer the security of social housing, to avoid facing the same situation again. It was her understanding that she would be housed if the order was granted. The Respondent did not take any advice from an advice agency on the situation in relation to paying her rent.

Findings in Fact and Law

7.
 - i. The Respondent and the late Graeme Hay entered into a short assured tenancy agreement commencing on 19th December 2016.
 - ii. The weekly rent in terms of the tenancy agreement was £185.
 - iii. The weekly rent was covered in full by housing benefit payments received by the Respondent which were paid to Graeme Hay.
 - iv. Graeme Hay passed away on 21st February 2022.
 - v. At some time after 21st February 2022, the Respondent asked the local authority to stop paying housing benefit. No further housing benefit was paid, and the Respondent paid no further rent.

- vi. A notice to quit and notice under section 19 of the 1988 Act was served upon the Respondent on 13th October 2023.
- vii. The Applicant has complied with the pre-action protocol.
- viii. The Respondent has accrued rent arrears under the tenancy and the cumulative amount of rent arrears exceeded an amount that is the equivalent of 6 months' rent under the tenancy when the notice under section 19 was served.
- ix. The Respondent has persistently delayed paying rent which has become lawfully due.
- x. The Respondent is keen to secure social housing.
- xi. It is reasonable to grant an order for possession.

Reasons for Decision

- 8. Ground 8A provided that 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 8A was introduced by Part 1 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 ("the 2022 Act") and was in force at the time of serving the notice under section 19. Schedule 2 of the 2022 Act was repealed on 31st March 2024. The Cost of Living (Tenant Protection) (Scotland) Act 2022 (Saving Provisions) Regulations 2024, which came into force on 31st March 2024, provides that the ground continues to have effect in relation to eviction notices served before Part 1 expires. Ground 8A, therefore, continues to have effect. The Tribunal is satisfied that the ground is met.
- 9. Ground 11 provides that 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. The Tribunal is satisfied that the ground is met.
- 10. The Tribunal considered the circumstances of both parties when considering whether it was reasonable to grant the order. The Tribunal considered the significant sum of rent arrears, and the fact that the Applicant is entitled to rent lawfully due. The Tribunal noted that the Respondent was not opposed to the granting of the order, and would prefer the security of tenure offered by social housing.
- 11. In all the circumstances, the Tribunal considered it was reasonable to grant the order for possession.

Decision

12. An order for possession is granted. The order is not to be executed prior to 12 noon on 14th 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.

Helen Forbes

Legal Member/Chair

10th July 2024
Date