



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 and Section 18 of the Housing (Scotland) Act 1988.

Chamber Ref: FTS/HPC/EV/24/0564

Re: Property at 26 Willow Road, Mayfield, Dalkeith, Midlothian, EH22 5LN (“the Property”)

Parties:

Ms Jacqui Furneaux, Flat 65, Central Quay North, Broad Quay, Bristol, BS1 4AU (“the Applicant”)

Mrs Megan Walker (now Bayri), 26 Willow Road, Mayfield, Dalkeith, Midlothian, EH22 5LN (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at 26 Willow Road, Mayfield, Dalkeith, Midlothian, EH22 5LN under Section 18 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 Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in her name may enter thereon and peaceably possess and enjoy the same.

Background

1. This is an action for recovery of possession of the Property raised in terms of Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).

2. The application was accompanied by a copy of a tenancy agreement and AT5 dated 10 February 2016 between the Applicant and the Respondent, a letter dated 21 September 2020 from Neil Reid Property to the Respondent, emails from Neil Reid Property dated 21 and 28 December 2023 and 11 January 2024 to the Respondent, an email dated 14 January 2024 from the Respondent to Neil Reid Property, emails dated 17 January 2024 between the parties, an email dated 22 January 2024 from Neil Reid Property to the Respondent, an email dated 23 January 2024 from the Respondent to Neil Reid Property, an AT6 dated 19 January 2024, confirmation of receipt of the AT6 dated 19 January 2024, a rent statement, a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 to Midlothian Council dated 5 February 2024.
3. On 18 June 2024, the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 29 July 2024. The Respondent required to lodge written submissions by 9 July 2024. This paperwork was served on the Respondent by, Christopher Andrew, Sheriff Officer, Edinburgh on 19 June 2024 and the Execution of Service was received by the Tribunal administration.
4. On 25 June 2024 the Respondent lodged written representations.
5. On 23 July 2024 the Applicant’s agent, Neil Reid Property emailed the Tribunal with a rent statement to the 15 August 2024 showing arrears of £7629.57.

Case Management Discussion

6. The Tribunal proceeded with the CMD on 29 July 2024 by way of teleconference. The Applicant was represented by Neil Reid from Neil Reid Property. There was no appearance by or on behalf of the Respondent despite the teleconference starting 5 minutes late. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in her absence. The case was heard with an application for eviction under reference FTS/HPC/CV/23/4957.
7. The Tribunal had before it the tenancy agreement and AT5 dated 10 February 2016 between the Applicant and the Respondent, the letter dated 21 September 2020 from Neil Reid Property to the Respondent, emails from Neil Reid Property dated 21 and 28 December 2023 and 11 January 2024 to the Respondent, the email dated 14 January 2024 from the

Respondent to Neil Reid Property, emails dated 17 January 2024 between the parties, the email dated 22 January 2024 from Neil Reid Property to the Respondent, the email dated 23 January 2024 from the Respondent to Neil Reid Property, the AT6 dated 19 January 2024 with confirmation of receipt, the rent statement to 18 August 2024, the Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 to Midlothian Council dated 5 February 2024 and the Respondent's written submissions. The Tribunal considered the terms of these documents.

8. Mr Reid explained to the Tribunal that they had not had any rent since November 2023. Arrears were £7187.44. The Respondent was a long-standing tenant. She had married a Turkish national in June or July 2023 and since then she has advised that as he was applying for a visa to live in the UK she has not been entitled to any benefits. She had been working but is on maternity leave having had a baby in December 2023 and claims that she is not in receipt of any benefits. Mr Reid has asked for bank statements from her to show her income, but she has not produced these. On occasions they have applied for rent direct from Universal Credit and every time they have been told she is not entitled to Housing Benefit.
9. He went onto explain that although there was mention that she had been seeking help from Penicuik CAB Mr Reid has had no correspondence with them. He has had no correspondence from Midlothian Council either although he believed from their correspondence, she was seeking social housing, but that she also understood they had to go through this process. Mr Reid explained he had a good working relationship with the Homeless Team at Midlothian Council and in an effort to try and assist the Respondent he had emailed them and her by way of an introduction to ask her to contact them to help her with the visa/benefit issues. However, he had heard nothing more.
10. Mr Reid explained that his client was being financially impacted by the high level of arrears. The Applicant was having to bear ongoing costs in relation to the tenancy despite not getting any rent. This was having an effect on her mental health. This was the only property the Applicant let out through him. He advised that as well as the baby the Respondent had another child whom he believed was about 12 years of age.

Findings In Fact

11. The Applicant and the Respondent entered into a Short Assured Tenancy Agreement dated 10 February 2016 in relation to the Property. In terms of

Clause 5.1 the Respondent agreed to pay the Applicant a calendar monthly rent of £630.

12. Clause 34 of the tenancy agreement sets out in full the grounds on which the tenancy could be brought to an end. Clause 34.4 provided for the tenancy to be brought to an end on any of the Grounds of repossession in Schedule 5 of the Housing (Scotland) Act 1988 including Grounds 11 and 12 relating to the failure to pay rent.

13. By letter dated 20 September 2020 the rent increased to £822.73.

14. The Respondent has fallen into arrears of rent. The last payment to account was of £822.73 on 14 November 2023. The Respondent has made no payments of rent since. Current arrears are £7187.44.

15. The Applicant's letting agent Neil Reid has sent numerous letters and emails to the Respondent regarding the arrears. The Respondent has advised she is not entitled to Universal Credit or Housing Benefit and is not in a position to pay rent. The arrears are not as a consequence of a delay or failure of Housing Benefit or Universal Credit.

16. On 19 January 2024, Neil Reid served an AT6 Notice on the Respondent by way hand in terms of Section 19 and founding on Grounds 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988. The Respondent signed an acknowledgement of the AT6.

17. A Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 was served on Midlothian Council by way email on 5 February 2024.

18. The Respondent lives in the Property with her two children. She is married to a Turkish national who does not live in the Property.

Reasons For Decision

19. In terms of Section 18(3), subject to Section 18(6) of the Housing (Scotland) Act 1988 ("the 1988 Act"), the Tribunal shall make an order for possession if satisfied that any of the Grounds of Possession as set out in Part I of Schedule 5 are established. In terms of Section 18(6) of the 1988 Act, the Tribunal shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless amongst other grounds the ground for possession

is any of the grounds in Part II of Schedule 5 of the 1988 Act other than Ground 9, Ground 10, Ground 15 or Ground 17 and the terms of the tenancy make provision for it to be brought to an end on the ground in question.

20. Ground 11 in Part I of Schedule 5 states *“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 of Part 1 of Schedule 5 states *“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.”

21. The Tribunal considered the issues set out in the application. The Applicant provided evidence of non-payment of rent in the form of the rent statement and provided evidence that the Respondent had stated she was not in a position to pay rent. The Tribunal was satisfied on the basis of the documents before it that the tenancy provided that the contractual tenancy could be brought to an end on Grounds 11 and 12 of Schedule 5 and that in terms of Section 18(6) of the 1988 Act the Applicant was entitled to rely on Grounds 11 and 12 in Schedule 5 of the 1988 Act.
22. On the basis of the submissions made by Mr Reid and on the basis of the documents lodged The Tribunal was satisfied the Respondent had persistently delayed paying rent lawfully due. Further the Tribunal was satisfied that rent was unpaid on the date the proceedings were begun and at the date of the AT6 on 19 January 2024. The Tribunal was satisfied on the basis of the tenancy agreement, rent statement and the supporting oral submissions made on behalf of the Applicant and by the submissions lodged by the Respondent that the arrears were not as a consequence of a delay or failure in Housing Benefit or Universal Credit. The Respondent had been asked by Mr Reid to provide confirmation from the DWP of her ineligibility to any welfare benefits and had failed to do so.
23. The Tribunal was satisfied on the basis of the documents lodged, together with submissions made by Mr Reid that the factual basis of the application had been established. A case under Grounds 11 and 12 of Schedule 5 of the 1988 Act was accordingly met. However the Tribunal also has to be satisfied that it is reasonable to evict.

24. 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 relevant circumstances of the case. In this case the Tribunal was satisfied on the basis of the submissions of Mr Reid that the Respondent had accrued arrears. The Tribunal was satisfied Mr Reid as the Applicant's agent had complied with the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 and had regularly contacted the Respondent since arrears started to arise in an attempt to get her to engage. It would not be reasonable to expect the Applicant to continue to bear that level of substantial arrears with the Respondent not making any payments and by her own admission not being able to pay rent. There were no outstanding benefits issues. The arrears were increasing by the month and had reached such a level that there was very little choice but for the Tribunal to grant the order. The Tribunal considered that although the Respondent had two children, that did not outweigh the fact that the Respondent was just not in a position to pay any rent. The Tribunal gave considerable weight to the fact that it was not reasonable for the Respondent to expect to continue to live in the Property without paying rent. The Applicant was facing considerable hardship and stress due to the arrears. The balance of reasonableness in this case weighted towards the Applicant.

25. In the circumstances the Tribunal considered that in terms of Grounds 11 and 12 of Schedule 5 of the 1988 Act had been met and that it is reasonable to grant an eviction order

Decision

26. The Tribunal granted an Order of eviction. 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.

Shirley Evans

4 August 2024

Legal Chair

Date