



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18 Housing (Scotland) Act 1988 (“the 1988 Act”)

Chamber Ref: FTS/HPC/EV/23/3103

Property at 9 Rosevale Street, Cresswell, Dumfries, DG1 2EP (“the Property”)

Parties:

Mr Anton Watson as Executor of Dina Watson deceased, 47 Castledykes Road, Dumfries, DG1 4SN (“the Applicant”)

Mr Brian McGee, 9 Rosevale Street, Cresswell, Dumfries, DG1 2EP (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Sandra Brydon (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted against the Respondent in favour of the Applicant.

Background

1. The Applicant seeks an order for possession in terms of Section 18 of the 1988 Act. A tenancy agreement, Notice to Quit, AT6 notice, Section 11 Notice and rent statement were lodged with the application. The AT6 and application for specify grounds 8, 11 and 12 of schedule 5 to the 1988 Act.
2. A copy of the application was served on the Respondent and parties were notified that a case management discussion (“CMD”) would take place on 8 December 2023 by telephone conference call. The Applicant notified the Tribunal that the Tribunal paperwork wrongly identified the Respondent as Connor McGee. As there was insufficient time to amend the paperwork to the correct name and re-serve the application, the CMD was postponed. The

parties were notified that a CMD would take place by telephone conference call on 11 April 2024 at 2pm.

3. As a result of administrative oversight, the application paperwork was not re-served on the Respondent. This was not noted by the Tribunal until shortly before the CMD.
4. The CMD took place on 11 April 2024 at 2pm. The Applicant was represented by Ms Dalgliesh, solicitor. The Respondent did not participate and was not represented.
5. The Legal Member of the Tribunal advised Ms Dalgliesh that the application had not been re-served, due to administrative oversight. As a result of this error, the CMD would require to be continued to a later date. Ms Dalgliesh told the Tribunal that the Respondent is still in occupation of the property and that the arrears have increased. She requested an early date for the continued CMD.
6. The application was re-served on the Respondent by Sheriff Officer on 30 July 2024. The parties were notified that a CMD would take place by telephone conference call on 28 August 2024. Prior to the CMD the Applicant submitted a certificate of confirmation as a link in title between the now deceased owner of the property, Dina Watson, and the Applicant who is her Executor. An updated rent statement was also submitted.
7. The CMD took place on 28 August 2024. The Applicant was again represented by Ms Dalgliesh. The Respondent did not participate and was not represented.

Summary of discussion at the Case Management Discussion

8. The Tribunal noted that the Applicant has made the application in his capacity as Executor of the late owner's estate. Following discussion, Ms Dalgliesh confirmed that she wished to amend the name of the Applicant to reflect this. The Tribunal also noted that the AT6 and application form referred to ground 8 of schedule 5. However, this ground was repealed on 1 October 2022 and would therefore not be considered. The Tribunal noted that the Applicant has lodged an updated rent statement. Ms Dalgliesh said that his had also been sent to the Respondent by ordinary first-class post and first class recorded delivery post.
9. Ms Dalgliesh told the Tribunal that the Applicant has been told by a third party that the Respondent may have moved out of the property. However, he has been unable to verify this as the Respondent has failed to respond to attempts to contact him and has not returned the keys or given notice. She also told the Tribunal that the Applicant has had some health issues and wants to sell the property due to the administrative burden of being a private landlord. It is his only rental property and was his mother's home. It is understood that the Respondent lives at the property alone. It is not known whether he has any health or other issues, as he has failed to engage, and the Applicant does not

know if he is working or in receipt of benefits. He has paid no rent since January 2024.

Findings in Fact

10. The Applicant is the Executor of the owner and is the landlord of the property.
11. The Respondent is the tenant of the property in terms of an assured tenancy agreement.
12. The Respondent is due to pay rent at the rate of £400 per month.
13. The Respondent owes the sum of £10,115.38 in unpaid rent to the Applicant.
14. The Applicant served an AT6 Notice and Notice to Quit on the Respondent on 27 January 2023.
15. The Applicant has issued letters in compliance with the Rent Arrears Pre Action-Protocol.
16. The Respondent has paid no rent since January 2024.
17. The Applicant is in ill health and wishes to sell the property.
18. The Applicant has received information that the Respondent is no longer living at the property but has been unable to verify if this is correct.

Reasons for Decision

19. The application was submitted with an assured tenancy agreement. The initial term of the tenancy was a period of 6 months from 30 September 2015. The Applicant also submitted a Notice to Quit and AT6 Notice, with a Sheriff Officer certificate of service. This establishes that the notices were served on the Respondent on 27 January 2023. The Notice to Quit called upon the Respondent to vacate the property on 30 March 2023, an ish date. The AT6 Notice is in the prescribed format and specifies grounds 11 and 12 of schedule 5. It states that the earliest date that proceedings can be taken is 31 March 2023, giving the Respondent more than two weeks' notice, as required by Section 19(4) of the 1988 Act. A copy of a section 11 Notice has also been lodged, with evidence that it was sent by email to the Local Authority. The Tribunal concludes that the Applicant has complied with Sections 19 and 19A of the 1988 Act.
20. Section 18 of the 1988 Act (as amended by the Coronavirus (Recovery and Reform) (Scotland) Act 2022 states:-
 - (1) The First-tier Tribunal shall not make an order for possession of a house let on an assured tenancy except on one or more of the grounds set out in schedule 5 to the Act.

(4) If the First-tier Tribunal is satisfied that any of the grounds in Part i or Part ii of Schedule 5 to this Act is established, the Tribunal shall not make an order for possession unless the Tribunal considers it reasonable to do so.

(4A) In considering, for the purposes of subsection (4) above, whether it is reasonable to make an order for possession on Ground 11 or 12 in Part II of Schedule 5 to this Act, the First-tier Tribunal shall have regard in particular to-

(a) The extent to which any delay or failure to pay rent taken into account by the tribunal in determining that the ground is established is or was a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit, and,

(b) The extent to which the Landlord has complied with the pre- action protocol specified by Scottish Ministers in regulations.

21. Ground 11 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 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".

22. The Applicant submitted a rent statement with the application and an updated one prior to the CMD. Based on the rent statements and the information provided at the CMD the Tribunal is satisfied that grounds 11 and 12 are established. The rent account has been in arrears since September 2015. At the time of service of the notices the Respondent owed over £6000, and this had increased to £10,115.38 by the date of the hearing.

23. The Tribunal proceeded to consider whether it would be reasonable to grant the order for possession and noted the following:-

(a) The Applicant has issued letters in compliance with the Rent Arrears Pre Action-Protocol.

(b) There is no information or evidence to suggest that the arrears are due to a delay or failure in the payment of a relevant benefit, such as housing benefit or universal credit.

(c) The rent arrears are substantial and are increasing.

(d) The Respondent may have moved out of the property.

(e) The Applicant is in ill health and wishes to sell the property.

24. Having regard to the factors listed in paragraph 16, the Tribunal is satisfied that it is reasonable to grant an order for possession of the property.

25. As the Applicant has complied with the requirements of the 1988 Act, and as the Tribunal is satisfied that it would be reasonable to grant the order, the Tribunal determines that an order for possession should be granted.

Decision

26. The Tribunal determines that an order for possession of the property should be granted against the Respondent.

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.

Josephine Bonnar, Legal Member

28 August 2024