



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for eviction/ possession of a Rented Property in terms of Rule 65 of the Procedure Rules.

Chamber Ref: FTS/HPC/EV/23/4533

Re: 20 Thomas Street, Annan, DG12 5BP ("the Property")

Parties:

Steven Ceates residing at Greenlea House, Standalane, Annan, DG12 5JR ("the Applicant")

Neil Wallace, Annan Properties, 6 Charles Street, Annan, DG12 5AJ ("the Applicant's Representative").

Joy Ellis, residing at 20 Thomas Street, Annan, DG12 5BP ("the Respondent")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal")

Tribunal Member: Jacqui Taylor (Legal Member) Helen Barclay (Ordinary Member)

Background

1. The Applicant applied to the Tribunal for eviction/ possession of the Rented Property under section 18(1) of the Housing (Scotland) Act 1988, in terms of Rule 65 of the Procedure Rules. The application was dated 16th December 2023. The application states:

'Ground 11: The tenant has persistently delayed paying rent.

Ground 12: Some rent is unpaid at the start of court proceedings and at the time of serving the notice of proceedings.'

The documents lodged with the Tribunal were:-

- A copy of the lease between the parties dated 20th August 2017 for the period 1st September 2017 to 31st August 2018 and monthly thereafter. The monthly rent payment due was £480.
- Notice to Quit dated 30th November 2023 requiring the Respondent to quit the Property by 14th December 2023.

- AT5 dated 20th August 2017 signed by the Respondent at 10am on 20th August 2017.
- Form AT6 dated 27th October 2023, which intimated that the Landlord intended to raise proceedings for possession under grounds 8A, 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988 and that proceedings would not be raised before 16th October 2023.
- Form AT6 dated 30th November 2023, which intimated that the Landlord intended to raise proceedings for possession under grounds 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988 and that proceedings would not be raised before 14th December 2023.
- Section 11 Notice addressed to Dumfries and Galloway Council.
- Rent statement dated January 2024 for the period 28th October 2022 to 15th January 2024 showing an outstanding rent balance of £5070.
- Preaction letters the Applicant's Representative sent to the Respondent dated 6th May 2023, 4th July 2023 and 14th July 2023.

2. By Notice of Acceptance by Petra McFatrige, Convener of the Tribunal, dated 8th April 2024, she intimated that she had decided to refer the application (which application paperwork comprises documents received between 18th December 2023 and 18th March 2024) to a Tribunal.

3. The First Case Management Discussion.

This case first called for a conference call Case Management Discussion at 2pm on 5th August 2024.

The Applicant was represented by Neil Wallace of Annan Properties.

The Respondent was not present and was not represented.

The Respondent had been served notice of the Case Management Discussion by Ellie McConnachie, Sheriff Officer on 2nd July 2024. No written response had been received from the Respondent. The Tribunal were satisfied that the requirements of Tribunal Rule 29 had been satisfied.

3.1 Neil Wallace advised the Tribunal as follows:

Ms Ellis has accumulated rent arrears since December 2022. He tried to encourage her to set up a payment plan but she has not engaged. She has been a tenant since 2017 and at the start she was a good tenant. During 2022 she was in receipt of benefits. He doesn't know if she is currently on benefits. She had been working for a call centre but he doesn't know her current employment status.

He had hand delivered the Notice to Quit and AT6 to Ms Ellis on 30th November 2023. He has a photograph he took when he delivered the documents to her which show her hand. He decided not to send the documents to her by recorded delivery as he suspects she would not sign for them. He did not think it was necessary to serve them by sheriff officer even although the lease stipulates that service of notices could be served by recorded delivery or sheriff officer. The Property is a three bedroom Property. Ms Ellis resides in the Property with her three children aged 15, 10 and 6.

The council's homeless officer asked him to ask Ms Ellis to contact them. He does not believe that she has contacted them.

The current rent arrears amount to £8531.30. The rent was increased to £530.65 per month on 13th July 2024 but he acknowledged that he has not provided the Tribunal with the rent increase documentation.

3.2 Outcome of the first Case Management Discussion.

The Tribunal acknowledged that clause 39 of the lease states that any Notice, Consent or Approval under the lease shall be in writing and any notice to the Tenant will be sufficiently served if sent by recorded delivery post or by sheriff officers to the Tenant at the leased subjects. The Tribunal also acknowledged that section 26(2)(a) of the Interpretation and Legislative Reform (Scotland) Act 2010 provides that a document may be served on a person if it is delivered personally to them. Clause 39 of the lease does not state that Notices must be served on the Tenant by recorded delivery post or by sheriff officers. Mr Wallace advised the Tribunal that he has photographic evidence that he personally served the AT6 on the Respondent. Consequently, the Tribunal continued the CMD to allow time for the Applicant's Representative to provide the Tribunal with evidence that he personally served the AT6 on the Tenant.

4. Additional Productions.

4.1 The Applicant's Representative sent the following documents to the Tribunal:

4.1.1 A copy photograph date stamped 30th November 2024 showing an envelope addressed to the Respondent being delivered.

4.1.2 A copy of the rent increase notice dated 1st April 2024 stating that the rent would increase to £530.65 from July 2024.

4.1.3 An email to the Tribunal administration dated 23rd September 2024 advising that the rent arrears are £3991.95.

4.1.4 An updated rent statement for the period 4th January 2023 to 13th November 2024 showing the rent arrears amount to £4453.25.

4.2 The Respondent sent the following document to the Tribunal.

4.2.1 An email dated 28th August 2024 advising that there is dampness in the Property, the boiler is faulty and the boundary fence needs to be repaired. She had stopped paying rent due to the condition of the Property. She has been suffering from depression and anxiety and took a break out of the UK.

5. The Second Case Management Discussion.

This case called for a conference call Case Management Discussion at 11.30am on 13th December 2024.

The Applicant was represented by Neil Wallace of Annan Properties.

The Respondent was not present and was not represented.

The Respondent had been sent notification of the Case Management Discussion by an email from the Tribunal administration dated 12th November 2024. The Tribunal were satisfied that the requirements of Tribunal Rule 29 had been satisfied.

5.1 Neil Wallace advised the Tribunal as follows:

The rent arrears are currently £3853.00. Although the Respondent has started to make some rent payments she is not communicating with the Landlord or the Landlord's Representative. The Respondent's parents made two payments totalling £5070 in September 2024. However, if she paid off the arrears at the rate of £70 per month it would take her 56 months to clear the arrears. If the Respondent could provide a cast iron guarantee that the arrears would be paid the Landlord would allow the tenancy to continue but this has not been forthcoming.

The Respondent lives in the Property with three children. He is not sure if she is employed. She has refused to allow any benefits to be paid to the Landlord direct.

The Property is not adapted and the Respondent is not disabled.

The Homelessness unit have advised that they would be unable to assist until an eviction order has been issued.

The Appellant's Representative secured access to the Property to enable the Gas Safety Check and the required gas repair works to be carried out. They have not been able to obtain access for the legionella check or the fire alarm check.

The Respondent had been a good tenant from 2017 to 2023 but after that time the rent payments became sporadic and she stopped communicating with the Landlord's Representative.

Regarding the alleged defects in the Property, he explained that the Landlord repairs any defects promptly. Regarding the Respondent's assertion that there is damp in the Property he asked her to provide a photograph showing the damp but this has not been provided. The boiler has been fixed whenever a defect in the boiler has been notified.

He considered it was reasonable for the eviction to be granted and he also considered that it would be fair for the eviction date to be extended slightly to 31st January 2025 to allow for the Christmas period.

6. Findings in Fact

The Tribunal make the following findings in fact:

6.1 The lease is an assured tenancy in terms of the Housing (Scotland) Act 1988

6.2 The rent due in terms of clause 3 of the lease was £480 per month payable monthly in advance.

6.3 The rent was increased to £530.65 with effect from July 2024.

6.4 The Rent arrears as at 13th December 2024 amount to £3853.00.

6.5 The Tenant has rent arrears at the date of today's CMD (13th December 2024), at the date of the application (16th December 2023) and at the date of service of the AT6 on the Tenant (30th November 2023).

6.6 The rent arrears are not due to a delay or failure to pay housing benefit to the Respondent.

6.7 The Respondent has not been remitting housing benefit payments to the Landlord.

6.8 On 30th November 2023 the Landlord's agent hand delivered form AT6 dated 30th November 2023 to the Property.

6.9 6.8 The AT6 stated that the grounds of eviction were Grounds 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988 and that proceedings would not be raised before 14th December 2023.

6.10 Clause 38 of the lease explains the procedure for ending the tenancy and lists the statutory grounds in full including Grounds 11 and 12.

6.11 The Applicant's Representative had sent the Respondent three Preaction letters and accompanying emails dated 6th May 2023, 4th July 2023 and 14th July 2023.

6.12 The Landlord's Representative had sent the required section 11 notice to Dumfries and Galloway Council.

7 Decision.

7.1. Requirements of Rule 65 of the Procedure Rules.

Rule 65 (a) states that the application under section 18(1) of the 1988 Act must state:

(i) the name, address and registration number of the Landlords.

(ii) the name and address of the Landlords' representative.

(iii) the name and address of the Tenants.

(iv) the possession grounds which apply. The grounds stated in the application are Grounds 11 and 12.

The Tribunal confirmed that the application correctly detailed the requirements of Rule 65(a) of the Procedure Rules.

(b) Section 65 (b) states that the application must be accompanied by the following documents:-

(i) The Tenancy Agreement (if available).

A copy of the lease had been provided.

(ii) A copy of the notice of intention to raise proceedings for possession of a house let on an assured tenancy.

A copy of form AT6 had been provided. The form was dated 30th November 2023 and stated that proceedings would not be raised before 14th December 2023. The grounds on which the Landlord was seeking possession are grounds 11 and 12 of the Housing (Scotland) Act 1998.

(iii) A copy of the Notice to Quit served by the Landlord on the Tenant (if applicable).

A copy of the Notice to Quit had been provided.

(iv) Evidence as the applicant has that the possession ground or grounds have been met.

The required rent statement detailing the arrears had been provided.

(c) The application form had been correctly signed and dated by the Applicants' Representative, as required by Section 65(c) of the Procedure Rules.

7.2 Requirements of Sections 18 and 19 of the Housing (Scotland) Act 1988

7.2.1 The Tribunal found that the Notice to Quit was invalid as it had not given the Respondent the required minimum period of 40 days notice.

7.2.2 The Tribunal found that a valid AT6 notice had been served on the Respondent giving her more than two weeks notice that the Landlord intended to apply for an Order for Possession on Grounds 11 and 12 of Schedule 5 of the Housing (Scotland) Act

1988 and the Notice had been validly served on the Respondent by hand delivery on 30th November 2023.

7.2.3 The Tribunal were satisfied that evidence that Grounds 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988 had been provided as the rent statement produced showed that the Tenant's rent arrears amounted to £4110 at the date of service of the AT6 (30th November 2023) and £4590 as at the date of the application (16th December 2023).

7.2.4 The Tribunal found that section 18(6) of the Housing (Scotland) Act 1988 applies as the grounds for eviction are Grounds 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988 and the tenancy agreement makes provision for the lease to be terminated under Grounds 11 and 12 Grounds 11 and 12. Consequently, the Tribunal are entitled to grant the order for possession even although the lease has not been terminated as the Notice to Quit was invalid.

7.2.5 In connection with the requirements of Sections 18(4) and 18(4) (A) of the Housing (Scotland) Act 1988 the Tribunal were mindful of the decision of Lord Greene in the case of *Cummings v Dawson* (1942) 2 All ER 653 on matters to consider when determining reasonableness:

'In considering reasonableness... it is my opinion, perfectly clear that the duty of the judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad, common sense way as a man of the world, and to come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or more weight, others may be decisive.'

The Tribunal found that it was reasonable for the eviction order to be granted given the fact that the rent arrears are currently £3853; the Applicant's Representatives have issued preaction letters to the Respondent; the Tribunal are satisfied that the rent arrears are not due to a delay or failure to pay benefits to the Respondent; the Respondent has not been remitting housing benefit payments to the Landlord; the Respondent has not been engaging with the Landlord or his Representative regarding the rent arrears and the Respondent will receive assistance with being rehoused once the eviction order has been issued.

The Tribunal did not find the Respondent's assertions that she had withheld rent due to the condition of the Property to be persuasive as no evidence of the alleged defects have been produced and the Tribunal accepted the evidence of the Applicant's Representative that the Landlord carries out required repairs promptly and that they have experienced difficulty gaining access to the Property.

7.2.6 The Tribunal determined that the requirements of section 18 of the Housing (Scotland Act) 1988 had been complied with and made an order for possession of the Property.

8. 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.

Jacqueline Taylor

Legal Member

13th December 2024