



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/24/1196

Re:1/1, 27 Pine Crescent, Johnstone, PA5 0BX ("the Property")

Parties:

Simon Coppinger ('the Applicant')

Guardian Letting & Sales Limited ('the Applicant's Representative')

Kayleigh Fraser ('the Respondent')

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

Tribunal Member: Jacqui Taylor (Legal Member) Sara Hesp (Ordinary Member)

1. Background

The Applicant applied to the Tribunal for eviction/ possession of the Rented Property in terms of Rule 66 of the Procedure Rules. The application was dated 12th March 2024. The application concerns eviction proceedings in relation to an assured tenancy of the Property. The Grounds of eviction are grounds 8 and 11.

2. Documents lodged with the Tribunal were:-

2.1 The Short Assured Tenancy Agreement between the parties dated 15th August 2011. The period of the tenancy was from 15th August 2011 to 16th February 2012.

2.2 Form AT6 dated 8th December 2023 giving notice to the Tenant that the Landlord intended to apply to the Tribunal for an order for possession under Grounds 8, 11 and 12. Part 4 of the application detailing the date and that proceedings would not be raised before had not been completed.

2.3 A copy of the section 33 notice dated advising the Tenant that she was required to remove from the Property before 16th February 2024.

2.3 A copy of the Notice to Quit dated 8th December 2023 giving the Tenant formal notice to quit the Property by 16th February 2024.

2.4 A Certificate of Service by Andrew Fraser, Sheriff Officer confirming that he served the AT6 and Notice to Quit and section 33 notice had been served on the Respondent on 8th December 2023.

2.5 A copy of the Section 11 Notice addressed to Renfrewshire Council.

2.6 An email sending the section 11 notice to Renfrewshire Council.

2.7 A Rent statement which showed that the rent arrears started in September 2021 and they amounted to £7983.62 on 11th March 2023.

2.8 A copy of the preaction requirement letters sent to the Respondent dated 11th July 2022, 2nd August 2022 and 15th August 2022.

3. By Notice of Acceptance by Nicola Irvine, Convener of the Tribunal, dated 2nd May 2024, she intimated that she had decided to refer the application (which application paperwork comprises documents received between 12th March 2024 and 9th April 2024) to a Tribunal.

4. The First Case Management Discussion

4.1 This case called for a Case Management Discussion (CMD) Conference call at 14.00 on 28th August 2024.

The Applicant was represented by Stuart Girdwood of Guardian Letting & Sales Limited.

The Respondent did not attend and was not represented.

Mrs Taylor explained that the Sheriff Officer had attempted to serve the notice of the CMD on the Respondent at the Property. He had provided a report dated 5th August 2024 which states that on attending 1/1, 27 Pine Crescent, Johnstone, PA5 0BX the sheriff officer had found the property to be empty and unoccupied. A copy of the sheriff officer's report had been sent to the Appellant's Representative on 26th August 2024 and they had been invited to confirm if they wished to withdraw the application or apply for service by advertisement. No reply had been received to that email.

Mr Girdwood advised that he wished to continue with the application and he sought a postponement. He intended to apply for service by advertisement.

Mrs Taylor and Mr Darroch advised that at the next CMD he would have to address the Tribunal on several matters including the fact that the date of when court proceedings would be raised was missing from the AT6 and the rent statement did not seem to be accurate. The validity of the AT6 had already been raised in the email from the Tribunal dated 9th April 2024. Mrs Taylor suggested that the Applicants' Representative may wish to obtain legal advice.

4.2 Outcome of the First Case Management Discussion.

The Case Management Discussion was continued to allow time for the Applicant to apply for service by advertisement.

5. Additional Productions.

On 11th September 2024 the Applicant's Representative sent the Tribunal the following documents:

5.1 Updated rent statement with the corrected weekly rent charge of £98.07 to reflect the rent detailed in the lease of £425 per month showing rent arrears of £21906.11 as at 9th September 2024.

5.2 A completed form to request for service by advertisement.

5.3 A Report from Fraser Irvine Sheriff Officer dated 9th September 2024 advising that they had been unable to trace the Respondent.

5.4 An email dated 11th September 2024 inviting the Tribunal to dispense with the requirement to produce an effective AT6.

6. The Second Case Management Discussion

This case called for a Case Management Discussion (CMD) Conference call at 14.00 on 13th January 2025.

The Applicant was represented by Stuart Girdwood of Guardian Letting & Sales Limited.

The Respondent attended.

6.1 Mr Girdwood's oral representations were as follows:

6.1.1 He had sent the Tribunal an up to date rent statement which showed that the rent arrears are £21906.11, as at 9th September 2024.

6.1.2 He asked the Tribunal to grant the eviction under ground 11. He acknowledged that ground 8 had been repealed.

6.1.3 He asked the Tribunal to dispense with the requirement for an AT6 as the Tenant had already vacated the Property.

6.1.4 He had sent a corrected rent statement as this had previously been asked for by the Tribunal. He acknowledged that the original rent statement detailed the rent was £350 per month and the latest rent statement detailed the rent was £425 per month.

6.2 Miss Fraser's oral representations are as follows:

6.2.1 She had contacted the Tribunal on the morning of 13th January 2025 to obtain the dial in details of the CMD. She had not received any recent paperwork in relation to the eviction and had not received the updated rent statement.

6.2.2 She had vacated the Property in April 2024.

6.2.3 She was not sure of the exact amount of the rent arrears but acknowledged that the rent arrears were over £10,000.

6.2.4 She acknowledged that the lease stated that the rent was £425 per month but advised that £350 per month had also been discussed.

6.2.4 She agreed to sent an email to the letting agent advising that she had vacated the Property last April.

6.3 The Tribunal were aware that the Respondent had not received all of the documents lodged by the Applicant. However, as the Tenant had vacated the Property and had acknowledged that she was due outstanding rent that exceeded £10,000 they determined that it was reasonable to proceed with the CMD without a further adjournment.

7. The Tribunal made the following findings in fact:

7.1 The Landlord named on the lease is Simon Coppinger.

7.2 The Tenant named on the tenancy agreement is Kayleigh Fraser.

7.3 The tenancy agreement was dated 15th August 2011.

7.4 The original term of the Tenancy was from 15th August 2011 to 16th February 2012.

7.5 The ish date of the tenancy was 16th February 2024.

7.6 The rent due in terms of the written lease agreement was £425 per calendar month. The rent may have been reduced to £350 per calendar month but it was not necessary for the Tribunal to determine the exact amount of rent that was payable.

7.7 The Notice to Quit, AT6 and Section 33 Notice were served on the Respondent on 8th December 2023.

7.8 Following service of the Notice to Quit the contractual tenancy ended.

7.9 There is no ongoing contractual tenancy in place.

7.10 The Tenant has vacated the Property in April 2024.

7.11 The rent arrears amounted to over £10,000.

7.12 The Applicant's Representative had served preaction letters on the Respondent.

8. Decision.

8.1 The Applicant had not produced the AT5 and therefore the Tribunal were unable to determine that the lease was a short assured tenancy. They proceeded on the basis that the lease was an assured tenancy.

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

8.3 The Tribunal found that the Notice to Quit was valid as it had given the Respondent the required minimum period of 40 days notice.

8.4 The Tribunal found that a valid AT6 notice had not been served on the Respondent as the AT6 did not include the date before which proceeding would not be raised.

8.5 The Tribunal were satisfied that it was reasonable to dispense with the requirement to serve a valid AT6 notice in terms of section 19(1)(b) of the Housing (Scotland) Act 1988 as the Tenant had vacated the Property.

8.6 The Tribunal were satisfied that Ground 11 of Schedule 5 of the Housing (Scotland) Act 1988 had been met as the Respondent had accepted that the rent arrears were in excess of £10,000.

8.7 The Tribunal were satisfied that the required notice giving notice of the proceedings under section 11 of the Homelessness etc Scotland Act 2003 had been served on the Local Authority.

8.8 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 Respondent had vacated the Property.

8.9 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.

9. 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.

J Taylor

Legal Member

13th January 2025