



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

Chamber Ref: FTS/HPC/EV/24/3485

Re: Property at 4/6 West Pilton Lea, Edinburgh, EH4 4ES (“the Property”)

Parties:

Mr Alexander Tucker, Mrs Anna Tucker, 11 Ashlands Ford, Salisbury, Wiltshire, SP4 6DY (“the Applicants”)

Ms Margaret Paterson, 4/6 West Pilton Lea, Edinburgh, EH4 4ES (“the Respondent”)

Tribunal Members:

Sarah O'Neill (Legal Member) and Elaine Munroe (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. An application was received on 31 July 2024 under rule 65 of Schedule 1 to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 rules”) seeking recovery of possession of the property under Grounds 8A, 11 and 12 as set out in schedule 5 of the 1988 Act.
2. Attached to the application form were:
 - (i) Copy short assured tenancy agreement between the first Applicant, Alexander Tucker, and the Respondent, which commenced on 1 February 2018.
 - (ii) Copy notice to quit dated 22 November 2023 requiring the Respondent to leave the property by 30 January 2024.

- (iii) Copy form AT6 addressed to the Respondent dated 22 November 2023, citing grounds 8A, 11 and 12.
 - (iv) Copy certificate of service of the notice to quit and form AT6 on the Respondent by sheriff officer on behalf of the Applicant on 23 November 2023.
 - (v) Rent statement showing the Respondent's outstanding rent arrears to be £43547.49 as at 1 July 2024.
 - (vi) Copy notice to Edinburgh City Council under section 11 of the Homelessness etc. (Scotland) Act 2003 with proof of sending by email on 31 July 2024.
 - (vii) Copies of pre-action requirements letters sent by the Applicants to the Respondent dated 23 and 30 April 2024.
3. The application was accepted on 20 August 2024.
 4. Notice of the case management discussion (CMD) scheduled for 26 February 2025, together with the application papers and guidance notes, was served on the Respondent by sheriff officer on behalf of the Tribunal on 28 January 2025. The Respondent was invited to submit written representations by 7 February 2025.
 5. No written representations were received from the Respondent prior to the CMD.

The case management discussion

6. A CMD was held by teleconference call on 26 February 2025 to consider the present application and the accompanying civil proceedings application (FTS/HPC/CV/24/3486). The Applicants were represented on the teleconference call by Ms Kirsty Donnelly of T.C. Young solicitors.
7. The Respondent was not present or represented on the teleconference call. The Tribunal delayed the start of the CMD by 10 minutes, in case the Respondent had been detained. She did not join the teleconference call, however, and no telephone calls, messages or emails had been received from her.
8. The Tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date and time of a case management discussion had been duly complied with. It therefore proceeded with the CMD in the absence of the Respondent.

Submissions on behalf of the Applicants

9. Ms Donnelly asked the Tribunal to grant an eviction order in favour of the Applicants against the Respondent on grounds 11 and 12 only, as ground 8A no longer applies. The Respondent has very significant rent arrears, which amounted to £49672.49 as at the date of the CMD. It would therefore be reasonable to grant an eviction order.
10. Ms Donnelly explained that while the Respondent had been consistently in arrears since 2011, she had previously paid some of the rent. There had, however, been a shortfall between her housing benefit payments and the rent due. The Applicants, who owned two other rental properties in the area, had previously delayed taking action against her as they had been sympathetic to her circumstances.
11. The Respondent had made no rent payments at all since December 2022, however, and had continued to accrue significant arrears. There had been a delay in serving the notice as the Applicants had thought that the Respondent was no longer residing at the property. She had been in hospital in March 2024 but had since moved back into the property. The Applicants, who live in England, had also been under the impression for some time that there was an eviction ban in place in Scotland.
12. The Respondent had previously told the Applicants that she needed an eviction order to allow her to pursue a housing application with the local authority. She had also said that she intended to move back to the north of Scotland. The Applicants had tried to contact the Respondent regarding a payment plan, but the Respondent has not engaged with them on this and has been difficult to contact.
13. Ms Donnelly was unable to tell the Tribunal much about the Respondent's personal circumstances, other than that she is believed to be in her fifties, to be unemployed and on benefits and living alone in the property. Ms Donnelly said that to her knowledge, the Respondent does not have any ongoing health issues.

Findings in fact

14. The Tribunal made the following findings in fact:
 - The Applicants own the property jointly between them. The first Applicant was an owner of the property at the time the tenancy agreement commenced. The second Applicant has owned a half share of the property since 2021.

- The first Applicant is the registered landlord for the property
- There is a short assured tenancy in place between the first Applicant and the Respondent, which commenced on 29 September 2010.
- The rent payable under the tenancy has been £875 per month since its commencement.
- The Notice to Quit and form AT6 were validly served on the Respondent by sheriff officer on behalf of the Applicant on 23 November 2023.
- The Respondent has been in rent arrears continuously since May 2011.
- As at the date of the CMD, the Respondent owed the Applicants £49672.49 in unpaid rent.
- The Respondent is currently residing alone in the property.
- The Applicants currently have a mortgage over the property.

Reasons for decision

15. The Tribunal considered that in the circumstances, it was able to make a decision at the CMD without a hearing as: 1) having regard to such facts as were not disputed by the parties, it was able to make sufficient findings to determine the case and 2) to do so would not be contrary to the interests of the parties.
16. The Tribunal was satisfied that the requirements of both Grounds 11 and 12, as set out in Schedule 5 of the 1988 Act had been met. In terms of Ground 11, the Respondent has persistently delayed paying rent which has become lawfully due. Ground 12 also applies as some rent lawfully due from the Respondent was (a) unpaid on the date on which the proceedings for possession are begun; and (b) was in arrears at the date of the service of the form AT6 relating to those proceedings.
17. The Tribunal then considered whether it was reasonable to make an order for recovery of possession. In doing so, it took into account all of the circumstances of the case.
18. The Tribunal gave particular weight to the fact that the Respondent had accrued a very significant level of rent arrears over a period of almost 14 years. Nothing had been received from the Respondent to indicate that she opposed the application, and it appeared that in fact she may welcome an eviction order to assist her in finding social housing.
19. The Tribunal therefore determined that it would be reasonable to grant an order for recovery of possession in favour of the Applicants.

Decision

The Tribunal grants an order in favour of the Applicants against the Respondent for recovery of possession of the property.

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.

Sarah O'Neill

Legal Member/Chair

Date 26 February 2025