



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 11 of the Rent (Scotland) Act 1984 (“the 1984 Act”)

Chamber Ref: FTS/HPC/EV/24/2502

Re: Property at 40 The Brae, Auchendinny, Penicuik, EH26 0RB (“the Property”)

Parties:

Riccarton Properties LLP, The Manor of Cadland Estate Office, Stanswood Farm, Stanswood Road, Fawley, Southampton, SO45 1AB (“the Applicant”)

Mrs Margaret Devlin, 40 The Brae, Auchendinny, Penicuik, EH26 0RB (“the Respondent”)

Tribunal Members:

Jim Bauld (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that that the application for the order for possession should be granted

Background

1. By application dated 31 May 2024, the applicants sought an order under section 11 of the 1984 Act and in terms of rule 77 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the procedure rules”). On 2 October 2024 the application was accepted by the tribunal and referred for determination by the tribunal.
2. A Case Management Discussion (CMD) was set to take place on 3 March 2025 and appropriate intimation of that hearing was given to all parties.

The Case Management Discussion

3. The Case Management Discussion (CMD) took place on 3 March 2025 via telephone case conference. The applicants were represented by their solicitor,

Ms Alice Flynn, DWF LLP, Solicitors, Glasgow. The Respondent did not take part.

4. The tribunal explained the purpose of the CMD and the powers available to the tribunal to determine matters.
5. The tribunal asked various questions of the applicants' solicitor with regard to the application.
6. She confirmed that she wished the order for eviction to be made.

Findings in Fact

7. The Applicants are the registered owner of the property.
8. The Applicants and the Respondent as respectively the landlord and tenant entered into a tenancy of the property which commenced on 22 June 1984
9. The tenancy was a regulated tenancy in terms of the 1984 Act.
10. The current monthly rental was £300.83 fixed by the Rent Officer on 12 November 2016.
11. On 25 July 2023 the applicant served upon the tenant a notice to quit required by the Act. Service was effected by recorded delivery mail and the notice became effective on 5 September 2023. The notice informed the tenant that the landlord wished to seek recovery of possession using the provisions of the Act.
12. The notice was correctly drafted and gave appropriate periods of notice as required by law.
13. The notice set out one of the grounds contained within schedule 2 of the 1984 Act, namely case 1 (that rent lawfully due from the tenant has not been paid). Arrears at the date of service of the notice were £6,538.14.
14. The amount of arrears at the date of the CMD was £11,554.74.
15. Appropriate accounting had been provided in respect of the outstanding rent with the application to the tribunal.
16. The basis for the order for possession on case 1 was thus established.

Reasons for Decision

17. The order for possession sought by the landlord was based on ground specified in the Act and properly narrated in the notice served upon the tenant. The tribunal was satisfied that the notice had been served in accordance with the

terms of the Act and that the landlord was entitled to seek recovery of possession based upon those grounds.

18. The tribunal accepted the evidence presented on behalf of the landlord with regard to the rent arrears. A rent statement was produced which set out the history of the arrears. Over the course of the tenancy, the respondent has failed to pay the rent as it fell due and significant arrears have accrued. The last payment made by the respondents was on 13 December 2023 of £500.

19. The tribunal was satisfied that the tenant is in arrears and that rent lawfully due has not been paid. The tribunal accepted the unchallenged evidence of the applicant relating to the arrears. The tribunal accepted that the applicant had made appropriate attempts to encourage the respondents to deal with the arrears. The applicants' solicitor also submitted that the applicant has fully complied with the relevant provisions of the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 despite these provisions not applying to this particular tenancy.

20. The grounds for eviction based on rent arrears was accordingly established.

21. An eviction order on this ground can only be granted if the Tribunal is also satisfied that it is reasonable to issue an eviction order.

22. The Tribunal has a duty, in such cases, to consider the whole of the circumstances in which the application is made. It follows that anything that might dispose the tribunal to grant the order or decline to grant the order will be relevant. This is confirmed by one of the leading English cases, *Cumming v Danson*, ([1942] 2 All ER 653 at 655) in which Lord Greene MR said, in an oft-quoted passage:

“[I]n considering reasonableness ... it is, in 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 commonsense way as a man of the world, and come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or no weight, others may be decisive, but it is quite wrong for him to exclude from his consideration matters which he ought to take into account”.

23. In determining whether it is reasonable to grant the order, the tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties.

24. In this case the tribunal finds that it is reasonable to grant the order. The balance of reasonableness in this case is weighted towards the landlord in this application for the following reasons.

25. The level of arrears is extremely high, and it is unlikely that the arrears will ever be repaid. The arrears amount to more than three years' rent. There is no suggestion that the tenant is making any attempt to meet the ongoing shortfall in rent. No arrangement has been made to deal with the arrears which have accrued. It was believed by the applicants' solicitor that the respondent has approached the local council for assistance in obtaining alternative housing and has been advised that such assistance will only be provided if an eviction order is made. The respondent has provided no explanation for the failure to fully meet the rental obligations. The arrears as the date of the CMD are a significant sum and there appears to be no likelihood of them being repaid by the respondent. The respondent has lodged no written representations with the tribunal despite being offered the opportunity to do so.

26. The tribunal decided to exercise the power within rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that a final order should be made at the CMD.

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 Bauld

3 March 2025

Legal Member/Chair

Date