



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

Chamber Ref: FTS/HPC/EV/24/2906

Re: Property at 21 Whinbank, Ladywell, Livingston, EH54 6HJ (“the Property”)

Parties:

Mr Allan Whiteford, 67 Foxknowe Place, Livingston, EH54 6TX (“the Applicant”)

Ms Helen Pirie, 21 Whinbank, Ladywell, Livingston, EH54 6HJ (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be determined without a Hearing and made an Order for Possession of the Property.

Background

1. By application, dated 24 June 2024, the Applicant sought an Order for Possession of the Property under Section 18(1) of the Housing (Scotland) Act 1988 (“the Act”). The Grounds relied on were Grounds 11, 12, 13 and 14 of Schedule 5 to the Act, namely that the Respondent has persistently delayed paying rent which has become lawfully due (Ground 11), that some rent is lawfully due and is unpaid (Ground 12), that an obligation of the tenancy (other than one related to the payment of rent) has been broken or not performed (Ground 13) and that the condition of the house has deteriorated owing to acts of waste by, or the neglect or default of, the tenant (Ground 14).
2. The application was accompanied by copies of a Short Assured Tenancy Agreement between the Parties, commencing on 17 December 2016 and, if not terminated on 17 December 2017, continuing thereafter on a monthly basis until terminated by either Party, a Notice to Quit dated 5 June 2024, requiring the Respondent to remove from the Property by 21 June 2024, and a Notice

served under Section 19 of the Act (Form AT6), advising the Respondent that the Applicant intended to apply to the Tribunal for an Order for Possession, that the Grounds relied on were Grounds 11, 12, 13 and 14 of Schedule 5 to the Act and that proceedings would not be raised before 21 June 2024, together with evidence of delivery of both Notices on the Respondent on 7 June 2024.

3. The Applicant stated that, in relation to Grounds 11 and 12, the Rent Statement showed a persistent pattern of late payments of rent and that four months had been missed altogether. With regard to Ground 13, he provided a statement from a neighbour to the effect that she had witnessed the Respondent's partner occupying the Property and the partner's car parked overnight. The Respondent's partner often takes the dog for a walk when the Respondent appears to leave for work, but the neighbour did not believe that the Property was the partner's sole residence, although they sometimes stay for two or three nights in a week. In relation to Ground 14, the Respondent had failed to report to the Applicant significant rotting of the wooden decking at the rear of the Property. The Applicant had only been made aware of it by a tradesman who visited the Property to repair a fence. The Applicant provided the Tribunal with photographs of the decking, which showed it to be in a very poor condition.
4. On 31 January 2025, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 21 February 2025. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

5. A Case Management Discussion was held by means of a telephone conference call on the morning of 11 March 2025. The Applicant was present. The Respondent was not present or represented.
6. The Applicant advised the Tribunal that the rent arrears now stand at £6.857 and that nothing has been paid since £800 on 20 May 2024. The Applicant had nothing to add to the evidence already submitted in relation to Grounds 13 and 14. The Applicant understood that the Respondent has been in contact with the Housing Officer of the local authority. The Respondent lives alone in the Property, apart from when her partner is also there. The Respondent over the last year had stopped communicating with the Applicant.

Reasons for Decision

7. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

8. Section 18(1) of the Act states that the 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. By Section 18(3) of the Act, if the Tribunal is satisfied that any of the Grounds in Part I or Part II of Schedule 5 is established, the Tribunal shall not make an Order for Possession unless the Tribunal considers it reasonable to do so.
9. In considering whether it is reasonable to make an Order for Possession on Ground 11 or 12, the Tribunal is to have regard, in particular, to 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 the consequence of a delay or failure in the payment of relevant housing benefit or universal credit and the extent to which the landlord has complied with the pre-action protocol specified by the Scottish Ministers in regulations.
10. The Respondent did not make any written representations to the Tribunal and chose not to be present or represented at the Case Management Discussion, so did not offer any information, such as issues with the payment of housing benefit or universal credit, which she would wish the Tribunal to take into account when deciding whether it was reasonable to make an Order for Possession. It was clear from the Rent Statement that there had been persistent delays in paying rent that had become due, and the Tribunal accepted the statement of the Applicant that no rent at all had been paid since the date of the application, by which date there were already substantial arrears. The Tribunal noted that there was no evidence that the Applicant had complied with the pre-action protocol specified by Scottish Ministers, but it appeared to the Tribunal that the Respondent had taken the decision to stop paying rent, without offering any explanation or excuse for her actions. She had also not taken the opportunity to make representations to the Tribunal either in writing or personally or through a representative at the Case Management Discussion. Accordingly, the Tribunal was prepared to excuse the failure to comply with the pre-action protocol.
11. Having considered all the evidence before it, the Tribunal decided that it would be reasonable to make an Order for Possession of the Property under Grounds 11 and 12 of Schedule 5 to the Act.
12. The Tribunal considered the issue of the Respondent's partner staying overnight at the Property, sometimes for several nights in a row, but there was no evidence that the Respondent's partner was staying at the Property on other than an occasional basis, and the Tribunal did not consider that the evidence established that the Respondent had broken the terms of Clause 11.3 of the Short Assured Tenancy Agreement, whereby "The Tenant agrees not to allow other persons to share the occupation of the premises, whether or not for payment, without the prior written consent of the Landlord". Accordingly, the Tribunal did not uphold the application under Ground 13 of Schedule 5 to the Act.
13. The Tribunal also did not uphold the application under Ground 14 of Schedule 5 to the Act. The Applicant had provided photographs showing the condition of

the timber decking, but there was no evidence that it had deteriorated due to acts of waste by, or the neglect or default of the Respondent. She had not reported it to the Applicant, but the Tribunal would have expected a landlord to be carrying out annual or more frequent inspections of the Property and that the deterioration would have been picked up at these inspections.

14. The Decision of the Tribunal was unanimous.

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.

George Clark

Legal Member/Chair _____

11 March 2025
Date