



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, as amended (“the 1988 Act”) and Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations”)

Chamber Ref: FTS/HPC/EV/24/4640

Re: Property at 4 Well Brae, Portlethen, Aberdeen, AB12 4WX (“the Property”)

Parties:

Mr Chinedu Okorro, Mrs Adekemi Okorro, 27 Woodall Close, Middleton, Milton Keynes, MK10 9JZ (“the Applicant”)

Mr Donald Cameron, Mr Craig Abercrombie, 4 Well Brae, Portlethen, Aberdeen, AB12 4WX (“the Respondent”)

Tribunal Member:

Nicola Weir (Legal Member) and Frances Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession of the property be granted.

Background

1. By application received on 7 October 2024, the Applicant applied to the Tribunal for an order for recovery of possession of the property in terms of Section 18 of the 1988 Act against the Respondent. The application sought recovery in terms of Grounds 11 (persistent delay in paying rent), 12 (some rent lawfully due) and 16 (deterioration in condition of furniture) of Schedule 5 to the 1988 Act. Supporting documentation was submitted in respect of the application, including a copy tenancy agreement, rent statement, the Notice to Quit and AT6/proof of service of same, the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003, some information relating to the ‘pre-action protocol’ in respect of rent arrears. An application for payment

of rent arrears of £5,800 was submitted at the same time and was conjoined with this application.

2. Following initial procedure and further correspondence between the Tribunal and the Applicant, on 27 December 2024, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. Notification of the application and details of the Case Management Discussion ("CMD") fixed for 23 April 2025 was served on the Respondent by way of Sheriff Officer.
4. On 17 March 2025, the Respondent, Mr Donald Cameron, lodged written representations in response to the application which contained sensitive personal information. The Tribunal Administration requested permission from him to circulate these representations on 26 March 2025 but there was no response. A copy of the representations was only circulated to the Tribunal Members on the morning of the CMD and to the Applicant only once the Respondent had been asked for his oral permission at the CMD. No representations were received from the Respondent, Mr Craig Abercrombie.
5. On 15 April 2025, the Applicant lodged an updated rent statement which showed the balance of the rent arrears now amounting to £12,800. This was circulated to the Tribunal Members and the Respondent on 22 April 2025. It was unlikely that the Respondent would have received this prior to the CMD as it was circulated to him by post, as the Tribunal did not yet have his permission to communicate with him by email. This, again, was obtained from him at the CMD.

Case Management Discussion

6. The Case Management Discussion ("CMD") took place by telephone conference call on 23 April 2025 at 10am. It was attended by both Applicants, the Respondent, Mr Cameron, and Ms Blessing Ameh who was attending with the Respondent in a supportive capacity. The Respondent, Mr Abercrombie, did not attend. It was noted that both Applicants were dialling in from Qatar and it was explained that, if the applications were to proceed to an Evidential Hearing, the Tribunal Administration would require to know in advance if the Applicants were still outwith the UK, as there is a requirement to obtain consent from the authorities in the relevant country.
7. After introductions and introductory remarks by the Legal Member, there was discussion regarding both applications. It was noted that Mr Cameron accepted that the increased rent arrears figure of £12,800 stated by the Applicant was likely correct. He accepted that he had not paid any rent since July 2024. It was noted that the tenancy had commenced on 18 November 2016 and that the rent was £1,000 per month. It was also noted that the tenancy had originally been joint with Mr Abercrombie but all parties were agreed that Mr Abercrombie had

moved out of the Property many years ago, around 2018. Mr Cameron explained that Mr Abercrombie had signed something at the time to say he was moving out. Mr Cameron accepted that Mr Abercrombie was nothing to do with the rent arrears which had accrued since he moved out and Mr Cameron accepted full responsibility for the arrears. The Applicant explained that they had previously been told by the Tribunal that they had to proceed against both Respondents as a fresh tenancy agreement had not been entered into with Mr Cameron alone. They also explained that they had offered to enter into a new tenancy agreement with Mr Cameron around April 2024. Mr Cameron explained that he had been advised not to do so because the tenancy was on different terms to the original tenancy [being a Private Residential Tenancy, as opposed to an Assured Tenancy]. The Tribunal confirmed that, in that case, the eviction application should technically continue to proceed against both Respondents, although, with the Applicant's agreement, the payment application should now proceed against Mr Cameron alone.

8. Mr Cameron explained that he had had some financial difficulties as he had been looking after his dad for a period of five years. His dad went into a care home in November 2023 after his condition had deteriorated rapidly. This had altered Mr Cameron's benefits situation as he no longer received Carer's Allowance. His dad had previously contributed to his monthly rent payments. Mr Cameron had explained in his written representations that he had also suffered two bereavements in recent years and faced some other personal challenges as a result of his circumstances. He is currently looking for work and has a job interview set up. However, he is wanting to move into social housing and has applied to the local authority for housing which will be more affordable to him. Mr Cameron explained that he really needs an eviction order to be granted, so that his housing application can progress and so that further rent arrears do not keep accruing. He explained that he has essentially been 'stuck' in this situation as he could not voluntarily leave the Property. This would result in him being considered voluntarily homeless and he would not then get rehoused by the local authority. He had gone for advice when he received notice last year and it appeared that, apart from his income situation, Mr Cameron had received legal or other advice from someone not to pay any more rent as this could have meant that the eviction order, based on rent arrears, was less likely to be granted. Mr Cameron referred to the length of time the process had been going on, with the arrears building up and would like the eviction order granted as soon as possible. Although Mr Cameron fully accepts the rent arrears grounds, he did not agree to the ground regarding the condition of the Property/its contents, as per his written representations.
9. The Applicants confirmed that they also wished an eviction order granted as soon as possible, given the procedural issues and delays experienced already in this application, as well as the significant rent arrears. They stated the arrears were significant, had started to accrue in July 2023 and the fact that no rent at all had been paid since July 2024 had caused them considerable financial pressure. They had been frustrated also by Mr Cameron's lack of engagement with them and refusal to sign a new tenancy agreement, which they stated he had requested from them to support his housing benefit application.

10. The Tribunal raised with the Applicants some technical issues regarding the formal notices served by them, particularly in respect of a defect in the Notice to Quit and the periods of notice given in respect of the Notice to Quit and AT6 Form. It was noted that the Tribunal had raised these issues with the Applicants during the initial application process and that, although the Applicants had responded at that time, the Tribunal required to be further addressed on these matters at the CMD as they were not satisfied with the terms of the written response which had been provided. There were lengthy discussions regarding these issues. The Respondent stated that he had no issue that he wished to pursue in relation to these technical aspects of the application. He had received notice a long time ago and reiterated that he wished to move out of the Property and move on. He reiterated the lengthy time that has already passed since notice was originally served.
11. An issue which had been identified in respect of the Notice to Quit was that it sought to terminate the contractual tenancy on 9 September 2024 but this was not an 'ish' date in terms of the lease, as the first ish date was 19 May 2017 and thereafter every month on the 19th of the month. The Notice to Quit also did not provide a sufficient notice period in terms of the law as, although it was dated 20 August 2024, it was not posted to the Respondent until 29 August 2024 and delivered to him on 30 August 2024. As the Notice sought to end the tenancy on 9 September 2024, only 9 days' notice had been given. It was, however, explained by the Legal Member that it is possible to bring such a tenancy to an end without a Notice to Quit in certain situations [where section 18(6) of the 1988 Act applies]. This is where certain grounds for possession were being used, which include the grounds here, namely 11, 12 and 16 and where the terms of the tenancy make provision for it to be brought to an end on these grounds, which this tenancy does (clauses 4, 21 and 22). The Legal Member went on to explain, however, that, although the issues with the Notice to Quit could therefore be permitted, there was also a similar issue with the AT6 which required 2 weeks' notice in respect of these particular grounds, but, again, only 9 days' notice had been given, as the AT6 was served together with the Notice to Quit. The Applicants both addressed the Tribunal in respect of these matters. They explained, as they had in their initial response to the Tribunal, that they had looked at the Scottish Government guidance on the matter, which they had produced to the Tribunal, and that they only had to give two weeks' notice in respect of these particular grounds. They had not realised that it was the date of delivery of the notices to the Respondent that was the start of the 14-day notice period, or that the date stated in the notices was the end of the 14-day period. They stated that they had produced evidence to the Tribunal that the notices had been delivered to, and signed for, by the Respondent some considerable time ago, on 30 August 2024, and that they had not then actually raised the Tribunal proceedings until 7 October 2024. The Applicants considered this had provided the Respondent with considerably more than 14 days' notice and made the point that the Respondent had made it clear that he accepted this.
12. The Legal Member explained that she understood the parties' positions but that did not consider that the Tribunal had discretion to ignore these technical issues concerning the notices. Following further discussion, the Tribunal Members

conferred, and it was agreed that the Tribunal would adjourn the CMD and thereafter allow a period of 21 days for the Applicants to seek independent legal advice, if they so wished, and to lodge with the Tribunal legal submissions on the matter. Parties were thanked for their attendance and the CMD concluded.

13. Following the CMD, the Tribunal Members reconsidered the matter, having regard to the terms of the 1988 Act and having noted that Section 19(1)(b) of the 1988 Act states that there is in fact a discretion available to the Tribunal to allow an application based on an AT6 notice which is technically invalid to proceed where the Tribunal "*considers it reasonable to dispense with the requirement of such a notice.*" The Tribunal accordingly instructed emails to be sent to both parties explaining the position and inviting any written representations they wished to make on the matter as soon as possible. The emails were issued to parties on 24 April 2025 and both responded.

14. The Applicants emailed on 25 April 2025 with detailed written representations requesting that the Tribunal exercise its discretion under Section 19(1)(b) of the Housing (Scotland) Act 1988 to allow their application to proceed despite the technical shortfall in the notice period in the Form AT6. They stated that there were several compelling reasons as to why this would be reasonable in the circumstances:-

(1) the Respondent was not opposing the eviction and is actively in favour of an eviction order being granted in order to progress his application for social housing with the local authority, who have advised him that the eviction order is essential to make him a priority for social housing;

(2) both parties are experiencing significant financial hardship due to this situation; they had not received any rental payments since July 2024 which had resulted in accumulated rental arrears totalling £12,800, with a further £1,000 being added every month; this was also making the Respondent's financial recovery increasingly difficult; the Applicants have been forced to cover all property expenses including mortgage payments, insurance, factoring and maintenance costs without any rental income for over nine months, creating serious financial and emotional strain for their family, as the property is generating no income; they were also currently surviving on one income as Mrs Okorro was laid off in 2020 (during Covid) and has not found work since; in addition, there has been damage to the property that will incur further significant repair costs, further complicating their precarious financial situation; the current circumstances are detrimental to both parties; and

(3) allowing this technical issue to derail proceedings would extend the hardship for both parties; the spirit of the notice requirements has been fulfilled, as evidenced by the Respondent's full awareness and support of these proceedings; they asked the Tribunal to exercise its discretion to allow their application to proceed in the mutual interests of both parties' welfare and financial stability.

15. The Respondent emailed on 29 April 2025 with his written representations. He apologised for not responding immediately. He stated that he wished for an amicable and quick resolution, explained that his financial difficulties had resulted in the rent arrears which had previously been paid on time. He

reiterated that he requires an eviction order so that he could obtain assistance from the housing authorities and would wish the Tribunal to exercise their discretion in this matter, as requested by the Applicants. The Respondent stated that he hoped the Applicants would consider a payment plan with him in respect of the rent arrears. He also reiterated what he had previously stated regarding the damage to the property alleged by the Applicant which he considered to be just normal wear and tear.

16. The Tribunal Members considered the application again in light of these further representations and decided to exercise their discretion in terms of Section 19(1)(b) of the 1988 Act and to grant the eviction order sought.

Findings in Fact

1. The Applicant is the joint owner and landlord of the Property.
2. The Respondent is the joint tenant of the Property by virtue of a Short Assured Tenancy which commenced on 18 November 2016.
3. The second-named Respondent had vacated the Property in or around 2018, having renounced his interest in the tenancy in writing at that time and had not entered into the Tribunal proceedings.
4. The first-named Respondent (referred to hereinafter as “the Respondent”) remains in occupation.
5. The rent in terms of the tenancy is £1,000 per calendar month.
6. Rent arrears started to accrue from July 2023 and no rent has paid at all since July 2024.
7. Arrears amounted to £4,800 when notice was served and £5,800 when this Tribunal application was lodged.
8. Arrears currently amount to in or around £12,800.
9. A Notice to Quit and AT6 were served on the Respondent by recorded delivery/’signed for’ post on 30 August 2024, with the notice period stated to end on 9 September 2024.
10. The Tribunal application was submitted on 7 October 2024.
11. The Respondent admits the rent arrears and does not oppose the eviction.
12. The Respondent is currently on a limited income, consisting only of state benefits which have reduced due to changes in his circumstances.
13. The Respondent cannot afford to continue renting the Property.

14. The Respondent wishes to obtain alternative accommodation and has applied for social housing, although has not yet secured same.
15. The Applicant is owed a substantial amount of money in rent arrears owed by the Respondent, which have been in existence for a lengthy period of time.
16. The Applicant requires to recover the Property to relieve their own financial pressures arising from the rent arrears situation.

Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, the written representations from both parties, prior to and following the CMD and the information given at the CMD by both Applicants and by the Respondent, Mr Cameron.
2. The Tribunal found that the application was in order, other than the defects in both the Notice to Quit and AT6 in terms of the date of termination stated in the Notice to Quit and the notice period given in the Notice to Quit and AT6, as narrated in detail above. However, having considered the representations made by both parties in these matters, the Tribunal determined that the requirement for a Notice to Quit could be dispensed with in terms of Section 18(6) of the 1988 Act, again as narrated above. The Tribunal also determined that it was reasonable in all the circumstances and, given the position of both parties in the matter, to exercise their discretion in terms of Section 19(1)(b) and dispense with the requirement of the AT6. The Tribunal agreed with both parties that it was in both their interests for the tenancy to be terminated as soon as possible and for the eviction order sought to be granted. To do otherwise would simply prolong the process further, to the detriment of both parties.
3. The application was under Grounds 11, 12 and 16 of the 1988 Act, which are as follows:-

“Ground 11

Whether or not any rent is in arrears on the date on which proceedings for possession are begun, the tenant has persistently delayed paying rent which has become lawfully due.

Ground 12

Some rent lawfully due from the tenant—

*(a) is unpaid on the date on which the proceedings for possession are begun;
and*

(b)except where subsection (1)(b) of section 19 of this Act applies, was in arrears at the date of the service of the notice under that section relating to those proceedings.

Ground 16

The condition of any furniture provided for use under the tenancy has deteriorated owing to ill-treatment by the tenant or any other person residing or lodging with him in the house and, in the case of ill-treatment by a person lodging with the tenant or by a sub-tenant of his, the tenant has not taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant.”

The Tribunal considered that all elements of grounds 11 and 12 were met. There was no dispute that the Respondent had persistently delayed paying rent that was lawfully due. The rent was substantially in arrears both when notice was served on the Respondent and when these proceedings were begun. However, the Tribunal did not consider that there was sufficient evidence before it to find ground 16 established. The Tribunal also noted that the Respondent denied this ground in his written representations, both before and after the CMD and had provided an explanation for his position in this matter in his original representations. Accordingly, the Tribunal determined that the eviction order would be granted with reference to grounds 11 and 12 only.

4. The Tribunal was also satisfied, with reference to the requirement of Section 18(4) of the 1988 Act that it was reasonable, having regard to all of the circumstances, to grant the eviction order sought. The Tribunal had regard to the Applicant's current circumstances and the financial pressures on them as a result of the long-standing rent arrears and the amount of the rent arrears which now amounted to £12,800. The Tribunal also took into account the current financial circumstances of the Respondent, the change in circumstances he had experienced as a result of no longer being his father's carer and bereavements and other person issues he has suffered. The Tribunal was of the view that all parties have experienced stress as a result of the arrears situation and did not consider that the current situation could continue, without further detriment to both parties. The steps taken by the Respondent already to apply for suitable alternative accommodation were also encouraging. In any event, the Respondent, having taken advice on the matter, did not oppose the eviction and, in fact, was in support of an order being granted as soon as possible in order to resolve the situation and allow him to vacate the Property. In all the circumstances, the Tribunal considered it reasonable to grant the eviction order at this stage, there being no requirement to adjourn to an Evidential Hearing, given the agreed position of the parties

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.

Nicola Weir

Legal Member/Chair

15 May 2025
Date