



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”) and Rule 65 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/EV/20/0254

Re: Property at 65 Main Street, Bannockburn, Stirling, FK7 8LX (“the Property”)

Parties:

Mr Stanley Collins, 19 The Kirklands, Stirling, FK7 9BD (“the Applicant”)

Mailers Solicitors, 2A King Street, Stirling, FK8 1BA (“the Applicant’s Representative”)

Mr Chris Balanowski, 65 Main Street, Bannockburn, Stirling (“the Respondent”)

Tribunal Member:

Ms. Susanne L. M. Tanner Q.C. (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) was satisfied that Ground 8 in Part II of Schedule 5 to the 1988 Act were established by the Applicant, in that both at the date of service of the notice under section 19 of the 1988 Act relating to proceedings for possession on 12 December 2019 and at the date of the hearing on 13 July 2020 at least three months’ rent lawfully due from the Respondent was in arrears; the arrears are not a consequence of a delay or failure in the payment of relevant housing benefit; and made an order for possession in terms of Section 18(3) of the 1988 Act.

Reasons

1. Procedural Background

- 1.1. The Applicant's Representative made an application to the tribunal on 24 January 2020 in terms of Section 18 of the Housing (Scotland) Act 1988 ("the 1988 Act") and Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules").
- 1.2. The Applicant seeks an order for possession of the Property in terms of Section 18 of the 1988 Act under Grounds 8 of Schedule 5 to the 1988 Act.
- 1.3. The Applicant's Representative lodged with the Application:
 - 1.3.1. a copy of a Short Assured Tenancy agreement between the parties for the Property;
 - 1.3.2. a copy of a Notice to Quit to the Respondent dated 11 December 2019;
 - 1.3.3. A copy of an AT6 notice to the Respondent dated 11 December 2019;
 - 1.3.4. Proof of service on the Respondent by Sheriff Officers on 12 December 2019;
- 1.4. On 27 January 2020, a legal member acting with the delegated powers of the Chamber President considered the Application and the tribunal requested further information from the Applicant's Representative, namely sight of the Section 11 Notice sent to the local authority. On 31 January 2020, the Applicant's Representative produced a copy of the Section 11 Notice and proof of service on 24 January 2020.
- 1.5. The tribunal's administration obtained the title deeds for the Property which show that the Applicant is the registered proprietor of the Property.
- 1.6. On 10 February 2020, the Application was accepted for determination by a tribunal. Both parties were notified by letters dated 25 February 2020 of the date, time and place of Case Management Discussion ("CMD") in relation to the Application on 30 March 2020 at 1000h in Wallace House, Maxwell Place, Stirling. The Respondent was invited to make written representations in response to the Application by 17 March 2020. Both parties were advised that they were required to attend the CMD. The parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application which may involve making or refusing an eviction order. The parties were also advised that if they do not attend the CMD this will not stop a decision or order being made if the tribunal

considers that it has sufficient information before it to do so and the procedure has been fair. The Application paperwork and notification was served on the Respondent by Sheriff Officers.

- 1.7. The Respondent did not submit any written representations in response to the Application.
- 1.8. The CMD which had been due to take place on 30 March 2020 was postponed due to the Covid-19 pandemic and parties were notified of the postponement to a date to be advised.
- 1.9. A further CMD was fixed for 13 July 2020. The tribunal Directed that the CMD would take place by teleconference as a result of the ongoing Government restrictions in relation to the Covid-19 pandemic. On 12 June 2020, both parties were notified of the date and time of the CMD and that it would take place by teleconference, with details for joining the call.
- 1.10. A letter was sent to both parties on 9 July 2020 together with a Direction confirming the reasons that the CMD was to be conducted by teleconference.
- 1.11. On 9 July 2020 the Respondent contacted the tribunal's administration by email to stated that he did not intend to participate in the CMD on 13 July 2020. He indicated that he is packed and ready to move "as soon as covid allows homeless and housing association to accommodate" him. He provided further background information about the tenancy. He made reference to the "first tribunal" in which there was a discussion about cash payments of rent and stated that he had reported these to HMRC. He stated that he would hopefully be out of the Property shortly. He offered apologies to all parties involved. He stated that he was awaiting four operations and suffered from a medical condition. A copy of the Respondent's email was forwarded to the tribunal chair and to the Applicant's Representative.

2. Case Management Discussion ("CMD") 13 July 2020, 1000h: Teleconference

- 2.1. Mr Philip Anderson from the Applicant's Representative attended on behalf of the Applicant.
- 2.2. The Respondent did not attend the CMD teleconference for the reasons given in his email correspondence of 9 July 2020. The tribunal was satisfied on the basis of the Sheriff Officer's execution of service and the further notifications and information sent to the Respondent by the tribunal's administration that the requirements of Rule 24(1) of the 2017 Rules regarding the giving of notice of a hearing had been duly complied with and proceeded with the Application upon the oral representations of the Applicants' Representative, the written

representations of the Respondent and the material before it, in terms of Rule 29 of the 2017 Rules.

- 2.3. Mr Anderson made submissions on the basis of an order for payment of rent arrears of £7350.00 that was granted by the tribunal on 20 February 2020 at a CMD hearing in Stirling. The tribunal chair explained that that was not a case which was allocated to her and she had no prior knowledge of the case or the decision and order which was made. Mr Anderson stated that the civil and eviction Applications had been made at different times and had not been joined for the purposes of CMD hearings. He provided the reference number FTS/HPC/CV/19/3354. The tribunal clerk obtained the decision and statement of reasons and order for payment from 20 February 2020 and these were passed to the tribunal chair for consideration.
- 2.4. Mr Anderson explained, with reference to the decision and order in the civil case, that the Respondent had attended that CMD hearing on 20 February 2020 and there had been an admission by the Respondent that there were rent arrears as at that date, but that there had been some dispute as to the exact amount of arrears, as the Respondent claimed to have made three payments to the Applicant in cash. The Applicant disputed that any payments were made to him in cash. Mr Anderson further stated that following an adjournment which was allowed by the legal member at the CMD, an agreement was reached between the parties that £7350.00 in rent arrears would be claimed from the Respondent. Mr Anderson received instructions from the Applicant to amend the application to seek £7350.00. The Respondent withdrew and incomplete time to pay application which he had submitted in advance of the CMD. The tribunal made the order for the agreed sum of £7350.00. Mr Anderson stated that he received the order dated 20 February 2020 on 25 March 2020, after the expiry of the appeal period. He stated that it has not yet been enforced on behalf of the Applicant.
- 2.5. Mr Anderson stated that the Respondent has not made payment of the sum of £7350.00 in the order. He stated that rent payments of £600.00 per calendar month have continued to fall due on 1 March, 1 April, 1 May, 1 June and 1 July 2020 and that the Respondent has not made any payments of rent since the order was made. He submitted that a further £3000.00 of rent arrears has accrued in the period since 1 March 2020. Taken together with the £7350.00 in the order for payment, the total rent arrears as at 13 July 2020, are £10,350.00.
- 2.6. Mr Anderson stated that the Applicant is concerned about obtaining vacant possession and that the delay in doing so is causing the Applicant considerable stress.

- 2.7. Mr Anderson noted that the Respondent had not stated in his submission of 9 July 2020 that he has made any payments towards the sum in the order for payment of 20 February 2020 or that he has made any payments of rent since then.
 - 2.8. The tribunal chair asked Mr Anderson for clarification as to the amount of arrears which were outstanding as at the date of service of the AT6 form on 12 December 2019, noting that the AT6 states that “arrears currently exceed 9 months’ rent payable” but that no rent statement had been lodged to confirm the rent due as at that date. Mr Anderson stated that a rent statement had been lodged in the civil application. He stated that he could obtain the information via his remote case system or by contacting the Applicant. The tribunal chair allowed a short adjournment for Mr Anderson to obtain the information.
 - 2.9. Following the adjournment, Mr Anderson confirmed that he had spoken to his client and obtained access to the rent statement and that the rent arrears outstanding as at 12 December 2019 were in excess of 10 months’ rent and totalled £6150.00. Mr Anderson further stated that he had written to the Respondent on 11 October 2019 confirming the rent arrears figure at that time, which was £5500.00 He had not paid. Mr Anderson further referred to the hearing in the civil application in which the Respondent had accepted at the CMD hearing that he was due to pay £7350.00 as at 20 February 2020.
3. The tribunal makes the following findings-in-fact:
- 3.1. There is a short assured tenancy between the Applicant and the Respondent for the Property which began on 1 February 2017 and is tacitly relocating on a monthly basis on the 1st day of each month.
 - 3.2. Rent is payable by the Respondent to the Applicant in the sum of £600.00 per calendar month, monthly in advance, on 1st of each month.
 - 3.3. On 20 February 2020, the tribunal made a decision in a civil application CV/19/3354 by the Applicant against the Respondent and made a payment order for £7350.00 in respect of rent arrears to 20 February 2020.
 - 3.4. The Respondent has not made payment to the Applicant of the sum of £7350.00 specified in the order.
 - 3.5. Rent arrears have accrued in the sum of £600.00 per calendar month from 1 March 2020 to 1 July 2020.
 - 3.6. The total rent arrears as at 13 July 2020, including the sum specified in the order and the rent for the period from 1 March to 1 July 2020 is £10,350.00.

3.7. The AT6 (Section 19 notice) was served on the Respondent on 12 December 2019.

3.8. As at 12 December 2019, the Respondent had rent arrears of £6150.00.

3.9. The AT6 notice included notice that the Applicant was intending to raise proceedings for possession of the Property on Grounds 8 of Schedule 5 to the Housing (Scotland) Act 1988 ("the 1988 Act").

3.10. The rent arrears are not a consequence of a delay or failure in the payment of Housing Benefit or relevant universal credit.

3.11. Discussion

3.12. The tribunal was satisfied on the basis of the findings in fact that Ground 8 in Part II of Schedule 5 of the Act are established, in that both at the date of service of the notice under section 19 of the 1988 Act relating to proceedings for possession on 12 December 2019 and at the date of the hearing on 13 July 2020 at least three months' rent lawfully due from the Respondent was in arrears. The arrears as at 13 July 2020 represent unpaid rent to 20 February 2020 of £7350.00, for which a payment order was made by the tribunal in case reference FTS/HPC/CV/19/3354; plus five months rent from 1 March to 1 July 2020 at £600.00 per calendar month. The tribunal was satisfied that the rent arrears are not a consequence of a delay or failure in the payment of relevant housing benefit. The tribunal was therefore required to make an order for possession in terms of Section 18(3) of the 1988 Act.

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

S. L. M. Tanner QC

13 July 2020

**Ms. Susanne L. M. Tanner Q.C.
Legal Member/Chair**