



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/21/0355

Re: Property at 8 Ivy Grove, Coatbridge, ML5 3PS (“the Property”)

Parties:

Ecosse Estates Limited, 1st Floor, Elizabeth House, 13 - 19 Queen Street, Leeds, West Yorkshire, LS1 2TW (“the Applicant”)

Ms Karen Ward, 8 Ivy Grove, Coatbridge, ML5 3PS (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member) and David MacIver (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“ the Tribunal”) determined that a possession order for the property in terms of Section 18 of the Housing (Scotland) Act 1998 , Grounds 8,11 and 12 be made in favour of the Applicant and against the Respondent

The decision of the Tribunal was unanimous.

Background

1. By application dated 17 February 2021, the Applicant’s solicitor applied to the First-Tier Tribunal for Scotland (Housing and Property Chamber) for an order for possession of the property at 8 Ivy Grove, Coatbridge, ML5 3PS in terms of Rule 65 of the First-Tier Tribunal rules of procedure. A related application for a payment order for unpaid rent said to be due in terms of a tenancy agreement at the property was also lodged with the Tribunal and this application has reference number FTS/HPC/CB/21/0356.
2. Both the application for a possession order and the application for the payment order were accepted by the Tribunal on 3 March 2021. The Applications were conjoined to be dealt with together.

3. A case management discussion was fixed for 13 April 2021 at 10 am for both applications. At this case management discussion on 13 April 2021 a detailed discussion took place. At that stage the Respondent set out her position regarding the rent arrears. She indicated there had been a number of repair issues at the property for which she had required to spend her own money to fix or attempt to fix the problems. Her position was that these repairs should have been effected by the Applicant. She also indicated that some repair issues remained unresolved at the property although she had waited for a number of years for these to be resolved. She also indicated that her health and employment situation had affected her ability to pay the rent at the property. It was her position that these matters had to be considered or set against any rent that was said to be due by her.
4. There was no dispute between parties that they had entered into two tenancy agreements at the property, the first of which commenced on 11th November 2014 and had continued until the subsequent agreement which commenced on 1st May 2017. The rent payable in terms of both tenancies was £550 payable monthly in advance. Around May 2020 the rent was reduced to £500 per month to assist the Respondent.
5. The Tribunal fixed a Hearing in relation to both applications to take place on 26th May at 10 am and issued a Note of Direction to the parties in relation to the application for a possession order after the case management discussion. This Direction, amongst other matters, required the Respondent to submit written submissions regarding any dispute she had with the rent statement lodged by the Applicant, a written statement of her employment history, a statement of her health history since 2018, a note of dates when she said that she communicated the requirement for repairs, a detailed list of the repair issues which she said remained unresolved and a detailed list of repairs for which the Respondent indicated she had paid her own money. In the Direction the Tribunal indicated that if no written submissions were made by the Respondent in relation to her dispute regarding the sum said to be the total rent arrears as at 1 March 2021 the Tribunal would assume that she accepted this figure.
6. The Tribunal was asked to postpone the Hearing on 26th of May in order that parties could negotiate a possible settlement of the issues. The Tribunal allowed the Hearing to be postponed to allow settlement negotiations between the parties to take place. A new Hearing was fixed for 2 July 2021. Settlement between the parties was not effected and a request to adjourn the Hearing fixed for 2 July to a later date was requested as the Applicant's legal representative was not available on 2nd July. This request to adjourn was granted by the Tribunal. A new hearing was fixed for 30 July 2021 10 am in respect of both applications.

The Hearing

7. The Hearing on 30 July 2021 was attended by Miss Donnelly, solicitor for the Applicant, Mr Brian Caplan, a director of the Applicant company and Ms Karen Ward, the Respondent who represented herself.
The Tribunal legal member and chair explained to the parties what would happen at the Hearing and went through all the paperwork which the Tribunal had in order to check that all parties had the appropriate papers. The Tribunal

had sight of six inventories of productions lodged on behalf of the Applicant relating to both applications.

8. The Tribunal had sight of both applications, a tenancy agreement from 2017, a Form AT6, recorded delivery receipts relating to notices, a rent statement, a notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003, an email to the local authority intimating the Section 11 notice, a pre-action requirements letter together with a tenancy agreement, a rent statement, tenant's rights information, private rented sector tenant support information, an income and expenditure form, a tenancy agreement from 2014, a rent statement from 2014, a rent statement from 2017, a settlement letter with rent statement attached, an email from the Respondent provisionally agreeing to settlement, invoices from Gas Select dated between 2014 and 2020, a gas safety certificate dated December 2020, copy invoices for works between 2016 and 2021, a builder's report regarding windows and doors, extract text message correspondence between the Applicant and Respondent, a rent statement as at 14 July 2021, e mail correspondence from 'The Window Mender' regarding access to the property dated 21 July 2021, e mail correspondence between Applicant and Respondent regarding access dated between 20 and 22 July 2021, a copy text message from the Respondent to the Applicant on 21 July 2021 and email correspondence from Wellwood Joinery regarding the back door at the property together with a copy invoice.
9. The Applicant's representative Miss Donnelly confirmed that these were the appropriate documents lodged on behalf of the Applicant. The Respondent Ms Ward confirmed that she had seen all of these documents except for the email and invoice from Wellwood Joinery. The Tribunal Clerk forwarded this missing information from inventory of productions number 5 for the Applicant to the Respondent by e mail.
10. In relation to the Respondent's position the Tribunal had sight of a series of emails between 19th April and 21 July 2021. Miss Donnelly for the Applicant had not had sight of these emails but had sight of emails from the Respondent dated 12th April and 24th of March. The Tribunal indicated that enquiries would be made to trace these emails and to forward to Miss Donnelly the e mails she had not seen before the Hearing started.
11. The Tribunal raised a number of preliminary issues with the Applicant's representative Miss Donnelly.
12. These related to the question of rent arrears said to be brought forward from the tenancy agreement which had commenced in 2014. The Tribunal raised the question of whether these arrears had arisen more than five years before the tribunal applications had been lodged and whether this part of the payment order claim might be time-barred. Miss Donnelly indicated that she would have to check that point. The Tribunal also raised the issue of the lodging of a letter proposing settlement terms from the Applicant's representative's firm and the response from the Respondent to that letter. Miss Donnelly confirmed that these documents were lodged simply to indicate that an attempt had been made to resolve matters and that these would not be relied on by the Applicant in any question of reasonableness to be argued in relation to the possession order. The Respondent Ms Ward had no objection to her response to the settlement offer being considered by the Tribunal.
13. The Tribunal raised as a preliminary matter with the Respondent whether she had complied with the requirements of the Direction issued after the case

management discussion. Her position was that she did not accept that the full arrears as set out by the Applicant in the rent statement which was lodged up to 1 March 2021 were due by her and confirmed that her position was that the Tribunal should be considering the fact that she had had to pay for a number of repairs to the property from her own money which she said should have been carried out by the landlord. In addition she said that any outstanding rent had to be set against the fact that she had been waiting for some repairs at the property for a number of years and that these had still not been carried out. She confirmed that she was not arguing that she had withheld rent in order to force any repairs to be carried out at the property.

14. When the Respondent clarified her position, both parties indicated that they were prepared to have a discussion in relation to both applications to see if an agreement could be reached. The hearing was formally adjourned and both Tribunal members left the audio teleconference call in order that a discussion could take place. The Tribunal clerk remained on the call.
15. When the hearing reconvened Miss Donnelly, the Applicant's representative confirmed that an agreement had been reached between the parties. She indicated that it was now agreed that the sum of £4000 was outstanding in respect of rent arrears at the property accrued over the period of the tenancy agreement which commenced on 1 May 2017. The Applicant was seeking a possession order under Grounds 8, 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988 and she said that the Respondent would not oppose an order in these terms on the basis of that amount of rent arrears. Miss Donnelly further indicated that in terms of the agreement on the possession order, it had been agreed between parties that enforcement action on any possession order granted would not take place for a period of four months from the date of the Hearing on 30 July 2021. No suspension of any possession order was requested in respect of the application.
16. Miss Donnelly indicated that parties had agreed that a payment order in the sum of £4000 be granted in favour of the Applicant and against the Respondent. Parties had agreed that the arrears would be paid by the Respondent at the rate of £150 per month to start when she vacated the property. She said that parties had agreed that Ms Ward would continue to pay monthly rent at the property of £500 per month until she vacated the property. There was no request for a time to pay direction in relation to the payment order.
17. The Tribunal legal member and chair went through the details of the proposed agreement with the Respondent who confirmed that she understood and was in agreement on the facts as set out by Miss Donnelly and agreed that she consented to the Tribunal making orders in the terms set out.
18. Miss Donnelly addressed the Tribunal in relation to the reasonableness of making a possession order in the circumstances. She explained that rent arrears at the property existed for a considerable period of time and that the Respondent had made sporadic payments towards the arrears due to her changing employment situation. The monthly rent payable had been £550 from the start of both tenancies until around May 2020 when in order to assist the Respondent the rent was reduced to £500 per month. Despite this problems with arrears persisted. In January 2021 the Applicant had sent documentation to the Respondent in terms of the pre-action requirements for the possession

order. Although the Respondent had acknowledged receiving these she had not made an arrangement to pay off the arrears. In the circumstances the Applicant's representative submitted that it was reasonable to grant the possession order under Grounds 8,11 and 12 of Schedule 5 to the Act in that both at the date of service of the notice under section 19 of the Act relating to proceedings for possession and at the date of the Hearing at least three months' rent lawfully due by the Respondent is in arrears, there had been persistent delay in payment of rent which had become lawfully due and some rent was lawfully due from the Respondent and was unpaid on the date of which the proceedings for possession had begun and rent was in arrears at the date of service of the notice under section 19 in relation to the proceedings .

19. The Respondent Ms Ward accepted all the factual information put forward by the Applicant's representative and confirmed she felt it was reasonable for the possession order to be made on the basis of the agreement set out by the Applicant's representative.
20. The Tribunal found that it was reasonable on the basis of the facts set out by the parties that a possession order be made in favour of the Applicant and against the Respondent in terms of Grounds 8,11, and 12 of Schedule 5 of the Act.
21. The Respondent had accepted during the discussion which had taken place on the morning of the Hearing on 30th July that she had built up rent arrears due to issues around employment and health but was prepared to leave the property if given time in order to source suitable housing. She was in agreement with all submissions made by the Applicant's representative in support of the request for a possession order.

Findings in Fact

22. The parties first entered to a tenancy agreement at the property with effect from 11th November 2014 with monthly rent payable of the rate of £550.
23. The parties entered into a subsequent assured tenancy agreement at the property from 1st May 2017 with monthly rent payable at £550 per month.
24. This tenancy agreement continued on a rolling monthly basis at the end of its six-month term on 1 November 2017 and continues.
25. Over the period of the tenancy agreement commencing 1 May 2017 rent arrears at the property started to accrue.
26. In May 2020 the monthly rent was reduced to £500 per month in an effort to assist the Respondent with ongoing difficulties in paying the rent and the build-up of rent arrears.
27. Arrears of rent continued to accrue in terms of the tenancy agreement at the property.
28. On 10 June 2020 the Applicant served on the Respondent a Notice in terms of section 19 of the Housing (Scotland) Act 1988 indicating that proceedings for a possession order would not be raised before 12 December 2020. This notice was served by recorded delivery post.
29. Notice under section 11 of the Homelessness etc (Scotland) Act 2003 was served on North Lanarkshire Council by email on 17 February 2021.
30. The Respondent is in arrears of rent for the property in the sum of £4000.
31. At the date of service of the Notice in terms of section 19 of the Housing (Scotland) Act 1988 and at the date of the Hearing more than three months'

rent is lawfully due from the Respondent and is in arrears.

32. The Respondent has persistently delayed in paying rent which has become lawfully due in terms of the tenancy agreement at the property.
33. Some rent lawfully due from the Respondent is unpaid on the date on which the proceedings for possession have begun and was in arrears at the date of service of the Form AT6 in relation to the tenancy agreement dated 1st May 2017.
34. The applicant's solicitors sent to the Respondent a formal letter dated 15 January 2021 in compliance with the Rent Arrears Pre-action Requirements Coronavirus (Scotland) Regulations 2020. This letter set out the terms of the arrears, enclosed the rent statement and encouraged the Respondent to discuss rent payments with the Applicant and signposted the Respondent to various organisations from which free advice could be obtained. The Respondent did respond to the pre-action requirement letter but did not put forward any form of proposal for payment of the arrears.

Reasons for Decision

35. The Tribunal considered the issues set out in the application together with the documents lodged in support of it. The Tribunal considered the submissions made on behalf of the Applicant and the terms of the agreement reached by the parties. The Tribunal concluded that the Applicant was entitled to seek a possession order for the property in terms of section 18 of the Housing (Scotland) Act 1988. The Tribunal had sight of the tenancy agreement between the parties which commenced on 1 May 2017. The Applicant had served a Form AT6 on the Respondent in terms of section 19 of the Housing (Scotland) Act 1988 as amended by the Coronavirus (Scotland) Act 2020. No notice to quit had been served on the Respondent and the Applicant was seeking a possession order using the AT6 only as the possession order was sought on the basis of a breach of the tenancy agreement and the full grounds upon which a possession order could be sought were set out in the tenancy agreement itself. The Tribunal was satisfied that appropriate notice had been given to the Respondent of the intention to recover the property and that the terms of this notice were correct.
36. The terms of section 18 of the Housing (Scotland) Act 1988 would usually entitle the Applicant to the right of mandatory repossession of the property in respect of at least Ground 8 of Schedule 5 of the Act, however in terms of the Coronavirus (Scotland) Act 2020 the Tribunal also had to be satisfied that it is reasonable to grant such an order on the grounds for possession set out by the Applicant. The Tribunal noted that the rent arrears in terms of the tenancy agreement had been persistent, had accrued over a period of time and although the Respondent was trying to make payments when in work she had been unable over a lengthy period of time to repay the rent arrears. The Respondent did not dispute any of the terms of the application other than the amount of the arrears which was now agreed. The Tribunal noted that the Applicant had complied as far as possible with the rent arrears pre-action requirements in the Coronavirus (Scotland) Regulations by sending out one letter to the Respondent in January 2021. The Tribunal was satisfied on the

submissions made by the Applicant's solicitor and not disputed by the Respondent that it would be reasonable to grant the order for possession. The Tribunal found the applicant entitled to an order for possession of the property in terms of Grounds 8,11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988.

Decision

The Tribunal granted a possession order for the property in terms of Grounds 8,11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988.

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.

Valerie Bremner

30.7.21

Legal Member/Chair

Date