



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 Act”)

Chamber Ref: FTS/HPC/EV/21/0724

Re: Property at 4B Niddrie House Drive, Edinburgh, EH16 4LH (“the Property”)

Parties:

Mr Bill Cooke, C/O Matrix Property Management Ltd, 132 St Stephen Street, Edinburgh, EH3 5AA (“the Applicant”)

Ms Maryann Cruickshank, 4B Niddrie House Drive, Edinburgh, EH16 4LH (“the Respondent”)

Tribunal Members:

Steven Quither (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for possession be GRANTED under s18 of the Act.

1. BACKGROUND

This is an application to bring to an end a Short Assured Tenancy, commencing 18 April 2014 for 1 year and continuing thereafter by tacit relocation on a month to month basis. Associated cases, under Tribunal references EV/21/0725 and CV/21/0726, to bring the tenancy to an end on account of the unpaid rent and for payment of said unpaid rent were considered together with this application. In terms of s18 of the Act as amended by the Coronavirus (Scotland) Act 2020, the Tribunal requires to be satisfied not only that the formal requirements of said section have been complied with but also that for any of the Schedule 5 grounds it is reasonable to make the order for repossession. Accordingly, the Tribunal now has an element of discretion in respect of those grounds in Part I of that Schedule, where previously it required to grant the order if satisfied the ground was established, one of which grounds (Ground 8) is founded upon in this application, along with (discretionary) Grounds 11 and 12. Accordingly, there is now a greater burden on a landlord looking to recover possession under a Part I ground than previously.

The supporting documentation for this application confirmed that appropriate notice periods had been given in respect of the s19 Notice (Form AT6) and that

the appropriate local authority had been notified of the application in terms of s11 of the Homelessness etc. (Scotland) Act 2003. The Tribunal also had regard to the terms of a letter sent to the Respondent by the Applicant's solicitors dated 8 March 2021, providing her with very full and detailed advice and information.

In his application, the Applicant stated that he wished possession in view of the level of arrears which had accrued, that it was reasonable to grant the eviction order sought, given said arrears and that, accordingly, all 3 of Grounds 8, 11 and 12 were established.

2. CASE MANAGEMENT DISCUSSIONS

2 Case Management Discussions ("CMD"s) took place, on 13 August and 30 September 2021. At both, the Landlord was represented by his Solicitor, Adam Gardiner, from Lindsays, Solicitors, Edinburgh and the Respondent was neither present nor represented. They proceeded as follows:--

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The Tribunal was advised notice and intimation of the CMD had been sent to the Respondent by First Class Post. However, since she was not present nor represented, no facts relating to her ability to ensure payment of the rent or background in which the rent fell into arrears were capable of agreement. Since the question of the unpaid rent was at the heart of and formed the basis for all 3 cases, the Tribunal considered the issue to be resolved was the reason behind any arrears of rent accruing, after a period of some years without any apparent issue.

Mr Gardiner advised that a rent payment of £692-27 had been very recently received and accordingly the sum sought was now £7369-57. The Tribunal formally allowed amendment of the sum claimed to this amount.

By way of general background, he advised that so far he was aware, the Respondent had been trying to resolve an issue which had arisen regarding payment of rent via Universal Credit ("UC") or suchlike, which had occasioned 2 postponements of the CMD, but this had not come to fruition. He understood the Respondent had possibly exhausted all avenues open to her to resolve the rent question by this means but he was not 100% certain. He also was not certain if those avenues might or could lead to all arrears being paid.

So far as the amount of arrears was concerned, he accepted that the rent had been paid virtually without fail up till about the end of 2019 when, indeed, the rent account showed a credit balance of £70-20. However, there had then been only payment of £323-49 for the January rent due of £670 and for each of December 2019 and then February till June 2020 no payment of rent at all had been received, leading to a debit balance due at the end of June of £4296-31, which increased to £4966-31 in July, before a further payment of £325-38 reduced it to £4640-93. It was about this time the Applicant served relevant notices etc. to lay the foundation for these proceedings.

Thereafter, till March 2021, this pattern more or less continued but the £325 or so paid was supplemented by just under £41 per month, against rent liability of £670 per month, leading to a debit balance of £7699 as at 30 April 2021, after which the rent payments increased to £650-76 and a further

supplementary payment of about £41, which payments would begin very gradually reducing the arrears by about £20 per month.

However, in June 2021, the rent increased somewhat substantially, to £820 per month, which would obviously not be covered by the £690 or so then being paid, leading to arrears beginning to accrue again.

The Tribunal was aware of the difficult position Mr Gardiner was in at this CMD, in that it sought from him information which was perhaps more properly due to be provided to it by the Respondent. However, he did his best to assist the Tribunal and was able to confirm to the best of his knowledge and belief some other matters, some with input from Matriix Property Management, namely:--

- a) An issue had arisen in early 2020 regarding payment of UC to the Respondent due to another person residing with her at the Property;
- b) This had resulted in either a reduction or refusal of UC during that period, up till the end of July 2020, when no rent was paid. If the Respondent received any UC during that period, she did not use it to pay rent;
- c) In or about July 2020, the Applicant was able to apply for UC to be paid direct to him;
- d) Any and all payments of rent were by UC or suchlike, rent being paid direct by Edinburgh City Council up till the end of 2019, when UC took over;
- e) The rent increase to £820 was carried out in terms of the provision for same in the lease. He was not aware of any representations being made by the Respondent in respect of said increase. Said figure reflects the UC rate due for rent for such a property.
- f) The property is a 2 bedrooomed, apparently (from the Land Certificate relating to same) mid-terraced dwellinghouse;
- g) As at about July 2021, the Respondent indicated she had advised UC of the rent increase but had provided no further information;
- h) Generally speaking, there had been no issues of concern with the Respondent as a tenant, apart from the arrears of rent;
- i) So far as the Applicant was aware, the "co-occupancy" issue, which had caused the difficulty with UC for all of 2020 had ended about April 2021.

In the circumstances of such a substantial amount of arrears having accrued, the Applicant asked the Tribunal to consider it reasonable to grant the eviction order sought.

The Tribunal was grateful to Mr Gardiner for his efforts to provide it with as much information as possible.

Having considered all of the information provided at length, the Tribunal was concerned that the Respondent was not present and therefore not able to state her own case. Despite Mr Gardiner's very fair and candid provision of information to it, the Tribunal felt that it would be preferable to afford the Respondent the opportunity to address it herself. It had particular concern about the period from December 2019 till March 2021, during which the rent arrears increased substantially. The Tribunal wished further information as to just what was the position regarding payment of UC or suchlike to the Respondent during this period, the reasons behind any reduction below the full rental figure and what communications etc. went on between the Respondent and the Department of Work & Pensions regarding her entitlement to UC throughout this period and to date. It considered such

information would greatly assist it in deciding not only the reasonableness of the applications for eviction but might also impact upon any sums due by way of arrears of rent.

The Tribunal also considered it would be useful to have confirmation from the Applicant regarding the procedure used to increase the rent to £820 in June 2021 and the basis for such a large increase then, after 7 years or so of much more modest increases ie from £600 per month in April 2014 to £670 per month in May 2021.

It issued a Direction regarding these matters.

In all of the circumstances, the Tribunal considered it just to fix a further CMD to enable the parties to provide the further information discussed, to assist it in deciding whether it would be reasonable to make any order for payment of rent arrears and/or the eviction orders sought. 30 September 2021 at 10am was identified as a suitable date. In view of the possibility of an eviction order being made on that date, the Tribunal instructed intimation of it on the Respondent by sheriff officer.

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Prior to the CMD, the Applicant confirmed an up to date rent figure due of £7497-66. Confirmation was also received by the Tribunal of sheriff officer intimation of today's CMD on the Respondent by personal service on 24 August 2021. No other information had been provided in terms of its Direction arising out of the previous CMD. As previously indicated, only Mr Gardiner attended the CMD. He advised that neither he, nor his instructing agents, nor the Applicant, had been contacted by the Respondent following the previous CMD.

He confirmed the Applicant's position remained the same, namely that he wished the order for possession and that it was reasonable to make the order in view of the level of arrears.

Obviously, in view of the Respondent's failure to attend, there was no challenge to any of what was stated on behalf of the Applicant.

3. FINDINGS IN FACT

The Tribunal found that the Respondent was due and liable for arrears of rent up to 8 September 2021 in the sum of £7497-66.

4. REASONS FOR DECISION

Having found that the Respondent was due and liable for arrears of rent in the sum of £7497-66 and the Tribunal was of the view that Grounds 8, 11 and 12 founded upon by the Applicant in this application, had been established.

Furthermore, that in view of said level of arrears which had accrued, it was just and reasonable to grant the order for possession now sought.

5. DECISION

To make the order for possession sought by the Applicant.

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.

S. R. Quither

30 SEPTEMBER 2021

Legal Member

Date