



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/20/0745

Re: Property at Flat 1/2, 16 Howard Street, Paisley, PA1 1PL (“the Property”)

Parties:

Mr Hendrick Lambrecht, residing at Balvonie House, Halketburn Road, Skelmorlie, PA17 5BP (“the Applicant”)

Mrs Janette McLelland, Balvonie House, Halketburn Road, Skelmorlie, PA17 5BP (“the Applicant’s Agent”)

Mrs Christine Durning, Flat 1/2, 16 Howard Street, Paisley, PA1 1PL (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make no order and dismissed the application

Background

1 By application dated 29 February 2020 the Applicant sought an order for repossession against the Respondent under section 18 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The following documents were submitted in support of the application:-

- (i) Copy Tenancy Agreement between the parties dated 21 March 2013;
- (ii) Copy Notice to Quit dated 12 January 2020 terminating the tenancy as at 28 February 2020;

- (iii) Copy Form AT6 – Notice of Intention to Raise Proceedings for Possession dated 12 January 2020 and citing grounds 13, 15 and 16;
 - (iv) Photographs of damage to Property;
 - (v) Notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Renfrewshire Council.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds to reject the application. A Case Management Discussion was therefore assigned for 18 August 2020. Due to the ongoing restrictions caused by the Covid-19 pandemic, a Direction was issued by the Chamber President confirming that the case conference would take place by tele-conference.
- 3 The application paperwork together with notification of the date, time and location of the Case Management Discussion was served on the Respondent on 24th July 2020 by Sheriff Officers.

The Case Management Discussion

- 4 A Case Management Discussion took place on 18th August 2020. The Applicant's Representative Mrs Janette McLelland was in attendance. The Respondent did not attend.
- 5 Having been satisfied that the application paperwork had been served upon the Respondent by Sheriff Officers together with notice of the date, time and joining instructions for the tele-conference, the Legal Member determined she could proceed with the Case Management Discussion in her absence.
- 6 Mrs McLelland explained that the Respondent had been a tenant for many years how, however for the last few years there had been issues with the cleanliness of the property. It had culminated in recent years and the Applicant was no longer able to carry out repairs due to the condition of the property. The Council's Environmental Health department had gotten involved and had visited the property. They had identified a number of things that required repair, which the Applicant had addressed. It was an ongoing challenge to keep up with repairs due to the Respondent's conduct. Extractor fans had been removed, as well as toilet seats and wash hand basins. The Applicant had repeatedly replaced items and carried out repairs, but could not sustain this any longer, particularly as it was now impossible to access the property due to its unsanitary condition. The Respondent's misuse of the property required an increased level of maintenance. The Applicant was now concerned that the property would deteriorate to such a condition that it would not be an easy task to restore it to a habitable condition.
- 7 Mrs McLelland expressed her concerns for the Respondent and her ability to manage the tenancy. She has tried to involve the Social Work department from

the Council to support the Respondent, however they had simply given her telephone numbers to call.

- 8 In response to questions from the Tribunal Mrs McLelland confirmed that the photographs of the property produced with the application had been taken in December or January, shortly before the application had been lodged. Mrs McLelland pointed the Tribunal to the photos of the damaged washing machine and cracked laminate flooring. She explained that the Applicant had been replacing the flooring every ten months at one point but could not do that anymore. She further stated that the washing machine had been replaced before and the fridge freezer was not working. The Respondent would not put gas in the meter therefore the gas had been capped and the Applicant was unable to carry out a gas safety inspection. The Respondent had an electric shower, but no hot water in the kitchen due to a lack of gas. It had also taken months to obtain an electrical safety certificate because the door of the fuse box had been tampered with.
- 9 Mrs McLelland confirmed that the Respondent resides in the property alone, although she has a partner who comes and goes. She also has a son who does not presently reside with her. The Respondent was well aware of the proceedings before the Tribunal. The Form AT6 notice had been delivered personally to her and she had signed her acknowledgement. The Applicant's building manager had also spoken with her about the proceedings but she had simply shrugged it off. She was no longer answering calls from any of the Applicant's representatives.

Relevant Law

- 10 The relevant legislation applicable to the Tribunal's determination of the application is section 18 and 19 of the Housing (Scotland) Act 1988 and Schedule 5 to the said Act:-

18 Orders for possession.

(1) The First-tier 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 this Act.

(2) The following provisions of this section have effect, subject to section 19 below, in relation to proceedings for the recovery of possession of a house let on an assured tenancy.

(3) If the First-tier Tribunal is satisfied that any of the grounds in Part I of Schedule 5 to this Act is established then, subject to subsections (3A) and (6) below, the Tribunal shall make an order for possession.

(3A) If the First-tier Tribunal is satisfied-

(a) that Ground 8 in Part I of Schedule 5 to this Act is established; and

(b) that rent is in arrears as mentioned in that Ground as a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit,

the Tribunal shall not make an order for possession unless the Tribunal considers it reasonable to do so.

(4) If the First-tier Tribunal is satisfied that any of the grounds in Part II of Schedule 5 to this Act is established, the Tribunal shall not make an order for possession unless the Tribunal considers it reasonable to do so.

(4A) In considering for the purposes of subsection (4) above whether it is reasonable to make an order on Ground 11 or 12 in Part II of Schedule 5 to this Act, the First-tier Tribunal shall 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 a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit.

(5) Part III of Schedule 5 to this Act shall have effect for supplementing Ground 9 in that Schedule and Part IV of that Schedule shall have effect in relation to notices given as mentioned in Grounds 1 to 5 of that Schedule.

(6) The First-tier Tribunal shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless—

(a) the ground for possession is Ground 2 or Ground 8 in Part I of Schedule 5 to this Act or any of the grounds in Part II of that Schedule, other than Ground 9, Ground 10, Ground 15 or Ground 17; and

(b) the terms of the tenancy make provision for it to be brought to an end on the ground in question

(6A) Nothing in subsection (6) above affects the First-tier Tribunal's power to make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, where the ground for possession is Ground 15 in Part II of Schedule 5 to this Act.

(7) Subject to the preceding provisions of this section, the First-tier Tribunal may make an order for possession of a house on grounds relating to a contractual tenancy which has been terminated; and where an order is made in such circumstances, any statutory assured tenancy which has arisen on that termination shall, without any notice, end on the day on which the order takes effect.

(8) In subsections (3A) and (4A) above—

(a) “relevant housing benefit” means—

(i) any rent allowance or rent rebate to which the tenant was entitled in respect of the rent under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971); or

(ii) any payment on account of any such entitlement awarded under Regulation 91 of those Regulations;

(aa) “relevant universal credit” means universal credit to which the tenant was entitled which includes an amount under section 11 of the Welfare Reform Act 2012 in respect of the rent;

(b) references to delay or failure in the payment of relevant housing benefit or relevant universal credit do not include such delay or failure so far as referable to any act or omission of the tenant.

(9) In subsection (3C), “pre-action requirements” means such requirements as the Scottish Ministers may specify in regulations.

(10) Regulations under subsection (9) may in particular make provision about—

(a) information to be provided by a landlord to a tenant including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy,

(b) steps to be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,

(c) such other matters as the Scottish Ministers consider appropriate.

(11) Regulations under subsection (9) are subject to the affirmative procedure.

19 Notice of proceedings for possession.

(1) The First-tier Tribunal shall not entertain proceedings for possession of a house let on an assured tenancy unless—

(a) the landlord (or, where there are joint landlords, any of them) has served on the tenant a notice in accordance with this section; or

(b) the Tribunal considers it reasonable to dispense with the requirement of such a notice.

(2) The First-tier Tribunal shall not make an order for possession on any of the grounds in Schedule 5 to this Act unless that ground and particulars of it are specified in the notice under this section; but the grounds specified in such a notice may be altered or added to with the leave of the Tribunal.

(3) A notice under this section is one in the prescribed form informing the tenant that—

(a) the landlord intends to raise proceedings for possession of the house on one or more of the grounds specified in the notice; and

(b) those proceedings will not be raised earlier than the expiry of the period of two weeks or two months (whichever is appropriate under subsection (4) below) from the date of service of the notice.

(4) The minimum period to be specified in a notice as mentioned in subsection (3)(b) above is—

(a) two months if the notice specifies any of Grounds 1, 2, 5, 6, 7, 9 and 17 in Schedule 5 to this Act (whether with or without other grounds); and

(b) in any other case, two weeks.

(5) The First-tier Tribunal may not exercise the power conferred by subsection (1)(b) above if the landlord seeks to recover possession on Ground 8 in Schedule 5 to this Act.

(6) Where a notice under this section relating to a contractual tenancy—

(a) is served during the tenancy; or

(b) is served after the tenancy has been terminated but relates (in whole or in part) to events occurring during the tenancy,

the notice shall have effect notwithstanding that the tenant becomes or has become tenant under a statutory assured tenancy arising on the termination of the contractual tenancy.

(7) A notice under this section shall cease to have effect 6 months after the date on or after which the proceedings for possession to which it relates could have been raised.

PART II GROUNDS ON WHICH FIRST-TIER TRIBUNAL MAY ORDER POSSESSION

Ground 13

Any obligation of the tenancy (other than one related to the payment of rent) has been broken or not performed.

Ground 14

The condition of the house or of any of the common parts has deteriorated owing to acts of waste by, or the neglect or default of, the tenant or any one of joint tenants or any person residing or lodging with him or any sub-tenant of his;

and, in the case of acts of waste by, or the neglect or default of, a person lodging with a tenant or a sub-tenant of his, the tenant has not, before the making of the order in question, taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant.

In this Ground, "the common parts" means any part of a building containing the house and any other premises which the tenant is entitled under the terms of the tenancy to use in common with the occupiers of other houses.

Findings in Fact and Law

- 19 The parties entered into a Tenancy Agreement dated 21 March 2013, the term of which was a fixed period of six months from 2 April 2013 to 1 October 2013.
- 20 The tenancy is an Assured Tenancy as defined by section 12 of the Housing (Scotland) Act 1988.
- 21 The Schedule appended to the Tenancy Agreement makes provision for the tenancy to be terminated on grounds 13 and 14 under Schedule 5 of the Housing (Scotland) Act 1988.
- 22 On 12th January 2020 the Respondent was served with a Form AT6 Notice of Intention to Raise Proceedings for Possession under section 19 of the Housing (Scotland) Act 1988. The Notice was served by hand and acknowledged by the Respondent. The Notice cites grounds 13 and 14 as the grounds upon which the Applicant seeks to raise proceedings for possession.
- 23 The Form AT6 Notice complies with the requirements of section 19 of the Housing (Scotland) Act 1988 and the Assured Tenancies (Forms) (Scotland) Regulations 1988.
- 24 The Respondent is in breach of Clause 14 of the said Tenancy Agreement in that she has caused damage, or allowed others to cause damage, to the interior and exterior of the Property. In particular the Respondent has caused damage to the fixtures and fittings including the washing machine, toilet, wash hand basin and extractor fan, and to the bedroom wall.
- 25 The Respondent is in breach of Clause 16 of the said Tenancy Agreement in that she has failed to make good any damage to the Property, fair wear or tear excepted.
- 26 The condition of the Property has deteriorated owing to acts of waste by, or the neglect or default of, the Respondent. In particular the condition of the property is unsanitary and unclean due to the Respondent's neglect and has deteriorated to such an extent that the Applicant, his representatives and contractors are unable to access the property.

- 27 The Applicant has replaced fixtures and fittings and has carried out repairs to the Property as a result of damage caused by the Respondent. The Applicant is no longer able to do so as a result of the unsanitary conditions in the Property.
- 28 The Respondent is the sole tenant of the property. The Respondent has a son who does not currently reside with her.
- 29 The Applicant's building manager spoke with the Respondent regarding the proceedings before the Tribunal. The Respondent did not wish to engage.
- 30 The Applicant has attempted to support the Respondent by engaging the local authority to assist with the management of her tenancy. Said attempts have been unsuccessful.
- 31 It is reasonable in all the circumstances to grant the order.

Reasons for Decision

- 32 The Tribunal was satisfied that it was able to make a decision at the Case Management Discussion and that to do so would not be prejudicial to the interests of the parties. The Respondent was aware of the proceedings and had chosen not to participate, therefore the Tribunal considered it could proceed in her absence.
- 33 The Applicant seeks recovery of possession under section 18 of the Housing (Scotland) Act 1988, under grounds 13 and 14 of Schedule 5 of that Act. Section 18(6) provides that the Tribunal cannot make an order for recovery of an assured tenancy, which is not a statutory assured tenancy, on grounds 13 and 14, unless the Tenancy Agreement makes provision for the landlord to terminate the agreement on those grounds. If there is no such provision, the landlord would require to terminate the tenancy by service of a valid Notice to Quit prior to raising proceedings before the Tribunal. The Tribunal noted that the Applicant had submitted a Notice to Quit with the paperwork. However the said Notice to Quit was invalid in that it did not seek to terminate the tenancy at an ish date.
- 34 The Tribunal was however satisfied that the Schedule appended to the Tenancy Agreement, and referred to at Clause 1.2 of the Agreement, made clear provision for the tenancy to be terminated on grounds 13 and 14, narrating the grounds as specified in Schedule 5 of the 1988 Act. The Tribunal determined therefore that the Notice to Quit was superfluous to the current proceedings before it as the tenancy agreement made provision for possession to be sought on the grounds specified in the application.
- 35 The Tribunal therefore considered the provisions of grounds 13 and 14. Based on its findings in fact, the Tribunal was satisfied that both grounds had been met. Mrs McLelland's submissions at the Case Management Discussion coupled with the photographic evidence produced by the Applicant were

persuasive in this regard. The Tribunal found Mrs McLelland's account of what had transpired to be credible and there was nothing before the Tribunal to contradict her position.

- 36 The Tribunal then had to consider whether it was reasonable to grant the order. Again, based on its findings in fact, the Tribunal concluded that, taking into account the ongoing deterioration of the property, the attempts made by the Applicant to repair the damage caused by the Respondent, the fact that the Respondent was the sole permanent occupier and the attempts made by the Applicant to obtain assistance for her in the management of her tenancy, it would be reasonable to grant the order sought by the Applicant.
- 37 The Tribunal therefore made an order for repossession of the property against the Respondent.

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.

R O'Hare

18/08/2020

Legal Member/Chair

Date