



**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/20/1556

Re: Property at 19D Walker Road, Torry, Aberdeen, AB11 8DQ (“the Property”)

Parties:

Mr John McRae, 7 Charlestone Way, Cove, Aberdeen, AB12 3FA (“the Applicant”)

**Miss Sarah Brown, Miss Stacey Cardow, 19D Walker Road, Torry, Aberdeen,
AB11 8DQ (“the Respondents”)**

Tribunal Members:

Valerie Bremner (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a possession order be made in terms of Ground 8 Schedule 5 of the Housing (Scotland) Act 1988 in that as of the date that notice of possession under Section 19 of the Act was given and as at the date of the case management discussion a sum in excess of three months’ rent lawfully due by the Respondents in relation to the property is in arrears.

Background

This is an application in term of Rule 65 of the Tribunal rules for a possession order in terms of section 18 of the Housing (Scotland) Act 1988. This Application was submitted to the Tribunal on 21st July 2020. The application was accepted by the Tribunal on 10th September 2020.

Case Management Discussion

The Case management Discussion was attended by Miss Lisa Campbell of Stonehouse Lettings who act as the landlord's representative in relation to the tenancy. There was no appearance by or on behalf of the Respondents. The Tribunal had sight of an execution of service of the application and supporting papers by Sheriff Officer by fixing these to the door at the property on 1st October 2020. Miss Campbell requested that the Tribunal proceed in the absence of the Respondents and the Tribunal agreed to this request given that the papers had been served and the terms of Rule 24 of the Tribunal rules appeared to have been satisfied as to reasonable notice of the case management discussion being given to the Respondents.

The Tribunal had sight of the Application, paper apart, tenancy agreement, extension to lease, Notices to Quit, Forms AT5 and AT6, Rent Statement, Notices in terms of Section 33 of the Housing (Scotland) Act 1988, papers in respect of termination process, cleaning guidelines, final checklist, check out sheet and deposit repayment process. The Tribunal also had sight of a Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003, an email submitting this Notice and an execution of service by Sheriff officer of various notices including the AT6 forms and Notices to Quit.

The Tenancy

The parties had entered into a short assured tenancy in terms of the Housing (Scotland) Act 1988 with effect from 28 April 2017. This appears to have been a fixed 12 month tenancy agreement. Parties agreed to extend the tenancy agreement and an extension was agreed to cover the period of 28 April 2018 to 28 October 2018. No further fixed term was agreed after this date in the lease continued on a rolling monthly basis as set out in clause 1.10 of the original tenancy agreement and in terms of the document extending the lease

The monthly rent payable at the property is £550 per calendar month. Rent arrears started to accrue or payments were made late during the tenancy and the last rent was paid in January 2020. At the time of service of the Form AT6 on 10th March 2020 Miss Campbell advised the Tribunal that the rent arrears amounted to £3650, over 6 months' rent. At the time of the application to the Tribunal in July 2020 the arrears amounted to £5850 and these have continued to accrue. Miss Campbell advised the Tribunal that she understood the Respondents had been students when they first signed the tenancy agreement but may have had subsequent employment. She indicated was not a tenancy agreement in which the payment of rent had been affected by a failure or delay in the payment of housing or other benefit.

She advised that the Respondents had agreed to leave the property in March 2020 but had not done so. They had contacted the letting agents on 8 September 2020 to

say that they had another property to go to but that they were simply waiting for this to be finalised. To date they have not left the property.

Notices

The Tribunal considered the terms of the Application, the Forms AT6 and the Notices to Quit. The Tribunal noted that the Tribunal application made no reference to Grounds 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988 although these were mentioned in the Forms AT6. The paper apart to the application referred to Ground 8 of Schedule 5 of the 1988 Act only. The Notices to Quit served on the tenants appear to have been served along with the other documentation on 10 March 2020, some two weeks before the suggested end date of the tenancy. The Forms AT6 appeared to be properly and timeously served and were in appropriate form. Miss Campbell accepted that the application form to the Tribunal did not refer to Grounds 11 and 12 of Schedule 5 of the 1988 Act and after discussion she indicated that she wished to proceed to seek a possession order in terms of Ground 8 only.

As far as the Notices to Quit were concerned while these appeared to be in proper form they did not terminate the parties' contract at a tenancy end date nor did they appear to comply with the with Section 112 of the Rent (Scotland) Act 1984, whereby four weeks' notice is required for any Notice to Quit premises to be effective.

It was clear after discussion that Miss Campbell was relying on an irritancy clause set out in the original tenancy agreement at clause 5.6 where the right of the landlord to seek a possession order was set out with reference to the full grounds of eviction in Schedule 5 of the Housing (Scotland) Act 1988. The Notices to Quit were therefore not essential to the application.

Having considered Forms AT6, the terms of the tenancy agreement, the Notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 and the level of rent arrears as at the service of the AT6 forms, and the date of the case management discussion, the Tribunal was satisfied that the requirements of the legislation had been met.

The Tribunal also considered the terms of the Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020. The Tribunal considered that the 2020 Act did not apply to this application as notices were served on the Respondents prior to 7 April 2020 and the modification regulations were also not applicable as notices were served prior to 3 October 2020.

The Tribunal was satisfied that it had sufficient information upon which to make a decision and that the proceedings had been fair.

The Tribunal determined that it was required to make a possession order in terms of Ground 8 of Schedule 5 of the Housing (Scotland) Act 1988.

Findings in Fact

1. The parties entered into a short assured tenancy agreement for the property with effect from 28th April 2017 for a fixed period of 12 months.
2. The tenancy agreement was the subject of an extension for a period of six months to cover the period of 28th April 2018 to 28th October 2018.
3. From 28th October 2018 the tenancy has continued on a rolling monthly basis as set out in clause 1.10 of the original tenancy agreement and in the document extending the lease.
4. The monthly rent payable each calendar month during the tenancy is the sum of £550.
5. Rent arrears accrued during the tenancy and as at the date of service of Forms AT6 on the Respondents the rent arrears stood at £3650, over six months' rent.
6. As at the date of the application to the Tribunal in July 2020 rent arrears accrued were £5850, over 10 months' rent.
7. No rent has been paid in terms of the tenancy agreement by the Respondents since January 2020 and arrears continue to accrue.
8. The rent arrears at the property have not accrued as a result of any delay or failure in the payment of any relevant benefit and are lawfully due by the Respondents.
9. As at the date of service of the Forms AT6, and the date of the case management discussion, more than 3 months rent lawfully due by the Respondents is in arrears.
10. As the Notices to Quit served in March 2020 were ineffective the tenancy agreement has continued to run and the arrears continue to accrue. There is an irritancy clause within the lease setting out that the lease can be terminated on any of the grounds contained within schedule 5 of the 1988 Act and these grounds are set out in full within the lease.

Reasons for Decision

This application was an application under Rule 65 of the Tribunal rules so some of the paperwork submitted by the Applicant's representative was irrelevant in terms of that rule. The Tribunal took no account of section 33 notices. The Notices to Quit were ineffective as these had not been served to coincide with the tenancy end date and only two weeks' notice had been given which was clearly insufficient having regard to the terms of section 112 of the Rent (Scotland) Act 1984.

The Forms AT6 were in proper form and had been properly served. The Applicant relied on an irritancy clause in the lease which set out all the eviction grounds in Schedule 5 of the 1988 Act in full and satisfied the requirements set out in **Royal Bank**

of Scotland v Boyle 1999 Hous.L.R 63. The requirements of section 18(6) of the 1988 Act were also satisfied allowing the Tribunal to make a possession order on the basis of the contractual tenancy being terminated in terms of Ground 8 of Schedule 5 of the 1988 Act.

The Tribunal also considered the terms of the Section 11 notice which had been sent to Aberdeen City Council. The notice had the name of the lead tenant only and in the section regarding the type of legislation applicable to the tenancy the wrong box had been ticked.

Although the wrong box had been ticked the words ‘short assured tenancy’ appeared beside that and in the view of the Tribunal the form set out the correct tenancy description. The form did not require the name of the second tenant to be included and it had not been included. The Tribunal considered whether this affected the validity of the notice and complied with the requirements of the Act. The Tribunal considered the terms of Section 11 of the 2003 Act and noted that it required the landlord to give notice of proceedings for possession to the local authorities. The notice submitted with this application outlined the details of the property, the lead tenant, the landlord’s details and gave notice of the date when the application to the first-tier Tribunal had been lodged.

The Tribunal was satisfied having considered this matter that the terms of the legislation had been complied with and that the form would have allowed the Council to know that the tenancy was the subject of proceedings for possession and that anyone who was a party to that tenancy might require assistance with housing.

Decision

The Tribunal made a possession order in respect of the property in terms of Ground 8 of Schedule 5 of the Housing (Scotland) Act 1988 in that as of the date that notice of possession under Section 19 of the Act was given and as at the date of the case management discussion a sum in excess of three months’ rent lawfully due by the Respondents in relation to the property is in arrears.

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.

V. B

Legal Member/Chair

30.10.20
Date