

Housing and Property Chamber
First-tier Tribunal for Scotland



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/19/1692

Re: Property at 4U Latherton Drive, Maryhill, Glasgow, G20 8HW (“the Property”)

Parties:

Mr Steven Howlett, Flat 2, 50 Alexandra Road, West Sussex, BN11 2DU (“the Applicant”)

Ms Lynne McIntosh, 4U Latherton Drive, Maryhill, Glasgow, G20 8HW (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

This is an application dated 31st May 2019 brought in terms of Rule 65 (Application for order for possession in relation to assured tenancies) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant provided with his application copies of a short assured tenancy agreement, form AT5, section 19 notice (form AT6), Section 11 notice, rent arrears statement and relevant executions of service.

All of these documents and forms save the section 11 notice had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland) Act 1988*, and the procedures set out in that Act had been correctly followed and applied.

The form AT6 intimated to the tenant that the Applicant intended to raise proceedings for possession of the house on grounds 8, 11 and 12 of Schedule 5 to the *Housing (Scotland) Act 1988*.

A Case Management Discussion was held on 25th July 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant did not appear, but was represented by Mrs McLaughlin, letting agent. The Respondent appeared, and was not represented.

A detailed Case Management Discussion note narrates in full what took place. The Case Management Discussion was continued to allow the Applicant to serve a fresh section 11 notice (the one provided had not been fully completed), and to provide certain further information about the Property.

The Respondent accepted that she had received the form AT6, which had been served on one of her two sons, and took no issue with its validity or service. She also accepted that the arrears in rental payments were not due to a failure or delay in payment of housing benefit, but rather that the housing benefit she received was not sufficient to meet the rent due.

Continued Case Management Discussion

A continued Case Management Discussion was held on 5th September 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant again did not appear, but was again represented by Mrs McLaughlin, letting agent. The Respondent again appeared, and again was not represented.

Mrs McLaughlin invited the Tribunal with reference to the application and papers to grant the order sought on grounds 8, 11 and 12 of Schedule 5 to the *Housing (Scotland) Act 1988*, and produced an updated rent arrears statement which disclosed arrears of £8,419.12 to today's date. The monthly rental due in terms of the tenancy agreement is £525.00 per month.

Mrs McLaughlin stressed that both she and the Applicant had considerable sympathy for the Respondent's circumstances, but that the Applicant simply could no longer sustain the increasing arrears which were accumulating.

The Respondent repeated her explanation of her various health issues and those of her two adult sons, and the Tribunal expressed its considerable sympathy to her for her difficult circumstances.

The Respondent again confirmed that she accepted that all the appropriate legal procedures had been followed, and she also accepted that the arrears of rent were due by her and currently amounted to £8,419.12.

The Respondent explained that she had been trying hard to persuade the local authority to increase her housing benefit payment to a sufficient level to pay her rent, but that so far she had been unsuccessful in doing so. She accepted that she was

currently unable to pay the monthly rent due, and that she had no basis to resist the granting of an eviction order in those circumstances.

Statement of Reasons

In terms of Section 18(3) of the *Housing (Scotland) Act 1988* ("the Act"), if the Tribunal is satisfied that any of the grounds in Part I of Schedule 5 to the Act is established then, subject to subsections (3A) and (6), the Tribunal shall make an order for possession.

Section 18(3A) of the Act provides that 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.

Section 18(6) of the Act provides that 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.

The Tribunal is satisfied that ground 8 contained in Part 1 of Schedule 5 to the Act has been established. The Tribunal has not been satisfied that rent is in arrears as a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit. The Respondent accepted that is not the case. The terms of the short assured tenancy agreement make provision for it to be brought to an end on the ground in question.

In terms of Section 18(4) of the Act, if the 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.

Section 18(4A) of the Act provides that in considering for the purposes of subsection (4) above whether it is reasonable to make an order for possession 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.

The Tribunal is satisfied that grounds 11 and 12 contained in Part 2 of Schedule 5 to the Act have been established, and considers that it is reasonable to make an order for possession in circumstances where the Respondent accepts that she is unable to meet the monthly rental payments due and unable to pay the rent arrears, which are very substantial. The Tribunal has not been satisfied that rent is in arrears as a

consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit. The Respondent accepted that is not the case.

Decision

In these circumstances, the Tribunal will make an order for possession of the house let on the tenancy as sought in this application.

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.

Neil Kinnear

05/09/19

Legal Member/Chair

Date