



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/21/1463

Re: Property at 30 Shore Street, Inverness, IV1 1NG (“the Property”)

Parties:

Mr Thomas Stuart Brown, c/o Scottish Highland Property Services, 11 Queensgate, Inverness, IV1 1DF (“the Applicant”)

Mr Jose Lago Entenza, 30 Shore Street, Inverness, IV1 1NG (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Janine Green (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the applications should be decided without a Hearing and made an Order for Possession of the Property.

Background

By application, received by the Tribunal on 16 June 2021, the Applicant sought an Order for Possession of the Property under Section 18 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Ground relied on was Ground 8 of Schedule 5 to the 1988 Act, namely that at least three months’ rent was in arrears both on the date on which the Notice of Intention to seek Possession of the Property was served and at the date of the hearing.

The application was accompanied by copies of an Assured Tenancy Agreement between the Parties, commencing on 10 June 2015 at a monthly rent of £495, a Notice to Quit requiring the Respondent to quit the Property by 9 June 2021 and a Form AT6 Notice, advising the Respondent of the Applicant’s intention to raise proceedings for possession under Grounds 8, 11 and 12 of Schedule 5 to the 1988 Act and that proceedings would not be raised before 10 June 2021, with evidence of service by sheriff officer of the Notice to Quit and Form AT6 Notice on 8 December 2020. The Applicant also provided the Tribunal with a Rent Statement showing arrears as at 10 June 2021 of £9,025, no payments having been made between October 2019 and 19

March 2021, with payments of £425 on 19 March, 27 April and 24 May 2021. The Rent Statement indicated that the rent had been increased to £510 per month in October 2017.

On 3 August 2021, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 24 August 2021. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the afternoon of 6 September 2021. The Applicant was represented by Elizabeth McInnes of Scottish Highland Property Services, Inverness. The Respondent was present and was assisted by Mr Graeme Mauchlen.

The Respondent did not dispute the amount claimed but contended that the fault lay with the Job Centre's failure to pay the housing element of his Universal Credit directly to his landlord and the difficulties he had experienced in dealing with the Job Centre during lockdown. Directly questioned by the Tribunal, however, he confirmed that he had been in receipt of Universal Credit between November 2019 and February 2021 and had not paid any of it to his landlord by way of rent.

The Applicant's representative told the Tribunal that, whilst the housing element of the Respondent's Universal Credit was now being paid directly to them and represented the payments of £425 from March 2021 onwards, there was still a shortfall of £85 per month, which the Respondent was not making up, and the level of arrears was such that the Applicant now had no alternative but to seek an Order for Possession. The arrears currently stood at £9,280.

Reasons for Decision

Rule 17 of the First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

Section 18 of the 1988 Act, as amended by the Coronavirus (Scotland) Act 2020 states that the 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 the Act and that if the Tribunal is satisfied that any of the Grounds in Part I or Part II of Schedule 5 is established, it shall not make an order for possession unless it is satisfied that it is reasonable to do so

Ground 8 of Part I of Schedule 5 to the 1988 Act applies where both at the date of service of the Notice of Intention to Raise Proceedings (Form AT6) and at the date of the Hearing, the rent is at least three months in arrears.

The Tribunal noted that English was not the first language of the Respondent, but that he had not taken advantage of the opportunity set out in the guidance leaflet which accompanied the Tribunal's letter of 3 August 2021 to request that an interpreter be provided for him at the Case Management Discussion. Mr Mauchlen was not an interpreter but was there at the Respondent's request to assist him should he have any difficulty in understanding or responding to questions or comments. The Tribunal noted that the Respondent had answered all its questions and responded to comments in a manner which indicated that he fully understood them and that an Order for Possession would be made if the Tribunal considered it reasonable to make it. The

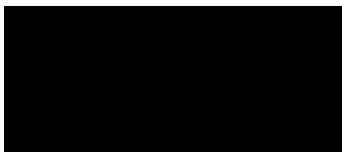
Tribunal was satisfied that the Respondent's access to justice had not been compromised by the absence of an interpreter.

The Tribunal noted that the date of the Form AT6 had been incorrectly stated as 7 December 2021 when it should have been 7 December 2020. The date prior to which proceedings would not be raised had, however, been correct and, as the Form AT6 had been served on the Respondent by sheriff officer on 8 December 2020, the Tribunal accepted that it was a mere typographical error which had not prejudiced the Respondent in any way.

The Tribunal was satisfied that the requirements of Ground 8 of Schedule 5 to the 1988 Act had been satisfied. The rent had been continuously in arrears since November 2019 and had been more than three months in arrears both at the date of service of the Notice of Intention to Raise Proceedings (8 December 2020) and the date of the Case Management Discussion. The matter for the Tribunal to consider was, therefore, whether it was reasonable to make an Order for Possession. The Tribunal noted that, whilst the Respondent had attempted to lay the blame for arrears on the Job Centre for failing to have paid the housing element of his Universal Credit directly to his landlord, it was not the role of the Job Centre or the Benefits Agency to ensure the Respondent's rent was paid. The Respondent had been in receipt of Universal Credit for many months prior to February 2021 and had taken the decision not to remit any of it to his landlord by way of rent. As a result, the arrears were now in excess of £9,000. The Tribunal accepted that lockdown restrictions during the COVID-19 pandemic would have made it difficult for the Respondent to arrange for the housing element of his Universal Credit to be paid to the landlord, but that did not excuse his failure to pay any rent at all during a period of many months that he was receiving his full Universal Credit payments directly. Accordingly, having considered carefully all the evidence before it, the Tribunal decided that it was reasonable to make an Order for Possession of the Property.

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.



Legal Member/Chair

6 September 2021
Date