



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/18/2523

Re: Property at 73 Linton Road, Dundee, DD2 2SX (“the Property”)

Parties:

Mr Robert Martin, 5 Playfair Drive, Dundee, DD3 8PD (“the Applicant”)

Miss Jade Martin, 73 Linton Road, Dundee, DD2 2SX (“the Respondent”)

Tribunal Members:

Andrew Upton (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Eviction Order should be granted.

STATEMENT OF REASONS

1. This case called before me for a Case Management Discussion (“CMD”) on 10 December 2018. The Applicant was represented by Mrs Royale. The Respondent was not present or represented.
2. The parties are father and daughter. They are also landlord and tenant respectively under and in terms of an assured tenancy agreement dated 8 January 2017. In terms thereof, the Applicant let the Property to the Respondent for the initial period of one year from 1 January 2017 until 1 January 2018. At the expiry of the initial period, the tenancy continued on a monthly rolling basis. The monthly rent payable was £430. The tenancy agreement provides that the tenancy could be terminated at any time on any of the grounds specified in Schedule 5 to the Housing (Scotland) Act 1988 (“the 1988 Act”)
3. The Applicant seeks to have the Tribunal grant an eviction order against the Respondent under and in terms of section 18 of the 1988 Act. In terms of the

application, which was properly served on the Respondent by Sheriff Officers on 16 November 2018, the Respondent was in arrears of rent in the sum of £1,830. Accordingly, the arrears of rent were in excess of four months' rent arrears. In addition, it was alleged that the Respondent was in breach of her contractual obligations to keep the Property in a clean and tidy condition. In particular, it was alleged that

- a. the Respondent was keeping three dogs at the Property when permission had been granted to keep one dog only;
- b. the Respondent was allowing the dogs to foul within the Property;
- c. the Respondent had removed a carpet and not replaced it; and
- d. the Respondent was not clearing away rubbish within the Property or from the external areas.

4. The Applicant has produced, with the application, the following documents:-

- a. Copy Tenancy Agreement dated 8 January 2017;
- b. Copy Notice to Quit dated 21 August 2018;
- c. Copy Form AT6 dated 21 August 2018;
- d. Copy Rent Account Statement; and
- e. Photographs of the Property.

5. In addition, Mrs Royale presented me with an updated Rent Account Statement at the CMD which purported to show that the rent arrears have increased since the application was lodged.

6. In terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Tribunal Rules"):-

"2.— The overriding objective

(1) The overriding objective of the First-tier Tribunal is to deal with the proceedings justly.

(2) Dealing with the proceedings justly includes—

- (a) dealing with the proceedings in a manner which is proportionate to the complexity of the issues and the resources of the parties;
- (b) seeking informality and flexibility in proceedings;
- (c) ensuring, so far as practicable, that the parties are on equal footing procedurally and are able to participate fully in the proceedings, including assisting any party in the presentation of the party's case without advocating the course they should take;
- (d) using the special expertise of the First-tier Tribunal effectively; and
- (e) avoiding delay, so far as compatible with the proper consideration of the issues.

...

3.— Effect of the overriding objective

(1) The Chamber President and the First-tier Tribunal must seek to give effect to the overriding objective when—

- (a) exercising any power under these Rules; and
- (b) interpreting any rule.

- (2) In particular the Chamber President and the First-tier Tribunal must manage the proceedings in accordance with the overriding objective.
- (3) The parties must assist the Chamber President or the First-tier Tribunal to further the overriding objective.

...

17.— Case management discussion

- (1) The First-tier Tribunal may order a case management discussion to be held—
- (a) in any place where a hearing may be held;
 - (b) by videoconference; or
 - (c) by conference call.
- (2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.
- (3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—
- (a) identifying the issues to be resolved;
 - (b) identifying what facts are agreed between the parties;
 - (c) raising with parties any issues it requires to be addressed;
 - (d) discussing what witnesses, documents and other evidence will be required;
 - (e) discussing whether or not a hearing is required; and
 - (f) discussing an application to recall a decision.
- (4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision."

7. In terms of section 18 of the 1988 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 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.

(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."

8. Having regard to and applying the overriding objective, I am required to consider the papers provided to me and take notice of any legal issues which appear to me to be present with any application. I am also required, where possible, to ensure that proceedings are dealt with justly and expeditiously.
9. In this case, my attention was drawn to the terms of the Notice to Quit lodged by the Applicant with the application. In terms of that notice, the Applicant sought to terminate the contractual tenancy on 10 September 2018. The

difficulty that the Applicant has is two-fold. Firstly, 10 September 2018 is not an ish date. A Notice to Quit can only terminate a tenancy agreement at its ish; not at any other date. Its sole purpose is to stop the operation of tacit relocation by giving notice that the party serving it does not want the contract to tacitly relocate. It follows that the Notice to Quit is invalid in that it does not specify an ish date.

10. Secondly, the tenancy agreement does not specify a notice period for the service by the landlord of a Notice to Quit. Accordingly, the common law period of forty clear days is the implied period of notice. The Notice to Quit is dated 21 August 2018. It was signed for on 23 August 2018. That provides only 17 clear days' notice, which is insufficient. It follows that the Notice to Quit is invalid in that it does not provide sufficient notice.
11. It follows that the contractual assured tenancy is continuing to operate in this case on a monthly rolling basis. In terms of section 18(6) of the 1988 Act, I shall not grant an eviction order unless the basis for recovery of possession is Ground 2, 8, 11, 12, 13, 14 or 16 in Schedule 5 of the 1988 Act and the tenancy agreement allows for recovery under that ground.
12. In terms of the Form AT6, the Grounds relied upon are Grounds 8, 11, 12, 13 and 14. The tenancy agreement provides, at clause 18.4, that the tenancy may be brought to an end under any of those grounds. Accordingly, I am permitted to grant an eviction order in this case, notwithstanding the existence of a continuing contractual assured tenancy.
13. As I have already noted above, the application sets out the allegations made against the Respondent as to her various breaches of the tenancy agreement. Recovery is sought under Ground 8, which is a mandatory ground, and Grounds 11, 12, 13 and 14, which are discretionary grounds.
14. The Respondent has been given an opportunity to dispute the allegations made against her in the Application, but has chosen not to do so. I am therefore satisfied that she does not dispute that Grounds 8, 11, 12, 13 and 14 apply in this case. I am also satisfied that she does not dispute that she has received the Form AT6 relied upon by the Applicant or its validity.
15. Notwithstanding that this is a CMD, I am empowered by Rule 17(4) of the Tribunal Rules to do anything at a CMD that I may do at a Hearing, including making an Order.
16. In all of the circumstances, I am satisfied that Ground 8 applies. Accordingly, in terms of section 18(3) of the 1988 Act, I must grant the eviction order. For completeness, I am also satisfied that Grounds 11, 12, 13 and 14 apply and that, in the absence of any opposition by the Respondent, it is reasonable to grant an eviction order.
17. Accordingly, I will grant the eviction order.

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.

A Upton

Legal Member/Chair

10 DECEMBER 2018

Date