



**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/18/3459

**Re: Property at 57 Easter Road, Broxburn, West Lothian, EH52 5HN (“the
Property”)**

Parties:

**Mr Scott Shaw, 5 Viewbank Road, Bonnyrigg, Midlothian, EH19 2HB (“the
Applicant”)**

**Mr Robert Keogh, 57 Easter Road, Broxburn, West Lothian, EH52 5HN (“the
Respondent”)**

**Tribunal Members Yvonne McKenna Legal Member and Leslie Forrest Ordinary
Member**

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for possession of the property at 57 Easter
Road , Broxburn, West Lothian, EH52 5HN be made in terms of s18 of the
Housing (Scotland) Act 1988 on the basis of ground 8 of schedule 5 of the Act.
This is since both at the date of service of the notice under section 19 of the
Act relating to the proceedings for possession and at the date of the hearing,
at least three months rent lawfully due from the Respondent is in arrears.**

Background

This is an application under Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Rules, “the rules” and s18 of the Housing (Scotland) Act 1988, “the Act”. The Applicant is seeking an Order for Possession of the Property, which is let by the Applicant to the Respondent in terms of an assured tenancy. The application was accompanied by a copy of the written tenancy agreement between the parties with various supporting documents. The Applicant is the landlord of the Property. The Respondent is the tenant of the Property. The Tenancy Agreement provided for rent to be paid at the rate of £550 per calendar month.

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In the application the Applicant stated that the Respondent has been in arrears of rent since June 2017 and that no rent has been paid in the period August 2017 to date. At the date of service of the notices under the Act rent of £7655.00 was outstanding. At the service of the proceedings the sum had increased to £9365.00.

Case Management Discussion

A Hearing took place on 4th March 2019. The Applicant was represented by his Representative Mr. Chisolm of Clarity Simplicity Ltd. The Respondent did not attend. On 28th February 2019 the Respondent had submitted an e-mail to the Tribunal stating that there were several issues regarding the condition of the property and that he would be seeking legal advice. The Applicant denied the allegations generally and said that these would be challenged at the forthcoming Hearing. The level of arrears did not appear to be disputed.

Directions were issued by the Tribunal in the following terms; -

The Respondent is required to provide

1. A written statement of the grounds and reasons for the Respondent having sought to abate or withhold payment of rent during the period June 2017 to March 2019, including the sums sought to be withheld or abated during each month of the said period; and in particular details of the following issues including all dates and times when the following issues arose;(1)the heating(including what items of heating are being complained of);(2)the alleged dampness;(3)the issue of "gas safety";(4)details of the landlords attempts to sabotage any repairs including the dates of the said sabotage; and (5) the matters upon which the Respondent relies upon in respect of the landlord being unhelpful and/or lacking responsibility.

2.All documents, notes, or other records whether in electronic or written form showing (or tending to show) all communications between the Respondent (or persons acting on the Respondent's behalf), and the Applicant (or persons acting on the Applicant's behalf) in respect of any matters relied upon by the Respondent for either the withholding or abatement of rent during the period June 2017 to March 2019.

The Hearing

1. The Applicant attended along with his legal Representative Miss Oshodi. The Respondent did not attend. He had previously intimated that due to work commitments he would be unable to attend. He stated that he was aware that a final decision could be taken today in relation to the application. He had, following the Case Management Discussion and in advance of the Hearing today made further written representations by e-mail dated 21st March 2019. The e-mail set out issues that the Respondent contended had given rise to the withholding of rent by him and included issues with the heating to the property, dampness under a window and the absence of a gas safety certificate. He stated that the Applicant had been reluctant to have these

issues resolved and that there were issues of lack of contact with the Applicant who he felt was generally unhelpful.

2. Miss Oshodi had lodged an updated rent statement for the property which stated that the rent arrears now amounted to £11,595 and that no further sum had been paid by the Respondent. This updated rent statement had been intimated by the Tribunal to the Respondent in advance of the Hearing today. Miss Oshodi sought to amend the sum sued for to reflect this amount. This request was granted by the Tribunal.
3. The Tribunal noted that there had been no agreement reached between the parties regarding the withholding of rent. Whilst there were messages between the parties by the media of WhatsApp communication none of these detailed that rent was being withheld regarding defects in the property. Further no application has been made to the Tribunal for a determination that the Applicant has failed to meet his repairing duty. The Tribunal noted that the exchange of messages between the parties were apologetic on the part of the Respondent, in relation to the non-payment of arrears of rent, with frequent promises to resolve the issue. The Tribunal took time to go through the Respondents representations in detail with the Applicant. The Tribunal accepted his evidence that there had never been an agreement reached in relation to the withholding of rent or a proportion of rent in relation to any of the issues claimed by the Respondent.

Findings in Fact

1 The Applicant is the owner of the property

2 The Applicant entered into an assured tenancy with the Respondent for let of the Property for the initial period from 1st June 2017 to 1st December 2017 and continuing thereafter on a monthly basis. In terms of the tenancy agreement the amount of rent due was £550.00 per calendar month.

3 Notice of intention to raise proceedings was served on the Respondent in terms of section 19 of the Act on 21st September 2018. At that date the arrears outstanding amounted to £7655.00 which is more than 3 months' rent arrears.

4 That the Respondent did not maintain payments of rent due in respect of this tenancy agreement and the arrears now due amount to £11,595.00 which is more than 3 months' rent arrears.

5 That the Respondent has not adhered to the terms of the tenancy agreement and that the sum of £11,595.00 is outstanding. There have been no payments made to the Applicant by the Respondent in relation to the arrears of rent since

6 On the balance of probability the delay in paying the rent arrears is not due to a failure or delay in the payment of relevant housing benefit.

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Reasons for Decision

The Applicant's Representative produced the up to date rent arrears statement to the Tribunal showing the extent of the outstanding arrears. These arrears are in excess of three months rental in relation to the property both today and on 21st September 2018.

In terms of Section 18 of the Act the Tribunal is to issue an Order against the Respondent if it finds that one of the grounds mentioned in Schedule 5 have been established. Ground 8 is a mandatory ground of said Schedule which provides that an Order should be made if both at the date of service of the notice under section 19 of the Act relating to the proceedings for possession and at the date of the hearing, at least three months rent lawfully due from the tenant is in arrears.

The Tribunal is satisfied that in this application that the Applicant has established this ground and as such is entitled to the Order as sought. For the avoidance of doubt the Tribunal also consider that discretionary Ground 11 , namely that whether or not any rent is in arrears on the date on which proceedings for possession are begun, the tenant has persistently delayed paying rent which has become lawfully due, and also Ground 12 where some rent lawfully due from the tenant is unpaid on the date on which the proceedings for possession were begun; and was in arrears at the date of the service of the notice section relating to those proceedings have also been established.

For these reasons the Tribunal is satisfied that the Order sought should be granted.

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.

Y McKenna


Legal Member/Chair

26/04/19

Date