

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/18/0558

Re: Property at 114 (G/2) Ballindean Place, Dundee, DD4 6PE (“the Property”)

Parties:

**Mach Holdings Ltd, c/o Pavillion Properties (Scotland) Ltd, 86 Bell Street,
Dundee, DD1 1HN (“the Applicant”)**

**Miss Evon Lynch, 114 (G/2) Ballindean Place, Dundee, DD4 6PE (“the
Respondent”)**

Tribunal Members:

Joel Conn (Legal Member) and Angus Lamont (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. This is an application by the Applicant for an order for possession in relation to an assured tenancy in terms of rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended. The tenancy in question was a Short Assured Tenancy of the Property by the Applicant to the Respondent commencing on 1 May 2017.
2. The application was dated 23 February 2018 and lodged with the Tribunal shortly thereafter. The application relied upon a notice in terms of section 19 (also known as an “AT6”) of the Housing (Scotland) Act 1988 dated 25 January 2018, providing the Respondent with notice that proceedings would not be raised before 14 February 2018. Evidence of service of the said AT6 upon the Respondent by recorded delivery post (signed for,

apparently by the Respondent, on 27 January 2018) was provided with the application.

3. The said AT6 relies upon two grounds under Schedule 5 to the 1988 Act; Grounds 8 and 11. Both grounds rely upon rent arrears of £1,344 being outstanding as at the date of the AT6. The lease for the Tenancy, lodged with the application, discloses a monthly rent of £440, which detail is further narrated in the AT6. There is thus just over three months of rent arrears said to be due as at the date of the AT6.
4. Evidence of a section 11 notice in terms of the Homelessness Etc. (Scotland) Act 2003 served upon Dundee City Council on 23 February 2018 was provided with the application.

The Hearing

5. On 15 May 2018, at a Hearing of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting at Dundee Carers Centre, Dundee, we were addressed by Mr Forsyth, a solicitor acting for the Applicant. As of 10:04, there was no appearance by the Respondent and my clerk confirmed that no contact had been received from or on behalf of the Respondent since the scheduling of the Hearing. Mr Forsyth said that the Applicant's letting agent had spoken by telephone with the Respondent and she explained that she had left the property but retained the keys and was doing so until she received a formal eviction order, apparently on legal advice from Dundee North Law Centre. Mr Forsyth said that this suggested to him that the Respondent was being provided with advice regarding claiming accommodation as a homeless person.
6. We were thus satisfied that there was no appearance by the Respondent nor any attempt by her to provide submissions or explain her non-appearance. In the circumstances, we were satisfied to consider the application in full at the Hearing in the absence of the Respondent.
7. The Applicant's agent addressed us on the current level of rent arrears, stating that he had been informed by the Applicant's letting agents that they were now £1,915. A Rent Schedule up to 5 February 2018 was provided with the application. As at that date, arrears stood at £1,784, being no payments of rent from 1 November 2017 to 1 February 2018 amounting to £1,760 plus a "late payment penalty" of £24 applied to the rent account on 9 November 2017. The Applicant's agent said that the Respondent had not paid any rent at all from November 2017 and explained the modest rise in arrears since 5 February 2018 as being the balance of rent after deduction of Housing Benefit that the Applicant now had paid to it direct. The Applicant's agent explained that the Applicant had discovered that the Respondent was in receipt of Housing Benefit but had been receiving it to herself direct and not passing it to the Applicant. There was no delay or arrears of Housing Benefit known of; the Applicant had received all payments due, either to herself or, more recently, to the

Applicant direct. There was no effect on the level of arrears from the Housing Benefit position.

8. The Applicant's agent submitted that the AT6 had been validly served. He explained that it was sent in the same envelope as a Notice to Quit of the same day (though the Notice to Quit was not insisted upon in the application). The lease upon which the application was based was in sufficient terms, under section 18(6) of the 1988 Act, so that no Notice to Quit was required prior to this application. The AT6 referred to an "attached statement" of the arrears. This was not submitted with the application but the Applicant's agent provided sight of this to the Tribunal showing arrears of £1,344, being three months of arrears from 1 November 2017 to 1 January 2018 plus the "late payment penalty" of £24 of 9 November 2017
9. The Applicant's agent confirmed that on 9 February 2018 Dundee North Law Centre had written to the Applicant's letting agents after the receipt of the AT6 and Notice to Quit. Some dispute was made in that letter of the terms of the Notice to Quit and the absence of a Section 33 Notice (neither of which are relevant to this application) but no dispute was made to the terms or validity of service of the AT6 or to the size of the arrears. The letter suggested that the Respondent was willing to leave the property. Nothing in the letter was thus inconsistent with the more recent conversation between the letting agent and the Respondent when she confirmed she had vacated the property but retained the keys. The Applicant's agent confirmed that no issues of non-provision of benefit had been raised by the Respondent as a reason for failure to make payment of rent. The Applicant's agent submitted that the Ground 8 of the 1988 Act was thus satisfied and, being a mandatory ground, an order for removal should be granted.
10. We further sought to be addressed by the Applicant's agent on significant issues relating to the Respondent's home circumstances (such as any dependents). The Applicant's agent said no such issues were known and he believed the Respondent resided alone. The Applicant's agent submitted that it was further reasonable for an order under Ground 11 to be made in light of the issues with arrears and the lack of any rent payments from the Respondent since November 2017.
11. We sought to be addressed by the Applicant's agent on the Applicant's title to the property. He provided submissions, but no documentation, that the Applicant held a portfolio of rental properties and was the heritable proprietor of the Property.
12. The Applicant's agent confirmed no order in respect of expenses was to be made.

Findings in Fact

13. On 21 February 2017, the Applicant let the Property to the Respondent by lease (stating it was a Short Assured Tenancy) with a start date of 1 May 2017 and an end date of 30 April 2018 ("the Tenancy").
14. Under the Tenancy, the Respondent was to make payment of £440 per month in rent to the Applicant on the 1st of each month.
15. The Tenancy's terms make provision for the Tenancy being brought to an end on Grounds 8 and 11 of Schedule 5 to the Housing (Scotland) Act 1988 while it is still an "assured tenancy" in terms that Act.
16. On 25 January 2018, the Applicant's agent drafted an AT6 form in correct form addressed to the Respondent, giving the Respondent notice in terms of section 19 of the 1988 Act of an intention to raise proceedings for possession in terms of Grounds 8 and 11 of Schedule 5 to the 1988 Act, all based on there being rent arrears of £1,344 (being the three months of rent arrears plus a late payment charge) as at the date of the AT6. The AT6 gave the Respondent notice that proceedings would not be raised before 14 February 2018.
17. On 25 January 2018, the AT6 was sent by recorded delivery post by the Applicant's agent and was thus competently served upon the Respondent. The Respondent was thus provided with sufficient notice of the Applicant's intention to raise proceedings for possession on the said grounds.
18. On 23 February 2018, the notice period under the AT6 having expired, the Applicant raised proceedings for an order for possession with the Tribunal, on the grounds narrated in the AT6s.
19. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon Dundee City Council on 23 February 2018 on the Applicant's behalf.
20. On 19 April 2018, a Sheriff Officer acting for the Tribunal intimated the application and associated documents upon the Respondent, providing the Respondent with sufficient notice of the Hearing of 15 May 2018.
21. On 15 May 2018, the Respondent was in arrears under the Tenancy of £1,915, being over four months of unpaid rent in total plus other charges. Within this figure are at least the three months of consecutive unpaid rent from 1 November 2017 to 1 January 2018 totalling £1,320.
22. No information was provided to the Tribunal regarding any delay of failure in the payment of relevant housing benefit or relevant universal credit.

23. No information was provided to the Tribunal regarding any reason why it would be unreasonable to grant an order for possession under any of the discretionary grounds in Part II of Schedule 5 to the 1988 Act.

Reasons for Decision

24. The application was in terms of rule 65, being an order for possession in relation to assured tenancies. We were satisfied, on the basis of the application and supporting papers, and the oral submissions provided by the Applicant's agent at the Hearing, that a valid AT6 had been issued on the Respondent; that this had expired without the breaches being resolved; and that the non-payment of rent remained unaddressed as at the date of the Hearing. As at the date of the Hearing, the total arrears now amounted to over four months of rent arrears.
25. We were satisfied from the submissions of the Applicant's agent that there were no known issues of failure or delay in benefit and thus it was reasonable to grant an order in terms of Ground 8 of Schedule 5 to the 1988 Act.
26. We were further satisfied that we were entitled to make a determination that it was reasonable to grant any order in terms of Ground 11 of Schedule 5 to the 1988 Act as there were no material circumstances brought to the Tribunal's attention that would suggest it would be unreasonable in the circumstances of over four months arrears and no payments by the Respondent personally since 1 November 2017.

Decision

27. In all the circumstances, we were satisfied to make the decision to grant an order against the Respondent for possession of the Property under section 18 of the Housing (Scotland) Act 1988 in normal terms.

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.

J Conn

Legal Member/Chair

Date

15 May 2018