



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/22/1201

Re: Property at Flat 5, 1 Cunningham Street, Dundee, DD4 6QR (“the Property”)

Parties:

Ms Christine Young, 8 Wishart Gardens, Montrose, Angus, DD10 8SJ (“the Applicant”)

Ms Emma Elliott, Flat 5, 1 Cunningham Street, Dundee, DD4 6QR (“the Respondent”)

Tribunal Members:

Petra Hennig-McFtridge (Legal Member) and David Fotheringham (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a possession order for the property be made against the Respondent and in favour of the Applicant in terms of Grounds 11, 12 and 13 of Schedule 5 of the Housing (Scotland) Act 1988 and that it was reasonable to make such an order.

A: Background

1. The application for an order for possession under S 18 of the Housing (Scotland) Act 1988 (the Act) and rule 65 of the Rules of Procedure was made by the Applicant on 23 April 2022 under Grounds 11, 12 and 13 of schedule 5 of the Act.
2. It was accepted by the Tribunal on 6 June 2022.
3. The following documents were lodged by the Applicant to support the application:
 - a. copy assured tenancy for the property between the parties commencing 3 September 2016 with an initial period to 2 March 2017
 - b. Notice to Quit dated 1 April 2022.

- c. S 11 Notice to Local Authority with confirmation of sending to Local Authority by email on 23 April 2022.
 - d. AT6 Notice dated 1 April 2022
 - e. Execution of Service by Sheriff Officers for the said Notice to Quit and AT6 document.
 - f. email correspondence between the parties between 24 June 2021 and 9 January 2022.
 - g. Letters from Applicant to Respondent regarding access and payment of rent dated 4 June 2020, 5 October, 10 January 2022, 4 February 2022, 24 February 2022, 30 August 2021, 3 September 2021 with recorded delivery sending receipts.
 - h. Text messages from Applicant to Respondent 9 February 2020, 15 February 2020, 10 January 2021, 2 March 2021, 9 January 2022
 - i. Redacted bank statements of Applicant for the period from 1 December 2020 to 9 May 2022
4. The Case Management Discussion (CMD) was scheduled for 15 August 2022. Case papers and notification of the CMD were served on the Respondent by Sheriff Officers on 7 July 2022. The Tribunal was satisfied that the Respondent had the required notice of the CMD as set out in Rules 17 (2) and 24 (2) of the Procedural Rules.
 5. No representations from the Respondent were received by the Tribunal.
 6. The case documents are referred to for their terms and held to be incorporated herein.

B: The Case Management Discussion:

1. The CMD took place on 15 August 2022 by telephone conference call.
2. Only Ms Young, the Applicant, participated. The Respondent did not join the teleconference call.
3. Ms Young confirmed that the rent arrears had increased to now over £3,420. No payments had been made since the application was made. There had been no contact from the Respondent and the Applicant had to make an application under the right of entry provisions and is waiting for assistance from the Tribunal to access the property on the authority of a warrant. The hearing will be on 14 September 2022. Her landlord registration cannot be renewed until she can present the necessary documents and all of that is on hold until she can legally access the property. The Respondent is a registered nurse and as far as the Applicant is aware lives on her own in the property and does not receive any benefits. The Applicant stated her landlord registration for her other rental properties are in place. She had tried in various ways to contact the Respondent but the Respondent had not reacted to any attempts to address the arrears or to arrange access after the gas checks in the summer of 2021. She had just stopped communicating.

C: Findings in Fact

1. The property was let on an assured tenancy commencing 3 September 2016 with an initial duration to 2 March 2017. Thereafter the tenancy continued from month to month (clause 2(1)).
2. The parties are the landlord and tenant of said Tenancy Agreement.

3. The rent of £380 monthly in advance is payable on each 3rd day of the month (clause 3)
4. The tenant is under an obligation to allow the landlord access to the property in terms of clause 21 of the tenancy agreement.
5. The landlord has not been able to gain access to the property to carry out the necessary electricity checks since September 2021 despite giving the Respondent due notice.
6. A request for assistance to enter the property for this purpose is ongoing under separate proceedings before the Tribunal.
7. The Respondent has not paid rent since November 2021 and the arrears currently stand at 9 months and 12 days and thus at an amount exceeding £3,420.
8. At the time of starting proceeding the arrears were £1,900.
9. The tenancy is ongoing.
10. The Applicant's landlord registration for the property cannot be progressed as the electricity check documentation cannot be submitted without access to the property.
11. The notice required under S 56 of the Act was issued to the local authority on 23 April 2022.
12. The tenancy agreement makes provision for the tenancy to be brought to an end under grounds 11, 12 and 13 of schedule 5 of the Act and the grounds are narrated fully in clause 4 of the tenancy agreement.
13. The Respondent is a nurse. The Applicant is not aware of any benefit entitlement of the Respondent.
14. The contractual tenancy was not validly terminated by the Notice to Quit dated 1 April 2022.

D: Reasons for decision

1. Relevant legislation:

In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(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.

Power to determine the proceedings without a hearing

However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—
(a) may make a decision without a hearing if the First-tier Tribunal considers that—
(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and
(ii) to do so will not be contrary to the interests of the parties; and
(b) must make a decision without a hearing where the decision relates to—
(i) correcting; or
(ii) reviewing on a point of law,
a decision made by the First-tier Tribunal.
(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties

2. The documents lodged are referred to for their terms and held to be incorporated herein.
3. The Tribunal did not consider that there was any need for a hearing as the essential facts of the case were not in dispute. The Respondent had fair notice of the content of the application and provided no representations to challenge the matters raised in the application.
4. The Tribunal makes the decision on the basis of the documents lodged by the Applicant and the representations made by the Applicant at the CMD.
5. In terms of S 18 of the Housing (Scotland) Act 1988 (the Act), the tribunal shall not make an order for recovery of 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. In terms of S 19 (1) of the Act this either requires an AT6 form to be correctly served in terms of S 19 (4) or in terms of S 19 (1) (b) the tribunal to consider it reasonable to dispense with the requirement of such a notice.
6. The Applicant had served the required AT6 notice on the Respondent by Sheriff Officers and the AT6 notice narrated the grounds for the notice as grounds 11, 12 and 13 and gave the Respondent fair notice of the reasons for the notice. The AT6 notice gave the required 2 week notice period.
7. In terms of S18 (6) of the 1988 Act 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.
8. In this case the tenancy continues as a contractual tenancy which had not been validly terminated. The Notice to Quit of 1 April 2022 was given to 22 April 2022. 22 April 2022 was not an ish date of the tenancy and thus the Notice to Quit was not valid. However, Grounds 11, 12 and 13 are specifically referred to in the tenancy agreement and thus the Tribunal considers S 18 (6) (b) of the 1988 applies.

9. The Tribunal had regard to S 18 (4A) of the 1988 Act and noted that the Respondent appears to be employed as a registered nurse and there is nothing to suggest that she would be entitled or is in receipt of relevant benefits.
10. The Tribunal then has to consider whether the Grounds 11 and 12 of Schedule 5 of the Act apply in this case. Both are discretionary grounds for possession. In this case the arrears as at the time the application was made were £1,900. The Applicant confirmed no further payments have been received and the Respondent is now in arrears of rent exceeding £3,420 and has not paid any rent since November 2021. The Respondent is aware of the arrears and has not co-operated with any attempts of the Applicant to discuss these, access conflict resolution services or enter into any payment agreement to reduce the arrears.
11. The Tribunal is satisfied Ground 11 of Schedule 5 of the Act: "*whether or not any rent is in arrears on the date on which proceedings for possession are begun the tenant has persistently delayed in paying rent which has become lawfully due*" applies in this case. The Respondent has not provided any reasons why she did not pay rent. The Tribunal took into account the level of arrears, the arrears history and the considerable efforts of the Applicant to communicate with the Respondent, signpost her to available advice resources, enter into a dispute resolution process and the Respondent's persistent failure to enter into any communication with the Applicant. There is no suggestion that the Respondent is in any way a vulnerable person. Applying its discretion in the matter considers that taking into account all relevant matters that it is reasonable in all the circumstances to grant the order for possession on that ground.
12. The Tribunal is satisfied Ground 12 of Schedule 5 of the Act : "*some rent lawfully due from the tenant:- (a) is unpaid on the date on which the proceedings for possession are begun; and (b) except where subsection (1) (b) of section 19 of this Act applies, was in arrears at the date of the service of the notice under that section relating to those proceedings*" applies in this case. Rent arrears of £1,520 as set out in the separate additional sheet of the AT6 notice had accumulated at the time the AT6 notice was served and by the time the application to the Tribunal was made the arrears in place had reached £1,900 as set out in the paper apart to part 5 of the application. The Respondent has not provided any reasons why she did not pay rent. The Tribunal took into account the level of arrears, the arrears history and the considerable efforts of the Applicant to communicate with the Respondent, signpost her to available advice resources, enter into a dispute resolution process and the Respondent's persistent failure to enter into any communication with the Applicant. There is no suggestion that the Respondent is in any way a vulnerable person. Applying its discretion in the matter the Tribunal considers it is reasonable in all the circumstances to grant the order for possession on that ground.
13. The Tribunal considered whether Ground 13 of Schedule 5 of the Act : "*Any obligation of the tenancy (other than one related to the payment of rent) has been broken or not performed.*" applies in this case. The Applicant has a vested interest to carry out regular checks of gas and electricity installations and the

certificates for these are a requirement for the landlord registration process. The Applicant has been trying to gain access to carry out the check for the electric installations in the property since September 2021 and the Respondent has persistently failed to comply with repeated and reasonable access requirements of the landlord as stated in clause 12 of the tenancy agreement. The Respondent has not provided any reasons why she did not provide access to the property either to the Tribunal or to the Applicant . The Tribunal is satisfied that the ground is met and, having regard to all relevant matters, the Tribunal considers that it is reasonable to grant the order for possession on that ground.

Decision: The Tribunal grants the order for possession of the property in terms of S 18 of the Housing (Scotland) Act 1988 on Grounds 11, 12 and 13 of Schedule 5 of said Act

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.

P. H

**Petra Hennig McFatridge
Legal Member**

**15 August 2022
Date**