

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 (“the 1988 Act”) and Rule 65 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/EV/19/3824

Re: Property at 17 Newtongrange Place, Newtongrange, Edinburgh, EH12 5LR (“the Property”)

Parties:

Mr Iain Gaul and Mrs Fiona Gaul, 5 Wester Coates Terrace, Edinburgh, EH12 5LR (“the Applicants”)

Bannatyne, Kirkwood, France & Co, Solicitors, 16 Royal Exchange Square, Glasgow, G1 3AG (“the Applicants’ Representative”)

Mr Jamie Gilchrist and Ms Shelley Forman, 17 Newtongrange Place, Newtongrange, Edinburgh, EH22 4DF (“the Respondents”)

Tribunal Member:

Susanne L. M. Tanner Q.C. (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) was satisfied that Grounds 6 and 8 in Part II of Schedule 5 to the 1988 Act were established by the Applicant, in that

(i) the Applicants intend to reconstruct a substantial part of the Property and to carry out substantial works on the Property; (a) the Applicants acquired their interest in the Property before the creation of the tenancy; and (b) the Applicants cannot reasonably carry out the intended work without the respondents giving up possession of the Property because the work cannot otherwise be carried out even if the Respondents accept a variation in the terms of the tenancy or an assured tenancy of only part of the house or both; and

(ii) both at the date of service of the notice under section 19 of the 1988 Act relating to proceedings for possession on 12 September 2019 and at the date of the hearing on 3 February 2020 at least three months' rent lawfully due from the Respondent was in arrears; the arrears are not a consequence of a delay or failure in the payment of relevant housing benefit; and made an order for possession in terms of Section 18(3) of the 1988 Act.

Reasons

1. Procedural Background

1.1. The Applicants' Representative made an application to the tribunal on 28 November 2019 in terms of Section 18 of the Housing (Scotland) Act 1988 ("the 1988 Act") and Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules").

1.2. The Applicants seek the Respondents' eviction from the Property in terms of Section 18 of the 1988 Act under Grounds 6, 8, 11 and 12 of Schedule 5 to the 1988 Act.

1.3. The Applicants' Representative lodged with the Application:

1.3.1. A paper apart for Ground 5 to the Application;

1.3.2. a copy of a tenancy agreement dated 25 July 2009;

1.3.3. a copy of an AT2 Notice to each Respondent dated 6 March 2019, with proof of service dated 7 March 2019;

1.3.4. A copy of a Notice to Quit to each Respondent dated 6 March 2019; with proof of service on 7 March 2019;

1.3.5. A copy of an AT6 notice to each Respondent (Ground 6) dated 12 September 2019, with proof of service on 12 September 2019;

1.3.6. A copy of an AT6 notice to each Respondent (Grounds 8, 11 and 12) dated 12 September 2019, with proof of service on 12 September 2019;

1.3.7. A Section 11 Notice with proof of service;

1.3.8. A copy of a payment order (case reference CV/18/2695) for £2,480.00 made by the tribunal in relation to the same Applicants, Respondents and Property dated 15 August 2019;

- 1.3.9. A rent statement for the period from 9 July 2009 to 9 November 2019;
- 1.3.10. Planning permission for a two storey extension to the Property dated 1 May 2019, with attached architect's drawings.
- 1.4. On 3 December 2019, the tribunal's administration obtained the title deeds for the Property (MID44748) which show that the Applicants have been the joint registered proprietors since 15 July 2003.
- 1.5. On 11 December 2019, the Application was accepted for determination by a tribunal. Both parties were notified by letters dated 3 January 2020 of the date, time and place of Case Management Discussion ("CMD") in relation to the Application on 3 February 2020. The Respondents were invited to make written representations in response to the Application by 24 January 2020. Both parties were advised that they were required to attend the CMD. The parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application which may involve making or refusing an eviction order. The parties were also advised that if they do not attend the CMD this will not stop a decision or order being made if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair. The Application paperwork and notification was served on the Respondent by Sheriff Officers on 3 December 2019.
- 1.6. The Respondents did not submit any written representations in response to the Application.
- 1.7. On 16 January 2020, the Applicants' Representative submitted an updated rent statement for the period to 9 January 2020, a copy of which was sent by the tribunal to the Respondents.

2. Case Management Discussion ("CMD"): 3 February 2020, 1400h, Riverside House, 2nd Floor, 502 Gorgie Road, Edinburgh, EH22 4DF

- 2.1. The First Respondent contacted the tribunal's administration at 13.55h on 3 February 2020 to say that he was suffering from a dental emergency which had started shortly before he had planned to leave to attend the CMD and that he was now unable to attend the CMD. He said that his wife, the Second Respondent, had to stay at home to look after their children. The First Respondent was asked by a member of the tribunal's administration staff to submit the information about his and his wife's inability to attend in writing. Following a query from a member of the tribunal's administration staff, the First Respondent confirmed that he and his wife were not requesting a

postponement of the CMD, stating he and his wife were in the process of moving out of the Property in any event.

2.2. Kirsty Donnelly, Solicitor, from the Applicant's Representative attended the CMD.

2.3. The tribunal was satisfied that the requirements of Rule 24 of the 2017 Rules regarding the giving of notice of a hearing have been duly complied with and decided to proceed with the application upon the representations of the party present and all the material before it, in terms of Rule 29 of the 2017 Rules.

2.4. The tribunal Chair informed Ms O'Donnell of the contact which had been received from the First Respondent and invited any submissions she wished to make in relation to a postponement of the CMD.

2.5. Ms O'Donnell stated that she was inviting the tribunal to proceed in the Respondents' absence. She stated that in relation to their stated intention to move, the Respondents have been advising for about one and a half years that they are going to move out. She referred to text message correspondence up until 30 December 2019. The Applicants also received a letter from the local authority stating that they were responsible for Council Tax again because the Applicants moved out of the Property on 6 January 2020. The Applicants contacted the Council and were advised that the tenants had informed the council tax department that they were moving out on 6 January 2020. The Applicants have advised the local authority that the Respondents are still in the Property.

2.6. Having heard from Ms O'Donnell and considering the statements made by the First Respondent to the tribunal's administration, as well as the overriding objective of the tribunal, the tribunal Chair decided not to adjourn the CMD.

2.7. The tribunal Chair explained the purpose of the CMD in terms of Rule 17 of the 2017 Rules. The tribunal Chair also informed Ms O'Donnell that if any decision was reached in the absence of the Respondents, there was the possibility of an application for recall but only if the Respondents stated why it was in the interests of justice and the application otherwise complied with Rule 30.

2.8. Applicants' representative's submissions

2.9. Ms O'Donnell stated that although the Application had been made under four grounds, she intended to make submissions in relation to grounds 8 and 6, as those are the mandatory grounds.

- 2.10. In relation to Ground 8, Ms O'Donnell stated that the rent was initially £845.00 pcm. It was increased in accordance with statutory provisions from 9 May 2019 to £1125.00pcm. After the increase, there was one payment at the higher rate. Since then there have been no further payments made by the Respondents.
- 2.11. Ms O'Donnell stated that previous tribunal proceedings had been raised against the Respondents last year. On the day of the hearing the Respondents made payment to bring the arrears to a sum £50.00 under three months' arrears. The mandatory ground was removed. The case proceeded to a full hearing on reasonableness in relation to Ground 11 and 12. The arrears were £2480.00 at that time, but below three months' arrears. The tribunal found that it was not reasonable to evict because by and large there had been regular payments and only a few had been missed over the course of a long tenancy. The tribunal did grant a payment order for the arrears up to 9 May 2019, dated 15 August 2019. Ms O'Donnell stated that the conjoined civil claim (CV/19/3825) to the present eviction application is for arrears from 10 May to date, in the sum of £9000.00.
- 2.12. Ms O'Donnell stated that two AT6 notices were served on each Respondent on 12 September 2019. Separate notices were served given the different notice periods for the different grounds. The notice specifies £5855.00 of rent arrears as at 12 September 2019. The rent statement shows £5855.00 of rent arrears as at 9 August 2019. She submitted that there were more than three months' rent arrears at the date of service of the AT6 notices.
- 2.13. Ms O'Donnell stated that the current rent arrears as at 3 February 2020 are £11,480, which includes £2480.00 in respect of which the previous payment order was made. The balance is £9,000.00.
- 2.14. Ms O'Donnell stated that the Respondents have never been in receipt of housing benefit.
- 2.15. Ms O'Donnell added that on or about 16 December 2019, the Applicants have been contacted by a landlord requesting a reference for the Respondent. The Applicants put off answering the question, texted the First Respondent and asked for the arrears to be paid. The First Respondent stated that he was not able to pay the arrears because he was putting down a deposit on a new property. The Respondent texted the Applicant and said that the new landlord was going to call. The First Respondent stated that they would not get the property without a positive reference and invited the Applicant to provide a positive reference despite the rent arrears. The First Respondent apparently acknowledged that there were rent arrears. The Applicants were not prepared to lie about the rent being up to date. The First Applicant stated that if the

Respondents paid by 4pm that day he would give a reference. The Respondents stated that it would not be possible to pay, he would call the prospective landlord and the Respondent would just wait until the 'court' hearing.

2.16. Ms O'Donnell submitted that as three months' arrears were £3,475.00, there were more than three months' rent arrears both at the date of service of the AT6 notice (£5855.00 on 12 September 2019) and as at the date of the hearing (£11480.00 on 9 January 2020). Her position was that the Applicants are entitled to an order for possession in terms of Ground 8 and Section 18 of the 1988 Act.

2.17. In relation to Ground 6, Ms O'Donnell stated that it is the Applicants' intention to refurbish the Property. She submitted that proper notice was given in an additional AT6 Notice to each Respondent. She stated that the Applicants are joint owners who acquired their interest in 2003, prior to the tenancy commencing in 2009. Ms O'Donnell produced additional documentation which includes more detailed plans and quotations to show the Applicants' state of preparation for the works together with a letter from Mr Dominguez, architect dated 30 January 2020. Planning permission was obtained in May 2019 when the Applicants made the first set of Applications to the tribunal. Quotations have been obtained. The architect has produced a letter stating that for both health and safety and practical reasons the works could not be carried out with the tenants in situ. The documents were accepted by the tribunal as being relevant to proof of the facts required in Ground 6, copied and added to the case file.

2.18. Ms O'Donnell submitted that Ground 6 had been established and as it is a mandatory Ground, she invited the tribunal to make an order for possession.

3. The tribunal makes the following findings-in-fact:

3.1. There is a short assured tenancy between the Applicants and the Respondents for the Property dated 25 July 2009.

3.2. The date of entry was 9 July 2009.

3.3. The initial end date was 8 January 2010 and the tenancy has continued by tacit relocation on a monthly basis since then.

3.4. Rent was payable by the Respondents to the Applicants in the sum of £845.00 per calendar month, monthly in advance, on 9th of each month.

3.5. The rent was increased to £1,125.00 per calendar month with effect from 9 May 2019.

- 3.6. On 15 August 2019 the tribunal made a decision in a civil application CV/18/2965 by the Applicants against the Respondents and made a payment order for £2,480.00 in respect of rent arrears to 15 May 2019.
- 3.7. Rent arrears have continued to accrue in the period from 9 May 2019 to 3 February 2020.
- 3.8. The AT6 (Section 19) notices were served on the Respondents in respect of rent arrears (Grounds 8, 11 and 12) on 12 September 2019.
- 3.9. As at 12 September 2019, the Respondents had rent arrears of £5,855.00.
- 3.10. The AT6 notices included notice that the Applicants were intending to raise proceedings for possession of the Property on Grounds 8, 11 and 12 of Schedule 5 to the Housing (Scotland) Act 1988 ("the 1988 Act").
- 3.11. As at the date of the hearing on 3 February 2020, there were rent arrears of £11,480.00.
- 3.12. The rent arrears as at 3 February 2020 include £2,480.00 to 9 May 2019 and a further £9,000 of arrears which have accrued in the period to 3 February 2020.
- 3.13. The rent arrears are not a consequence of a delay or failure in the payment of Housing Benefit or relevant universal credit.
- 3.14. The Applicants became the registered proprietors of the Property on 15 July 2003, which was before the tenancy was entered into with the Respondents.
- 3.15. The Applicants are intending to carry out substantial worked on the House ("the intended works").
- 3.16. The Applicants obtained planning permission for the intended works on 15 May 2019.
- 3.17. The Applicants have obtained quotations for the intended works.
- 3.18. The Applicants cannot reasonably carry out the intended works without the Respondents giving up possession of the Property because it should not be occupied for health and safety reasons, nor would it be practicable given the extent of the intended works, to be carried out with the Respondents in the Property.

3.19. Discussion

3.20. The tribunal was satisfied on the basis of the findings in fact that Ground 8 in Part II of Schedule 5 of the Act is established, in that both at the date of service of the notice under section 19 of the 1988 Act relating to proceedings for possession on 12 September 2019 and at the date of the hearing on 3 February 2020 at least three months' rent lawfully due from the Respondents was in arrears. The tribunal was satisfied that the rent arrears are not a consequence of a delay or failure in the payment of relevant housing benefit. The tribunal was therefore required to make an order for possession in terms of Section 18(3) of the 1988 Act.

3.21. Separately, the tribunal was satisfied on the basis of the findings in fact that Ground 6 in Part II of Schedule 5 of the Act is established. In reaching its findings in fact, the tribunal had regard to documentation submitted to the tribunal in respect of the intended works, including the terms of the letter from Pablo Domingues, Architect, Iain Gaul Architects, dated 20 January 2020, in which it was stated that the Property should not be occupied during the intended works for health and safety reasons, nor was it practical for the Property to be occupied given the extent of the works. The tribunal was therefore required to make an order for possession in terms of Section 18(3) of the 1988 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.

S. Tanner

Susanne L. M. Tanner Q.C.
Legal Member/Chair

3 February 2020