

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/19/0142

Re: Property at Seaview Top Flat, 67 Main Street, Inverkip, PA16 0AT (“the Property”)

Parties:

Ms Tina Beales, 0/1, 42 Anniesland Road, Glasgow, G13 1XB (“the Applicant”)

Mr Thomas Dilys, Seaview Top Flat, 67 Main Street, Inverkip, PA16 0AT (“the Respondent”)

Tribunal Members:

Colin Dunipace (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order should be granted against the Respondent for possession of the Property under section 18 of the Housing (Scotland) Act 1988, (hereinafter the “1988 Act”), and in terms of Rule 65 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Regulations 2017.

This Application called before this Tribunal for a full Hearing on 10 April 2019 in Gamble Halls, Gourock, 44 Shore Road, Gourock, PA19 1RG. Ms Tina Beales (hereinafter the Applicant) was present at this Hearing, and was accompanied by her son who was present as an observer. The Applicant was also represented by Mr Kenneth Caldwell of Messrs Patten and Prentice, LLP, Solicitors. Mr Thomas Dilys (hereinafter the Respondent) was also present and was represented by Ms Helen McHugh of Messrs Brown and Co, LLP, Solicitors.

Background

1. By way of background it was noted that the Applicant was seeking an Order for eviction in terms of Grounds 8, 11 and 12 of the 1988 Act and in support of her Application there had been provided to the Tribunal an AT6 form dated 17 December giving notice to the Respondent that the proceedings would not be raised before 17 December 2019. It was noted that this form AT6 narrated verbatim the 3 Grounds previously mentioned and that the reason for the Application was that there were arrears of rent, this not having been paid since May 2018. At the time of the service of the form AT6 the accrued arrears of rent amounted to £2740.
2. At the Case Management Discussion on 1 March 2019 the Applicant has been called upon to confirm how the terms of S18(6) of the 1988 Act had been met, and in particular how when the lease had not been terminated by a valid Notice to Quit, the terms of the tenancy made provision for it to be brought to an end on the ground or grounds in question as relied upon in the AT6. The Applicant was specifically requested to address the case of Royal Bank of Scotland v Boyle 1999. Having received written submissions from the parties, it was determined that following the judgement of Sheriff Wheatley in the aforementioned case of RBS v Boyle that the essential requirements of the grounds relied upon by the Applicant required to be set out in the lease to allow section 18(6) of the 1988 Act to be relied upon and in the present case the only ground which had the essential requirements sufficiently specified in the lease was Ground 11 where the lease specifically made reference to persistent delay in the payment of rent. The Tribunal specifically rejected the submissions of the Applicant to the effect that Ground 12 could be relied upon as it did not have the essential ingredients narrated in the lease. At that stage it was agreed between the parties that Ground 11 was valid, and that given that this was a discretionary ground that the matter should proceed to a full Hearing on 10 April 2019. At that case Management Discussion the following facts were also agreed;

1. That the Respondent leases the property from the Applicant;
2. That no rent had been paid by the Respondent since May 2018, but noted that there was a current action for arrears of rent and damage to the property with the Tribunal and that there was a dispute as to the exact amount of rent outstanding and as the Applicant had changed the method of billing from monthly to weekly that this caused a difference in the amount which would be due if it was to be monthly only.

Parties were directed at that time to lodge any written evidence or submissions and any List of Witnesses to the Tribunal at least 14 days before the Hearing. In this regard the Respondent's solicitor submitted full written submissions and enclosed an Inventory of Productions and List of Witnesses to the Tribunal on 27 March 2019.

The Hearing

3. The Application called as a full Hearing on 10 April 2019. At this Hearing the Applicant was present and represented as aforementioned, and the Respondent was also present and represented. As a preliminary matter the Applicant's solicitor indicated that he wished to lodge an amended inventory of production. This Inventory contained a copy of the tenancy agreement dated 13 September 2017; a letter to the respondent with Notice to Quit and Form AT6 dated 17 December 2018 (with execution of service by Sheriff Officers); a rent statement as at 14 January 2018; Notice under section 11 of the Homelessness Etc (Scotland) Act 2003; and a Rent statement dated 8 April 2019 setting out the current position in respect of arrears of rent in the sum of £4,400. This motion was not opposed by the Respondent's representative and was duly received in evidence. For the Respondent it was indicated that there were no witnesses present to give evidence for the Respondent. The Tribunal was advised that in terms of the List of Witnesses previously lodged, that it had been intended to call as witnesses the Respondent's benefit adviser and CPN, but that they were not available to attend. The Respondent's solicitor advised that they intended to proceed in the absence of these witnesses. There was however a motion to adjourn the Hearing by the Respondent in terms of section 20(1) of the 1988 Act on the basis that the Respondent still had an outstanding benefits appeal, given that this formed the crux of the current dispute. In support of the motion the Tribunal was advised that the respondent had applied for Universal Credit in June 2018 and that this had initially been refused on the basis that the respondent was not deemed to be resident. In this regard reference was made to the documentation submitted by the respondent indicating that the Respondent's application for Universal Credit had been refused on 20 October 2018 on the basis that he did not have a right to reside in the United Kingdom, and that the Respondent had submitted a Benefit Reconsideration Request on 25 October 2018. The respondent's representative advised that he had been obtaining assistance from his Benefit Adviser at Inverclyde Council. The Tribunal was advised that the original refusal decision had been upheld on 4 March 2019, but that a further Appeal against this decision had been lodged on 1 April 2019. Reference was made to a letter dated 3 April in this regard and the Tribunal was advised that a date for a decision in relation to this latest Appeal was still awaited, and that if successful that this could result in a payment of back rent. The Respondent's solicitor indicated that it was felt that the Appeal had good prospects of success. The Tribunal was further advised that the Respondent had originally applied for Universal Credit in September 2018, and that prior to this that he had been in employment with the Applicant's son, but that this had resulted in very limited earnings for him. By way of further background the Respondent's solicitor also advised the

Tribunal that he had previously rented other properties from the Applicant, and that he had required to give up a computer course due to health issues. In relation to his employment with the Applicant's son, he had only received two payments, namely £200 on 7 September 2018 and £150 on 4 September 2018. The motion to adjourn was opposed by the Applicant who indicated that the Respondent had arrived in the United Kingdom from Lithuania in August 2017 to study at Paisley College and that he initially resided in the Applicant's house as a sub-tenant. The respondent had thereafter moved to the subject premises, thereafter running up the current arrears of rent, with his last payment having been in May 2018. It was pointed out that the Respondent had not applied for benefits until October 2018, and that as he did not have five years residence in the United Kingdom that he was unlikely to be entitled to any benefits. The Applicant's solicitor indicated that the Respondent had not paid rent for almost a year and that no dates had yet been allocated for any final appeal in relation to his application for Universal Credit. It was further pointed out that by the time the Respondent had applied for benefits on 25 September 2018, that he was already £1240 in arrears of rent. Having heard from the parties the Tribunal adjourned to consider its decision in relation to the motion to adjourn, and having done so refused same. This decision was reached having regard to the procedural history of the Application; to the fact that there was still no date fixed in relation to an appeal; the fact that there was no detailed evidence in relation to the Respondent's prospects in this appeal; and the fact that the Respondent had not applied for benefits until 25 September 2018, by which time he was almost four months in arrears of rent.

4. The Tribunal thereafter heard detailed submissions from the parties in relation to the substantive merits of the Application. In support of the Application the Applicant's solicitor indicated that it was accepted that the only ground for eviction was ground 11, and that the tenancy had commenced on 12 September 2017 and that this was an Assured tenancy. The term date was stated to be September of each year and that it continued on a year to year basis. The documents served on 17 December 2018 required the Respondent to leave the property. The Applicant's solicitor accepted in relation to the question of the rent due that the correct sum was £400 per month rather than £100 as mentioned in the documentation. It was stated that the documentation lodged spoke for itself, in that there was a clear pattern of non-payment by the Respondent in relation to payment of rent and that the current sums due were in the sum of £4400. In relation to the purported health difficulties of the Respondent, the Applicant disputed this to the extent that it was submitted that the Applicant asserted that the Respondent had only been in hospital for one day. It was also stated that section 18(4A) of the 1988 Act did not apply given that it could not be established that the Respondent would be entitled to benefits which would clear his arrears of rent. For the

respondent it was submitted that the terms of section 18 (4A) of the 1988 Act did apply. Reference was made to the terms of this section which states:

"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."

The Respondent's solicitor confirmed that the respondent had made an application for Universal Credit and that his inability to pay rent might well be considered as having been due to the delay or failure in the payment of his Universal Credit, and as such it was unreasonable to make an order for possession on ground 11 as sought by the Applicant. It was submitted that following the initial application for Universal credit that it had taken almost four months for this application to be determined and refused, and that this was entirely outwith the control of the Respondent. Further the Respondent had submitted his appeal against the refusal within 4 days. The Respondent's solicitor also made reference to his mental health issues and to the terms of his Immediate Discharge letter which related to a suicide attempt. It was submitted that the Respondent had significant mental health difficulties. It was accepted on behalf of the respondent that prior to his application for Universal Credit that there had accrued significant arrears, but it was explained that these were due to him planning to start a business, and that unfortunately that this business had not taken off. It was submitted that it would in all of the circumstances be unreasonable to evict the Respondent.

Findings in Fact

1. The parties entered into an Assured Tenancy in relation to the property at Seaview, Top Flat, 67 Main Street, Inverkip, PA16 0AT on 12 September 2017. The Respondent leases the subject property from the Applicant. The monthly rental due in respect of this property was in the sum of £400 per month;
2. That no rent had been paid by the Respondent since May 2018. The Respondent applied for Universal Credit on 25 September 2018, but he has not established as at the present date that he is entitled to this Benefit. The Respondent had accrued arrears of rent prior to the application for Universal Credit.

3. That a Notice to Quit was served upon the Respondent on 14 December 2018, together with Form AT6. A Notice in terms of section 11 of the Homelessness Etc (Scotland) Act 2003 was also served on the Respondent.

4. That the Applicant has established Ground 11 of Part II of Schedule 5 to the 1988 Act, and that the Respondent has not established that it would be unreasonable to make an order for possession in terms of section 18 (4A) of the 1988 Act.

Findings in Fact and Law

1. The Applicant is entitled to recover possession of the property from the Respondent.

Reasons for Decision & Decision

Having heard from the parties the Tribunal was satisfied that the Applicant had established Ground 11 of Part II of Schedule 5 to the 1988 Act, in that the Respondent has persistently delayed paying rent which had become lawfully due. In this regard the Tribunal noted that the arrears of rent as at the date of the Tribunal were in the sum of £4400. Whilst the tribunal noted the position of the Respondent to the effect that it would be unreasonable to grant the Order, and that the terms of section 18 (4A) applied given the outstanding claim for Universal Credit, the Tribunal was not satisfied that the factual position in this regard had been established by the an Order. In particular it was noted that even prior to the application for this benefit in September 2018 that the Respondent was already considerably in arrears of rent. The Tribunal was not satisfied with the Respondent's explanation in relation to the reasons why he had not paid rent during this period. Further it was noted that the Respondent had not yet been able to establish that he would ultimately be entitled to this benefit and that any submissions in this regard by the Respondent were purely speculative, and were not supported by any independent, or other evidence. In any event even if successful the claim for Universal Credit would have left a considerable amount due in respect of rent, and no submissions had been made by the Respondent as to how he intended to address these arrears. In relation to health concerns highlighted by the Respondent, the Tribunal was not satisfied that sufficient evidence had been submitted to establish these issues, and as such was unable to take these into account. Having considered all of the evidence the Tribunal was not satisfied that the Respondent had established that it would be unreasonable to make an order for possession in terms of section 18 (4A) of the 1988 Act, and accordingly the Applicant was entitled to the Order as sought. The Order is accordingly made.

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.



Legal Chair

29/4/17

Date