



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/19/0350

Re: Property at 73 Brankston Avenue, Stonehouse, ML9 3JE (“the Property”)

Parties:

Miss Kay Stewart, West Croft, Bonkle, Wishaw, ML2 9PH (“the Applicant”)

Miss Gail Lennox, 73 Brankston Avenue, Stonehouse, ML9 3JE (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member)

Decision (in absence of the Respondent)

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

Background

1. An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 65 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order for recovery of possession in relation to an assured tenancy under the Housing (Scotland) Act 1988 by the Applicant against the Respondent in relation to the subjects 73 Brankston Avenue, Stonehouse, ML9 3LE.
2. The application contained a copy of
 - the Tenancy Agreement;
 - AT6 Form together with a certificate of service by sheriff officer ;
 - Section 11 Notice together with evidence of service; and
 - a copy of a rental statement.

3. The Applicant's representative, Mr Paul McDermott, from Messrs Friels Solicitors, appeared on behalf of the Applicant.
4. There was no appearance from the Respondent.
5. Notice of the Hearing together with a copy of the application and confirmation that the Respondent could make written representations in response to the application, had been served on the Respondent on 11 March 2019. No written representations had been received. As I was content that the Respondent had received notice of the today's hearing I was prepared to proceed in her absence.

The Hearing

6. The Applicant's representative explained that they were seeking an order for eviction under Grounds 8, 11 and 12 of Schedule 5 of the 1988 Act as the Respondent was in arrears of rent for more than 3 months and this continued to be the case as at today's date.
7. The tribunal had sight of the tenancy agreement in the name of the Applicant and Respondent and noted that it commenced on 31 January 2017.
8. Clause 4 provided that rent payable was £350 per month and that it was to be paid in advance.
9. The tenancy agreement at clause 17 provided for termination of the tenancy, and at clause 17.5 it provided that the landlord may give notice in the prescribed format in terms of section 19 of the Housing (Scotland) Act 1988 of their intention to commence proceedings and thereafter obtaining an order for recovery of possession in relation to one of the grounds set out in Schedule 5 of the 1988 Act including Grounds 8, 11 and 12 and those grounds were set out in full in in clause 17.5.
10. An AT6 Form had been served on the Respondent by sheriff officers on 28 November 2018. The AT6 Form set out that the landlord intended to seek eviction under Grounds 8, 11 and 12 and narrated the reasons why eviction under those grounds was sought. A certificate of service had been included in the application.
11. The Applicant's representative advised that when the AT6 Notice had been served the rent arrears were £1772.72 which was a sum in excess of three months' rent arrears. He advised that as at today's date the rent arrears were still outstanding and had in fact increased to £2481.49.
12. While there were payments of rent being made by way of housing benefit and direct payments by the respondent, they were not sufficient to repay the arrears.

13. Respondent had contacted the Applicant after the tribunal proceedings had been served on her; however she had not offered to repay the arrears and had become aggressive towards the Applicant on the phone. He did not think that there had been any other contact with the Respondent.
14. The Applicant's representative advised that there were no outstanding benefit claims for the Respondent. In all of the circumstances he was therefore seeking an order under Ground 8 the mandatory ground.

Findings in Fact

15. The Tribunal have found the following facts to be established:
16. A tenancy agreement was entered into between the Applicant and the Respondent for the property. It was entered into on 31 January 2017.
17. Clause 4 provided that rent of £350 was due per calendar month in advance.
18. Clause 17.5 provided a right to seek to recover possession of the property, under an application being made to the tribunal relying on certain grounds set out of the Schedule 5 of the 1988 Act, including grounds 8, 11 and 12.
19. That the rental statement showed that at the date that the AT6 was served on the Respondent at least three months arrears of rent was outstanding.
20. That an AT6 Notice had been served on the Respondent and there was evidence of service of this document.
21. That at today's date the Respondent was more than 3 months in arrears of rent.
22. That there did not appear to be any outstanding benefit issues which had caused the delay in the payment of rent

Reasons for Decision

23. Section 18 of the 1988 Act provides that:-

18 Orders for possession.

(1) The First-tier Tribunal shall not make an order for possession of a house let on an assured tenancy except on one or more of the grounds set out in Schedule 5 to this Act.

...

(3A) If the First-tier Tribunal is satisfied—

(a) that Ground 8 in Part I of Schedule 5 to this Act is established; and

(b) that rent is in arrears as mentioned in that Ground as a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit,

the Tribunal shall not make an order for possession unless the Tribunal considers it reasonable to do so.

...

(6)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.

...

24. On the basis of the evidence before the tribunal, I found that an assured tenancy existed. That a valid AT6 had been served on the Respondent. The Respondent was in arrears of rent which exceeded three months' rent as at the date of the service of the AT6 Notice and as at today's date, the date of the hearing.

25. In those circumstances, I consider that I am required to make an order under Ground 8 unless the arrears were as a delay in relation to the payment of relevant housing benefit or relevant universal credit. There was no information before the Tribunal that there were any such issues regarding these benefits. Accordingly, I consider that I should grant the Order against the Respondent.

Decision

26. The Tribunal grants an order in favour of the Applicant against the Respondent, for possession of the property.

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.

Melanie Barbour

Legal Member/Chair

1. 4. 19

Date