



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/18/1881

Re: Property at Flat A, 82 Murray Street, Montrose, DD10 8JY (“the Property”)

Parties:

Mr Neil Mitchell, C/O Your Move, 31A North Bridge Street, Bathgate, EH48 4PJ (“the Applicant”)

Mr Connor Simpson, 82 Murray Street, Montrose, DD10 8JY (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatridge (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted.

1. The Case Management Discussion (CMD) took place at Dundee on 22 October 2018. Present was the Applicant’s Representative Ms Euphemia Mattheson from Bannatyne Kirkwood France & Co solicitors. The Respondent was not present. The tribunal was satisfied that the Respondent had received notification of the CMD as Sheriff Officers had confirmed service of the notification and documentation for the CMD on the Respondent on 4 October 2018.
2. The application for an order for possession in terms of Rule 65 had been received by the Tribunal on 25 July 2018. The application was accompanied by a copy of the S11 notice, the AT5, the AT6 dated 26 June 2018 with service confirmation of same on the Respondent on 26 June 2018 with the earliest date of raising proceedings stated 12 July 2018, copy tenancy agreement for tenancy commencing on 20 December 2016 and rental statement dated up to and including 20 August 2018 showing arrears of £1,445 as at that date.
3. At the hearing the Applicant’s representative confirmed that the application is made in terms of Rule 65 and the process under which the application is made is S 18 of the Housing (Scotland) Act 1988 and that the application for repossession

relies on grounds 8, 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988 and produced an up to date rent statement showing the arrears having decreased to £1,195 as at 19 October 2018.

4. She moved for an order on the basis that the rent had been in arrears to a smaller or larger extent consistently since April 2017 and only sporadic payment were being made. The rent in terms of the tenancy agreement is £325 per calendar month and at the date of the CMD and on the date of the service of the Notice of Proceedings the rent was in arrears of over 3 months rent.
5. No correspondence had been received from the Respondents and they did not attend the CMD.

Findings in Fact:

1. The property is let on a Short Assured Tenancy, which commenced on 20 December 2016.
2. The agreed rent is £325 to be paid in advance with the due date on the 20th day of the month.
3. The rent arrears relevant to the application as the date of the CMD were £1,195 as per the table of arrears produced.
4. The arrears as of 26 June 2018, the date of service of the AT6 Notice as shown in the table of arrears were £995.
5. Both at the date of service of the AT6 Notice of Proceedings and as of 22 October 2018 the date of the CMD the arrears exceeded 3 months rent.
6. The AT6 document given under part 3 as reasons Ground 8, Ground 11 & Ground 12 and explains in the notice that arrears of more than 3 months rent had accrued.
7. The tenancy agreement includes in clause 5.5 an irritancy clause and sets out verbatim in particular Grounds 8, 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988.

Reasons for Decision:

1. In terms of S 18 (1) 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 18 (6) the 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 of 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... and (b) the terms of the tenancy make provision for it to be brought to an end on the ground in question*". 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) with the minimum period stated as 2 weeks for grounds 8, 11 and 12.
2. The AT6 Notice in terms of S 19 was served stating the grounds, setting out the reasons and gave more than the required period of 2 weeks. The tenancy agreement sets out verbatim the Grounds 8,11 and 12 in clause 5.5 of the tenancy agreement and thus in terms of S 18 (6) an order can be granted even although the tenancy was not terminated by a Notice to Quit and thus still a contractual assured tenancy.

3. The tribunal then has to consider whether the Grounds 8, 11 and 12 of Schedule 5 of the Act apply in this case. Ground 8 is a mandatory ground as there was no suggestion and information that the Respondent received housing benefit or universal credit. Ground 8 was notified to the Respondent in the AT6 notice. Both at the time of the service of the AT6 notice and at the time of the CMD the arrears exceeded 3 months rent.
4. Both Grounds 11 and 12 are discretionary grounds for possession. In this case the arrears as of the time the application as submitted were £1,445.00 and at the time of the CMD £1,195. Arrears have been documented persistently since April 2017 and there has been no explanation from the Respondent why these arose or why in this case it would not be reasonable to grant an order for possession. Both grounds 11 and 12 of Schedule 5 of the Act were notified to the Respondents in the AT6 notice.
5. The facts of the case are not in dispute as the Respondent has made no representations and did not attend the CMD. The notification bundle to the Respondent included the clear warning "The Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision on the application which may involve making or refusing an eviction order or payment order".
6. The tribunal is satisfied that Ground 8 of Schedule 5 of the Act "*both at the date of the service of the notice under section 19 of this Act relating to the proceedings for possession and at the date of the hearing, at least three months rent lawfully due from the tenant is in arrears*" applies in this case and arrears of more than 3 months rent were evidenced at the date of service of the Notice of the Proceedings and at the CMD. This is a mandatory ground of granting possession as there is no indication that S 18 9(3A) of the Act applies. Furthermore, in so far as the requirement of Ground 8 is that at the date of the hearing 3 months rent has to be in arrears, a Case Management Discussion at which both parties have been advised to attend meets the requirements of a hearing in terms of Ground 8. The Respondent had been clearly advised of the possibility that an order may be granted at the CMD in the notification correspondence.
7. 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 and, applying its discretion in the matter considers that taking into account all relevant matters it is fair in all the circumstances to grant the order for possession on that ground. There has been no explanation as to the reason for the arrears and it is not disputed that rental payments have been persistently in arrears and thus delayed for over a year since April 2017 as shown in the rental payment statement.
8. 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 and, applying its discretion in the matter considers that taking into account all relevant matters it is fair in all the circumstances to grant the order for possession on that ground. There has been no explanation as to the reason for the arrears and it is not disputed that since April 2017 as shown in the rental payment statement rent lawfully due has remained unpaid.

Decision: The Tribunal grants the order 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.

P H-McFatrige

Legal Member

[Signature]

Date

22 October 2018