

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)**

Chamber Ref: FTS/HPC/EV/22/2176

Re: Property at 18 Caulfield Terrace, Inverness, IV2 5GG (“the Property”)

Parties:

**Mrs Stephanie Simpson, Mr James Simpson, 37 Stuart Crescent, Kemnay,
Aberdeenshire, AB51 5RZ (“the Applicant”)**

**Mr Cameron Neilson, 18 Caulfield Terrace, Inverness, IV2 5GG (“the
Respondent”)**

Tribunal Members:

Virgil Crawford (Legal Member) and Sandra Brydon (Ordinary Member)

Decision

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

BACKGROUND

1. By Lease dated 25th June 2021 the Applicants let the Property to the Respondent;
2. The start date of the tenancy was 29th June 2021;
3. The rent payable was £600 per calendar month;
4. The Applicant made payment of rent on 29th June 2021 and 23rd July 2021. Thereafter the Applicant made no further payments of rent, the only payments made thereafter being payments received by way of benefits which were paid directly to the Landlord;
5. The Landlords presented two separate applications to the Tribunal, one seeking an Order for payment of rent arrears (CV/22/2180) and, separately, an application seeking an Order for eviction (EV/22/2176). The application seeking the Order for eviction, however, proceeded on the basis that the Landlords intended to sell the Property rather than on the basis of rent arrears;

6. A Notice to Leave was served upon the Respondent and a Notice in terms of Section 11 of the Homelessness Etc.(Scotland) 2003 ("the 2003 Act") was intimated to the Local Authority;

THE CASE MANAGEMENT DISCUSSION

7. Both Parties participated in the Case Management Discussion although the Applicants were represented by Mrs A Cochrane of Tughan and Cochrane Limited, Letting Agents;

8. Both Case Management Discussions were dealt with at the same time as, although the application for an Order for Eviction did not proceed on the basis of rent arrears, the issue of arrears was relevant in relation to the issue of reasonableness in relation to any Order for eviction;

9. In relation to the rent arrears, Mrs Cochrane advised the Tribunal that, as at the date of the Case Management Discussion, the arrears amounted to £4,171.16. The Respondent did not dispute that figure. He advised that there should have been a recent payment of £425. This was confirmed by Mrs Cochrane and had been taken into account in the calculation of the outstanding amount of £4,171.16. The Respondent advised that he had arranged a loan to consolidate his debts and was seeking the exact figure for rent arrears to enable the the loan application to be processed and thereafter he would be repaying the arrears in full. He did not have any objection to an order for payment being made;

10. In relation to an order for eviction, the legal requirements to enable the Tribunal to grant such an Order had been complied with in that a Notice to Leave had been served, a Notice in terms of Section 11 of the 2003 Act had been intimated to the Local Authority and evidence had been provided of an intention to sell the Property. The Tribunal, however, still required to consider the issue of reasonableness and this became the main focus of discussion at the Case Management Discussion;

11. Mrs Cochrane advised the Tribunal that the Applicants required to sell the property as they were struggling financially having regard to the fact that the Respondent had not been paying rent. They only rent this one property. They have a mortgage on this property and their own private dwellinghouse. The fact that rental payments are not being paid for this property is causing them financial difficulty and, that being so, they had taken the decision that they require to sell the property. Proof of that intention had been provided;

12. In relation to the Respondent, he had made reference in the course of the Case Management discussion to him suffering from mental health issues and, in particular, stated that he suffered from bi-polar disorder; he stated that he was aware that he had been burying his head in the sand in relation to the rent arrears. He advised that he was on medication for that condition. He advised that he had social work support also. In addition, he suffered a serious back injury during September 2021 when he fell from a horse. He previously resided in Dublin and returned to Scotland to care for his elderly and infirm mother. He indicated that it was his intention to leave Scotland again once his mother had passed away, although no timescale was provided as to when that unfortunate event may occur;

13. The Tribunal made enquiry in relation to whether there had been any contact with the Respondent by the Local Authority having regard to the fact that a Notice in terms of Section 11 of the 2003 Act had been served. The Respondent advised that they had been in touch but there was a problem because he had a small dog. He

advised that they wished to place him in hostel accommodation but he would not be allowed to take his dog there. When the Tribunal made further enquiry about the assistance he was obtaining from the Local Authority the Respondent suggested that the Local Authority were not of very much help to him but was unspecific beyond that;

14. The issue of rent arrears and future payments was discussed with the Respondent. He advised, as stated previously, that he was obtaining a loan to consolidate his debts and that would include payment of the rent arrears. In relation to ongoing payments, he advised that he was due to start work on 31st October 2022 as an IT Consultant working from home. At present, however, he was in receipt of state benefits. He suggested, therefore, that he should be in a position to make payment of rent on an ongoing basis. It was noted, however, that he would also require to make repayment of the loan he had referred to which was likely to be in the region of £275 per month also. Mrs Cochrane advised the Tribunal, however, that there had been various promises of payment previously and had been assurances that funds had been transferred previously, all of which came to nothing. She was, therefore, sceptical that the Respondent would, indeed, clear the arrears and pay rent on an ongoing basis;

15. Mrs Cochrane pointed out that, aside from the first two months of the tenancy, the Applicant had not made any rental payments himself. All other payments thereafter had been by way of benefits but the payments received were never sufficient to cover the entire cost of the rent thereby resulting in arrears of £4,171.16 at this stage;

16. When discussing the matter of benefits, Mrs Cochrane pointed out that housing benefit was terminated because the Local Authority became aware that the Respondent was the owner of a property in Portugal and, on the basis of his ownership of that asset, he was no longer entitled to Discretionary Housing Payment ~~housing benefit~~. The Tribunal, therefore, made enquiry in relation to that also. The Respondent advised the Tribunal that he did, indeed, own an apartment in the Algarve in Portugal. He purchased this "about 15 years ago" for €85,000 (euros). There was no mortgage or other security on this property. While he did not know its current value he expected that it would have increased in value in the 15 years of his ownership. The Respondent advised the Tribunal that the property was currently empty but he expected that he would be able to let it again in the course of 2023 and the income he would receive from that would also assist his ability to pay rent on an ongoing basis. He had let the apartment out previously;

17. On further enquiry, it became apparent that the apartment in Portugal had not, in fact, been let out to anyone since November 2019, a period of almost 3 years. Before it could be let to anyone again work was required to be undertaken in relation to it. The Respondent indicated that the cost of the work required would be in the region of £10,000. Given his current financial situation, however, he would not be in a position to arrange that work at this stage. In the circumstances, therefore, there could be no certainty that this property would generate an income for the Respondent at any point in the near future;

18. Separately, however, the Tribunal enquired as to whether the Respondent had considered selling his property in Portugal. Despite the fact it requires work, it would appear to be of significant value and has no security over it. The Respondent advised that he had not thought about that, advised that he considered the apartment in Portugal to be his "nest egg" and that he was expecting that it would provide an additional income to him in the future;

FINDINGS IN FACT

19. The Tribunal found the following facts to be established;
- a) By Lease dated 25th June 2021 the Applicants let the Property to the Respondent;
 - b) The start date of the tenancy was 29th June 2021;
 - c) The rent payable was £600 per calendar month;
 - d) The Applicant made payment of rent on 29th June 2021 and 23rd July 2021. Thereafter the Applicant made no further payments of rent, the only payments made thereafter being payments received by way of benefits which were paid directly to the Landlord;
 - e) The Landlords presented two separate applications to the Tribunal, one seeking an Order for payment of rent arrears (CV/22/2180) and, separately, an application seeking an Order for eviction (EV/22/2176). The application seeking the Order for eviction, however, proceeded on the basis that the Landlords intended to sell the Property rather than on the basis of rent arrears;
 - f) A Notice to Leave was served upon the Respondent and a Notice in terms of Section 11 of the 2003 Act was intimated to the Local Authority;
 - g) As at 28th October 2022, due to arrears of rent, the sum of £4,171.16 was due, resting and owing by the Respondent to the Applicants;
 - h) The Applicants intend to sell the Property;
 - i) It is reasonable in all the circumstances that an order for eviction be granted;
 - j) Having regard to the Respondent's health it is reasonable that the date for enforcement of the order for eviction be assigned for a date after the traditional festive period;

REASONS FOR DECISION

20. In relation to rent arrears, the Respondent accepted that he was in arrears of rent. He accepted that the amount outstanding at this stage was £4,171.16 and did not object to a payment order being granted in that amount;
21. In relation to the matter of time to pay, this was considered by the Tribunal. Having regard to the level of the order being granted, the fact that the Respondent is currently in receipt of benefits but also the fact that the Respondent intimated to the Tribunal that he had arranged finance to fund any payment order issued by the Tribunal, no time to pay direction was made by the Tribunal;
22. In relation to the matter of eviction, as indicated previously, the legal requirements to enable the Tribunal to grant such an order had been met. The issue for the Tribunal was one as to whether it was reasonable to grant such an order. The Tribunal concluded that it was reasonable;
23. The Tribunal considered the fact that the Applicants were Landlords of one property only and that the failure of the Respondent to make payment of rent on a regular basis was having a financial effect upon them. The Tribunal accepted that the Applicants intended to sell the property as a result;
24. In relation to the Respondent, the Tribunal noted his mental health difficulties. While he also made reference to injuring his back during September 2021, that did not appear to be a matter which was of immediate relevance in relation to the issue of reasonableness of eviction at this stage;

25. In relation to the Respondent's mental health, as indicated, he advised that he suffers from bi-polar disorder. He is on medication in relation to that. He has social work support in relation to that. Given the nature of that condition, it is unlikely to resolve at any point. While the Tribunal had sympathy with the Respondent, in all the circumstances, that this was not a matter which would justify the refusal of an order for eviction;

26. In addition, however, the Tribunal considered that the existence of the apartment in Portugal was also of relevance. The Respondent is the owner of a property in Portugal which, clearly, has a significant value. That property is currently unoccupied and has been for some time. If the Respondent wished, he would be able to sell that property and would be able to use any funds realised to repay rent arrears on the Property he is currently renting from the Applicants as well as meet his ongoing rental commitments. After clearing his arrears he could also either acquire a property, in any location of his choosing, or use the funds realised to make payment of rent for any other property he may choose to lease. He frankly admitted to the Tribunal that he had not considered selling his apartment in Portugal. It was clear from his comments that he was wishing to retain this property as a "nest egg" and a potential source of future income. The reality of that, however, is that when he is residing in the Property which is the subject of these proceedings and not paying rent, while retaining ownership of a property of significant value elsewhere, he is, thereby, placing a financial burden upon the Applicants and obtaining a direct benefit himself by way of retaining ownership of his apartment in Portugal for his own financial benefit. It is not reasonable that the Applicants be expected to indirectly, or even directly, fund the Respondent's future financial security. Despite any mental health issues, the decision not to sell or otherwise realise funds from his apartment in Portugal is a choice made by the Respondent. He had clearly made a conscious decision that he wishes to retain this apartment for his own future financial security. While the Respondent advised the Tribunal that he had not thought about selling this apartment, it is more likely that he had thought about it but decided against it;

27. In all the circumstances, the Tribunal decided, as stated, that it was reasonable to grant an order for eviction. The Tribunal also, however, took into account the fact that the Respondent suffers from bi-polar disorder and the Tribunal members, while not hearing medical evidence on the matter, are both experienced persons. Both are aware that the festive period can be particularly difficult for persons with a variety of mental health issues, including bi-polar disorder. While granting an order for eviction, the Tribunal, having regard to the mental health issues of the Respondent and the particular time of year such an order would normally be enforceable, delayed the date for an enforcement until 12 Noon on 9th January 2023.

DECISION

The Tribunal grants order to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth and from the Property at 18 Caulfield Terrace, Inverness, IV2 5GG and to make the same void and redd that the Applicants or others in their name may enter thereon and peaceably possess and enjoy the same.

Order not to be executed prior to 12 noon on 9th January 2023

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 Member/Chair

28 October 2022

Date