

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/18/0854

**Re: Property at 3C Station Road, Haddington, East Lothian, EH41 3NU (“the
Property”)**

Parties:

Mrs Allison Mitchell, 19 Main Stret, Fintry, G63 0XA (“the Applicant”)

**Mr Barry Marshall, 3C Station Road, Haddington, East Lothian, EH41 3NU (“the
Respondent”)**

Tribunal Members:

Joel Conn (Legal Member)

Decision (in absence of the Respondent)

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

Background

1. This is an application by the Applicant for an order for possession in relation to an assured tenancy in terms of rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”). The tenancy in question was described as a Short Assured Tenancy of the Property by the Applicant to the Respondent, commencing on 3 June 2017.
2. The application was dated 10 April 2018 and lodged with the Tribunal shortly thereafter. The application relied upon a notice in terms of section 19 (also known as an “AT6”) of the Housing (Scotland) Act 1988 dated 6 March 2018 providing the Respondent with notice that proceedings would not be raised before 23 March 2018. Evidence of service of the said AT6 upon the Respondent by Sheriff Officers was provided with the application, service being on 8 March 2018.

3. The said AT6 relies upon three grounds under Schedule 5 to the 1988 Act; Grounds 8, 11 and 12. All three rely upon rent arrears of £3,102.50 being outstanding as at the date of the AT6. The lease for the Tenancy, lodged with the application, discloses a monthly rent of £475, which detail is further narrated in the AT6. The lease details that the rent is payable on the 3rd of each month. There were thus over six months of rent arrears said to be due as at the date of the AT6.
4. Evidence of a section 11 notice in terms of the Homelessness Etc. (Scotland) Act 2003 served upon East Lothian Council on 10 April 2018 was provided with the application.

The Hearing

5. On 26 June 2018, at a case management discussion ("CMD") of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting at George House, Edinburgh, scheduled for 14:00, I was addressed by Mr Matheson, a solicitor acting for the Applicant. There was no appearance by the Respondent and both my clerk and the Applicant's agent confirmed that no contact had been received from or on behalf of the Respondent since the scheduling of the CMD. The Applicant's agent stated that no contact had been received from the Respondent with the Applicant during 2018 at all, though there had been contact in 2017, to which I refer below.
6. Having waited until 14:05 before commencing the CMD, I was satisfied that there was no appearance by the Respondent nor any attempt by him to provide submissions or explain his non-appearance. In the circumstances, I was satisfied to consider the application in full at the CMD in the absence of the Respondent.
7. The Applicant's agent addressed me on the current level of rent arrears, stating these currently stood at £2,152.50. The explanation was that, since the date of the AT6, the payment dates for rent of 3 April, 3 May and 3 June had passed without payment from the Respondent, but the Applicant had received two payments from Universal Credit. One was on 18 May 2018 and was described by the payment administrator as being for 12 January to 11 May 2018. The second was for £475 and described as being for 12 May to 11 June 2018. The Applicant had received no intimation prior to the first payment that it was to be expected. The Applicant's agent stated that there was no indication from the payment administrator of Universal Credit whether a further payment was to be expected on 18 July 2018 and monthly going forward, nor why the rent was being paid on the 18th of the month to cover, in arrears, a period up to the 11th of that month (when rent was due under the lease in advance on the 3rd of each month, to cover the period to the 2nd of the next month). Further, the Applicant's agent submitted that the receipt of a backdated payment covering the period 12 January to 11 May 2018 suggested that no further Universal Credit was to be expected for historic arrears. The lack of contact from the Respondent meant the Applicant had no proposal

from the Respondent himself on payment towards historic arrears. The Applicant's agent submitted that even if payments of Universal Credit continued to be received on the 18th of each month (in arrears), the historic arrears would remain unaddressed at £2,152.50, being in excess of four months arrears. Of this figure, the majority arose in the period from 3 September 2017 until 2 January 2018 when only £237.50 was received during October 2017 against the liability of four month's rent (a shortfall on those months of £1,662.50).

8. The Applicant's agent submitted that the AT6 had been validly served. The lease submitted with the application was further in sufficient terms, under section 18(6) of the 1988 Act, so that no Notice to Quit was required prior to this application.
9. The Applicant's agent confirmed that in the Respondent's last contact in 2017 he had explained that he was out of work and was considering voluntarily leaving the Property. He referred to considering applying for Housing Benefit. No contact had been received since then and the payments from Universal Credit were unexpected. The Applicant's agent submitted that the payments strongly suggest all backdated benefits have now been received by the Applicant and (even before those payments) no issues of non-provision of benefit had been raised by the Respondent as a reason for failure to make payment of the arrears of rent. The Applicant's agent submitted that the Ground 8 of the 1988 Act was thus satisfied and, being a mandatory ground, an order for removal should be granted.
10. I sought to be addressed by the Applicant's agent on the Respondent's home circumstances (such as any dependents, whether the Property was specially adapted for the needs of the Respondent or any dependents, and any known health issues of the Respondent). The Applicant's agent said no such issues were known beyond the reference to a period of unemployment and the inference that his financial position left him qualified for Universal Credit, at least for the period 12 January to 11 June 2018. The application submitted that it was reasonable for an order under Grounds 11 and 12 to be made in light of the very long standing issues with arrears.
11. The Applicant's agent confirmed no order in respect of expenses was to be made.

Findings in Fact

12. On 3 June 2017, the Applicant let the Property to the Respondent by lease (stating it was a Short Assured Tenancy) with a start date of 3 June 2017 until 2 December 2017, continuing monthly thereafter ("the Tenancy").
13. Under the Tenancy, the Respondent was to make payment of £475 per month in rent to the Applicant on the 3rd of each month.

14. The Tenancy's terms make provision for the Tenancy being brought to an end on Grounds 8, 11 and 12 of Schedule 5 to the Housing (Scotland) Act 1988 while it is still an "assured tenancy" in terms that Act.
15. On 6 March 2018, the Applicant's agent drafted an AT6 form in correct form addressed to the Respondent, giving the Respondent notice in terms of section 19 of the 1988 Act of an intention to raise proceedings for possession in terms of Grounds 8, 11 and 12 of Schedule 5 to the 1988 Act, all based on there being rent arrears of £3,102.50 (being over six months of rent arrears) as at the date of the AT6. The AT6 gave the Respondent notice that proceedings would not be raised before 23 March 2018.
16. On 8 March 2018, a Sheriff Officer acting for the Applicant competently served the AT6 upon the Respondent. The Respondent was thus provided with sufficient notice of the Applicant's intention to raise proceedings for possession on the said grounds.
17. On 10 April 2018, the notice period under the AT6 having expired, the Applicant raised proceedings for an order for possession with the Tribunal, on the grounds narrated in the AT6.
18. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon East Lothian Council on 10 April 2018 on the Applicant's behalf.
19. On 30 May 2018, a Sheriff Officer acting for the Tribunal intimated the application and associated documents upon the Respondent, providing the Respondent with sufficient notice of the CMD of 26 June 2018.
20. On 26 June 2018, the Respondent was in rent arrears under the Tenancy of £2,152.50, being over four months of unpaid rent in total.
21. No information was provided to the Tribunal regarding any delay of failure in the payment of relevant housing benefit or relevant universal credit still outstanding. All information provided to the Tribunal suggested that any delays in payment of such benefits were now resolved in full.
22. No information was provided to the Tribunal regarding any reason why it would be unreasonable to grant an order for possession under any of the discretionary grounds in Part II of Schedule 5 to the 1988 Act.

Reasons for Decision

23. The application was in terms of rule 65, being an order for possession in relation to assured tenancies. I was satisfied, on the basis of the application and supporting papers, and the updated rent information and oral submissions provided by the Applicant's agent at the CMD, that a

valid AT6 had been issued on the Respondent; that this had expired without the breaches being resolved; and that the non-payment of rent remained unaddressed as at the date of the CMD. As at the date of the CMD, total arrears still amounted to over four months of rent.

24. I considered the question as to whether a CMD was a "hearing" in terms of Ground 8 of Schedule 5 to the 1988 Act, and was satisfied that it was. Read simply, the 1988 Act seeks a consideration of whether, at the date of a hearing considering the order for possession, there are three months arrears of rent. The Procedure Rules allow at rule 17(4) for a CMD to be such a hearing where an order for possession is considered and potentially granted.
25. I was satisfied from the submissions of the Applicant's agent that there were no known continuing issues of failure or delay in benefit and thus it was reasonable to grant an order in terms of Ground 8 of Schedule 5 to the 1988 Act.
26. I was further satisfied that I was entitled to make a determination that it was reasonable to grant any order in terms of Grounds 11 and 12 of Schedule 5 to the 1988 Act as there were no material circumstances brought to the Tribunal's attention that would suggest it would be unreasonable in the circumstances of over four months of rent arrears, no proposal for clearance of same, nor engagement with the Applicant at all.

Decision

27. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal and, in all the circumstances, I was satisfied to make a decision at the CMD to grant an order against the Respondent for possession of the Property under section 18 of the Housing (Scotland) Act 1988 in normal terms.

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.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

J Conn

Legal Member/Chair

26 June 2018
Date