

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/18/0592

Re: Property at 72 Maxwood Road, Galston, KA4 8QE (“the Property”)

Parties:

Mrs Louise Coxon, 8 Rumford Place, Kilmarnock, KA3 6FH (“the Applicant”)

Miss Janette Cree (“the First Respondent”) , Mr Dean Sibley (“the Second Respondent”), 72 Maxwood Road, Galston, KA4 8QE (“the Respondents”)

Tribunal Members:

Melanie Barbour (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondents)

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

Background

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 Respondents in relation to the subjects 72 Maxwood Road, Galston.

The application contained a copy of the Tenancy Agreement; AT5 Form, two AT6 Forms against both Respondents together with certificates of service by sheriff officers; Form 11 Notice together with evidence of service; copy of a rental statements; copies of a number of letters to the Respondents from the Applicant’s letting agents regarding unpaid rent; and emails between the First Respondent and the letting agents regarding unpaid rent.

The Applicant, Louise Coxon, together with Jeff Coxon her supporter and representative appeared. They also brought a witness, Sharon McCourt, Branch Manager of Select Properties. There was no appearance from the Respondents. An email was received at 10.30 am from the tribunal office regarding the First Respondent which we shall refer to later.

Notice of the Hearing together with a copy of the application and confirmation that the Respondents could make written representations in response to the application on or before 21 May 2018, had been served on Janette Cree (the First Respondent) on 2 May 2018. On that date the First Respondent, Janette Cree had advised the sheriff officers that Dean Sibley (the Second Respondent) had left the property and moved to Dunfermline, but she stated that she was unable to provide an address for him. Notice of the Hearing and a copy of the application had not therefore been served on the Second Respondent.

The Hearing

The Applicant explained that she was seeking an order for eviction under Ground 8 of Schedule 5 of the 1988 Act as the Respondents were in arrears of rent for more than 3 months and this continued to be the case as at today's date.

The tribunal had sight of the tenancy agreement in the name of the Respondents and the noted that it stated that it commenced on 3 March 2017 for a period of 6 months and monthly thereafter. Clause 3 provided that rent payable was £475.00 per month. The tenancy agreement contained an irritancy clause at Clause 9 which included that recovery of possession could be on a number of the grounds in Schedule 5 of the 1988 Act, including Ground 8.

Two AT6 Forms had been served on the Respondents by the Sheriff Officers. The AT6 Forms set out that the landlord intended to seek eviction under Ground 8.

There were a number of copies of correspondence sent from the letting agents to the Respondents seeking repayment of the rent arrears. There were also emails between the letting agents and the Respondents regarding the rent arrears and seeking repayment of the arrears. The tribunal was also shown sight of a rental statement showing that between March 2017 until February 2018 there had only been two rental payments, one in March 2017 for £475 and one in September 2017 for £250. All other months' rent payments had not been made.

The Applicant stated that there had been no further rental payments made at all and the current rent arrears amounted to £5425.

The Applicant advised that due the continuing non-payment of rent, the Applicants had changed letting agents in September 2017, as they understood that the new letting agents may be able to offer additional assistance regarding the rental payment and tenancy issues, as the letting agents had previously worked with the Respondents.

The Applicant advised that with the support of the new letting agents they had offered to give the Respondents repayment payment plans and different arrangements to address the rent arrears, but all attempts had been unsuccessful. The Applicant advised that two weeks ago they had received a text from the First Respondent apologising and stating that she would try and pay something. No payment has been made.

The Applicant advised that she was not aware of any benefit issues which may have affected the Respondents ability to pay rent. The Applicant understood that the Respondents were both in full time employment.

At this stage during in the hearing (10:30am) the Clerk advised that she had received an email from the tribunal office advising that the First Respondent's mother had been in touch at 10:10am advising that the First Respondent would not attend today's hearing as she had taken unwell with a long standing illness. There was no request in the email to seek an adjournment of today's hearing. The tribunal decided to continue with the hearing and to hear further from the Applicant and her witness.

The Applicant then called her witness Sharon McCourt, Branch Manager, Select Properties, their current letting agents. Ms McCourt advised that she had been approached in September 2017 by the Applicant to act as her letting agent as she had had previous dealing with the Respondents, and had previously removed them from another property.

Ms McCourt advised that she had a good relationship with the First Respondent and she was happy to act as a mediator between the Applicant and Respondents. She would also try and arrange to put the Respondents in touch with the local council, CAB, or Shelter to assist them in their tenancy.

Ms McCourt advised that she made arrangements with the Respondents to pay £250 per week and it was arranged that Ms McCourt would attend at the First Respondent place of work on a Friday to collect this money. She advised that there had however only been one payment made under this arrangement, and thereafter the First Respondent would provide various excuses regarding the non-payment of the rent.

Ms McCourt advised that she passed the Respondents details to Shelter to ask them to offer support, however the Respondents did not engage with Shelter. She advised that they could have assisted in looking to see if there was any additional finance available to assist them.

Ms McCourt advised that she made a number of attempts to call the First Respondent but she would not engage with her regarding repayment of the arrears.

Ms McCourt advised that in all the time she was instructed she had no dealings with the Second Respondent, and that he did not respond to any of her letters or any of her calls.

Ms McCourt she does not believe that the First Respondent had any issues with her health, as she holds down a full time job

Ms McCourt did not consider that there were any benefits issues affecting the couple, given that they were both working full time. However had they worked with Shelter they could have obtained advice on any relevant issue from them.

The Applicant advised that in addition to the non-payment of rent the Respondents had also brought two dogs into the property, contrary to the terms of the tenancy agreement. In addition she was aware that the condition of the rear garden area was now poor, and such that neighbours had complained to environmental health about the property. She understood that environmental health would be serving a notice about the condition of that area.

The Applicant advised that the non-payment of rent had had a detrimental effect on her and her husband, mentally, physically and financially. They had had to try and pay two mortgages during the last year and this had been very difficult. She advised that the stress, anxiety and pressure that this matter had caused them both was intolerable. It had also impacted on the Applicant's husband's job in relation to the pressure that this had caused him.

Findings in Fact

The Tribunal have found the following facts to be established:

A tenancy agreement was entered into between the Applicant and the First and Second Respondents for the property. It was entered into on 3 March 2017. It was for an initial 6 months period and continued monthly thereafter. It contained a right to terminate the tenancy under Ground 8 of the Schedule 5 of the 1988 Act. It also provided that rent of £475 was due on a monthly basis.

That rental statements showed that until February 2018 on two payments of £725 had been paid.

That AT6 Notices had been served on both Respondents and that there was evidence of service of these documents. That these notices provide notice to the Respondents that there was an intention to raise proceeding for non-payment of rent under Ground 8.

That at the date of the application being lodged that the Respondents were more than 3 months in arrears of rent.

That at the date of the hearing no further payment had been made.

That the requirements of Ground 8 had been met.

that there had been served on the Respondents Notices to Quit and also Section 33 Forms, as this was set out in the certificate of service by the sheriff officers. We did not however have sight of these documents.

That service of today's hearing and the application had only been made on the First Respondent. The Second Respondent was not aware of today's hearing. The sheriff

officers had been advised by the First Respondent that the Second Respondent had left the property and moved to Dunfermline. (It appeared that the Second Respondent had left the property. It may have been given that he received the AT6 form and Notice to Quit, and therefore decided to terminate the tenancy on his own accord.)

We found the Applicant, her husband and the Applicant's witness to be credible and reliable.

the Applicant was detailed in her evidence of what had happened in terms of trying to get rent repaid and that they had gone to considerable lengths to get the Respondents to engage with them to repay rent; and had tried to get the Respondents support in making these payments.

The problems with the tenancy and non-payment of rent did appear to have taken a toll on the Applicant and her husband and had been detrimental to them.

Reasons for Decision

Two preliminary points need to be dealt with First,

1. The email advising that the First Respondent was not attending due to being unwell.

The tribunal considered the terms of the email, and considered if they should adjourn the hearing or continue to hear the application.

We decided that we would continue to hold the hearing. Rule 2 of the 2017 Rules sets out the overriding objective of the proceedings and they require to be dealt with justly and also without delay.

While we note that the First Respondent had indicated that she was unwell, we understood she was in full time employment, and Applicant and the letting agent, considered that she had used her ill health as an excuse on a number of occasions.

the tribunal cannot know what was wrong with the First Respondent and the nature of her health condition; however as the First Respondent' mother had indicated it was long standing, given this we considered that, this information could have been made available to tribunal much earlier together with evidence of the medical condition. We also noted that the First Respondent did not seek any adjournment but merely advised that she would not be attending.

We also considered the evidence we had heard from the Applicant and we considered the effect of delaying these proceedings further would be unjust to the Applicant.

Accordingly, the tribunal agreed to proceed with the hearing.

2. The sheriff officers had only served notice of the hearing and the application on the First Respondent.

The tribunal noted that service had not been made on Dean Sibley the Second Respondent. His address is apparently unknown to the First Respondent.

We were satisfied that the First Respondent had received service of the application and the hearing date.

We also were aware that the Notices to Quit had been served on the Respondents. While we have not had sight of those notices, given that the First Respondent stated that the Second Respondent had left the property, we considered that he may have acted under the Notice to Quit.

We considered that while papers had not been served on the Second Respondent, they had been properly served on the First Respondent and therefore we consider that we could proceed to determine the case against the First Respondent.

We also considered that it would be in the interests of justice to proceed to determine the matters against the First Respondent today.

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.

(2) The following provisions of this section have effect, subject to section 19 below, in relation to proceedings for the recovery of possession of a house let on an assured tenancy.

(3) If the First-tier Tribunal is satisfied that any of the grounds in Part I of Schedule 5 to this Act is established then, subject to subsections (3A) and (6) below, the Tribunal shall make an order for possession.

(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.

...

(7) Subject to the preceding provisions of this section, the First-tier Tribunal may make an order for possession of a house on grounds relating to a contractual tenancy which has been terminated; and where an order is made in such circumstances, any statutory assured tenancy which has arisen on that termination shall, without any notice, end on the day on which the order takes effect.

(8) In subsections (3A) and (4A) above—

(a) “relevant housing benefit” means—

(i) any rent allowance or rent rebate to which the tenant was entitled in respect of the rent under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971); or

(ii) any payment on account of any such entitlement awarded under Regulation 91 of those Regulations;

(aa) “relevant universal credit” means universal credit to which the tenant was entitled which includes an amount under section 11 of the Welfare Reform Act 2012 in respect of the rent;

(b) references to delay or failure in the payment of relevant housing benefit or relevant universal credit do not include such delay or failure so far as referable to any act or omission of the tenant.

On the basis of the evidence before the tribunal, we found that an assured tenancy existed. That a valid AT6 had been served on the First Respondent. The Respondents were in arrears of rent which exceeded three months' rent and that they were in arrears of rent on the date that the AT6 was served and at the date of today's hearing. In those circumstances we consider that we are required to make an order 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, we consider that it is reasonable to grant the Order against the First Respondent.

For the reasons already narrated the tribunal is not entitled to grant the order against the Second Respondent, as he has not notice of this hearing.

Decision

The Tribunal grants an order in favour of the Applicant against the First Respondent, Janette Cree, 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.

M Barbour

Legal Member/Chair

4. 6. 18

Date