

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/18/2671

**Re: Property at 107 Headland Court, South Anderson Drive, Aberdeen, AB10
7HW (“the Property”)**

Parties:

**City 06 LLP T/A Aberdeen Letting Centre, Suite D1, 4/5 Golden Square,
Aberdeen, AB10 1RD (“the Applicant”)**

**Miss Alison Divers, Mr Rhys Robb, 107 Headland Court, South Anderson Drive,
Aberdeen, AB10 7HW (“the Respondent”)**

Tribunal Members:

Petra Hennig-McFatridge (Legal Member) and Mike Scott (Ordinary Member)

Decision in absence of the Respondents

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

1. The Hearing took place at Aberdeen on 7 January 2019. Present were the Accounts Assistant of the Applicants Laura Meldrum and the Manager of the Applicants Carole Ogston. The Respondents were not present. The tribunal was satisfied that the Respondents had received notification of the Hearing as Sheriff Officers had confirmed service of the notification and documentation for the Haring on the Respondents on 5 December 2018.
2. The application for an order for possession in terms of Rule 65 had been received by the Tribunal on 9 October 2018. The application was accompanied by a copy of the S11 notice, the AT5, the AT6 dated 15 August 2018 and the Notice to Quit dated 15 August 2018 for date of removing from the premises on 26 September 2018 with service confirmation of the Notice to Quit and AT6 on the Respondents by Sheriff Officers on 16 August 2018 with the earliest date of raising proceedings stated 31 August 2018, copy tenancy agreement for tenancy commencing on 26 February 2016 and rental statement dated up to and including 3 August 2018 showing arrears of £2,750 as at that date.

3. At the hearing the Applicants produced an up to date rental statement showing arrears of £5,500 as of 7 January 2019.
4. At the hearing the Applicants 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.
5. They moved for an order on the basis that the rent had been in arrears to a smaller or larger extent consistently since January 2017 and only sporadic payment were being made. The rent in terms of the tenancy agreement is £650 per calendar month but the Applicants gave evidence that the rent had been reduced by the landlord in July 2017 to £550 per month and an offer made to the Respondents to reduce the arrears by payments of £50 per month, some of which had subsequently been paid. However, no payments had been received at all since 1 July 2018 and at the date of the date of the hearing and on the date of the service of the Notice of Proceedings the rent was in arrears of over 3 months rent.
6. Both Laura Meldrum and Carole Ogston gave evidence that there had been regular correspondence from the Applicants to the Respondents to update the amount of arrears due and that an email had been sent on 17 July 2018 by the Applicants to the Respondents stating that if no remedial action was being taken the Applicants would have to take the matter to the First Tier Tribunal.
7. Both referred the panel to clause 13 of the Lease which states that if rent arrears are not paid timeously it shall be the option of the Proprietor to terminate the lease. The Notice to Quit was clearly sent in connection with the rent arrears and the preceding emails to the Respondents.
8. In July 2018 the Respondents had stated in an email that they were going to apply for Housing Benefit but despite further emails from the Applicants enquiring about the progress of the application no further information or any contact details or confirmation of Housing Benefit having been awarded were received by the Applicants. There is nothing to suggest that Housing Benefit is actually being paid to the Respondents.
9. No correspondence had been received from the Respondents and they did not attend the Hearing.

Findings in Fact:

1. The property is let on a Short Assured Tenancy, which commenced on 26 February 2016.
2. The agreed rent as per clause 3 of the Lease was £650 and the rent statements show that the rent was altered to £550 per month as of 1 July 2017 to be paid in advance.
3. A Notice to Quit dated 15 August 2018 and an AT6 document dated 15 August 2018 were served on the Respondents on 16 August 2018 by Sheriff Officers. The Notice to Quit gave 40 days notice to 26 September 2018 and the AT6 document 14 days notice to 31 August 2018.
4. The arrears as of 16 August 2018, the date of service of the AT6 Notice as shown in the table of arrears were £2,750.
5. The contractual tenancy terminated on 26th September 2018 as per the Notice to Quit.
6. The rent arrears relevant to the application as the date of the Hearing were £5,500 as per the table of arrears produced.

7. Both at the date of service of the AT6 Notice of Proceedings and as of 7 January 2019 the date of the Hearing the arrears exceeded 3 months rent.
8. The AT6 document states 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.
9. The tenancy agreement includes in clause 13 an irritancy clause and refers specifically to Ground 8 of Schedule 5 of the Housing (Scotland) Act 1988.
10. Rent arrears accrued since January 2017 and no rent had been paid since July 2018.
11. The Respondents still reside at the property.

Reasons for Decision:

1. The Respondents had been given the option to make any relevant representations by 22 December 2018 and no representations had been received. The facts of the case are thus undisputed. The Respondent has made no representations and did not attend the Hearing.
2. The notice period for a Hearing stated in Rule 24 (2) was provided to the Respondents.
3. 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*".
4. In terms of S 19 (1) of the Act this 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.
5. 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.
6. The tribunal then has to consider whether the Grounds 8, 11 and 12 of Schedule 5 of the Act apply in this case.
7. Ground 8 is a mandatory ground as there was no evidence 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 Hearing the arrears exceeded 3 months rent. In this case the arrears as of the time the AT6 Notice were £2,750 and at the time of the Hearing £5,500.
8. Both Grounds 11 and 12 are discretionary grounds for possession. Arrears have been documented persistently since January 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.

9. 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 Hearing. This is a mandatory ground of granting possession as there is no indication that S 18 (3A) of the Act applies.

10. 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 why no payments at all have been made since July 2018 and it is not disputed that rental payments have been persistently in arrears and thus delayed for over a year since January 2017 as shown in the rental payment statement.

11. 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 January 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.

Petra Hennig-McFatridge

Legal Member/Chair

7.1.19

Date