



Decision the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for eviction/ possession of a Rented Property in terms of Rule 65 of the Procedure Rules.

Chamber Ref: FTS/HPC/EV/19/0214

Re: 6 Birkscairn Way, Irvine, KA11 1EU ("the Property")

Parties:

Alan Easton, 2 Newfield Drive, Dundonald, Kilmarnock, KA2 9EW ("the Applicant")

Steven Easton, 2 Newfield Drive, Dundonald, KA2 9EW ('the Landlord's Representative').

Amy Singleton, 6 Birkscairn Way, Irvine, KA11 1EU ("the Respondent")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal")

Tribunal Member: Jacqui Taylor (Legal Member)

Background

1. The Applicant applied to the Tribunal for eviction/ possession of the Rented Property under section 18(1) of the Housing (Scotland) Act 1988, in terms of Rule 65 of the Procedure Rules. The application was dated 21st January 2019.

The application states:

Breach of clause 7 of the lease.

Ground 8: At least 3 months rent is in arrears both on the date on which the notice of proceedings was served and at the date of this hearing.

Ground 11: Whether or not any rent is in arrears on the date on which proceedings began and the Tenant has persistently delayed in paying rent which has become lawfully due.

Initial documents lodged with the Tribunal were:-

- A copy of the lease between the parties dated 13th April 2015 for the period 13th April 2015 to 13th October 2015 and monthly thereafter.
- A copy of Notice AT5 dated 13th April 2015.

- Form AT6 dated 12th December 2018, which intimated that the Landlord intended to raise proceedings for possession under grounds 8 and 11 of Schedule 5 of the Housing (Scotland) Act 1988.
- Section 33 notice dated 12th December 2018 informing the tenant that they required possession of the property on 13th February 2019.
- Notice to Quit dated 12th December 2018 giving the Tenant formal notice to quit the Property by 13th February 2019.
- Certificate of Intimation by Cameron Sutherland, Sheriff Officer of Stirling Park dated 13th December 2018 confirming service of the notice to quit, section 33 notice, AT6 and rent arrears statement on Amy Singleton on 13th December 2018. His covering letter advised that Amy Singleton was employed as a bank nurse.
- Section 11 Notice addressed to North Ayrshire Council with covering letter to North Ayrshire Council dated 21st January 2019.

2. Case Management Discussion.

This case called for a Case Management Discussion at 2pm on 18th March 2019 at Ardrossan Civic Centre.

The Applicant was represented by Steven Easton of 2 Newfield Drive, Dundonald, KA2 9EW.

The Respondent was not present and was not represented.

The Respondent had been served notice by Sheriff Officers on 27th February 2019 of the case and details of the Case Management Discussion. No written response had been received from the Respondent.

Steven Easton advised the Tribunal as follows:

- He advised that the Respondent is still resident in the Property.
- He provided a rent arrears statement correct to 15th March 2019 which showed that the outstanding rent arrears amounted to £5325. The Respondent had made a payments of £425 on 29th January 2019 and £550 on 27th February 2019. Also, in respect of the rent payments due on 13th January 2017, 13th February 2017, 13th April 2017, 13th November 2017, 13th April 2018, 13th June 2018, 13th October 2018, 13th November 2018 and 13th November 2018 the Respondent had made no rent payments.
- Whilst the rent payments made by the Tenant at the beginning of the lease were £425 per month the lease had not been varied and the rent due in terms of the lease was £475 per month.
- He acknowledged that the application erroneously referred to the Tenant not having met the terms of clause 7 of the lease.
- As far as he is aware the Tenant is employed as a nurse and she has never advised the landlord that her rent difficulties were due to housing benefit issues.
- He had sent North Ayrshire Council the required section 11 notice but never received a response.

3. Findings in Fact

The Tribunal make the following findings in fact:

- 3.1 The lease is a short assured tenancy in terms of the Housing (Scotland) Act 1988.
- 3.2 The Tenant has rent arrears of more than three months rent at both the date of today's hearing, at the date of the application and at the date of service of the AT6 on the Tenant.
- 3.3 The Landlord had served the Tenant with the required form AT6 and given the Tenant the required period of notice in excess of two weeks as possession is sought on Grounds 8 and 11 of Schedule 5 of the Housing (Scotland) Act 1988.
- 3.4 Clause 1.2 of the lease states:
' The Landlord may seek recovery of possession of the Property prior to expiry of the term on one or more of the grounds 2, 8 or 11-16 inclusive set out in Schedule 5 of the Housing (Scotland) Act 1988.'
There after the lease sets out in full the terms of the said grounds.
- 3.5 The Landlord had served a valid notice to Quit on the Tenant giving her in excess of 40 days notice to vacate the Property at an ish date 13th February 2019.
- 3.6 The Landlord had sent the required section 11 notice to North Ayrshire Council.
- 3.7 The Tribunal accepted the evidence of the Landlord's representative Steven Easton to the effect that the Tenant was employed and he had no reason to believe that the rent arrears was due to housing benefit issues. The fact that the Tenant is employed had also been confirmed by the said report of Cameron Sutherland, Sheriff Officer.

Decision Following the Case Management Discussion:

4.1. Requirements of Section 65 of the Procedure Rules.

'Section 65 (a) states that the application under section 18(1) of the 1988 Act must state:

(a) (i) the name, address and registration number of the Landlords.

This section had been completed with the details of Alan Easton, 6 Tarbolton Road, Dundonald as Landlord of the Property. Alan Easton is registered proprietor of the Property in terms of Land Certificate AYR27122.

(ii) the name and address of the Landlord's representative.

This section had been completed with the details of Easton Ayrshire Limited..

(iii) the name and address of the Tenant.

This section had been completed with the Respondent's details.

(b) Section 65 (b) states that the application must be accompanied by the following documents:-

(i) The Tenancy Agreement (if available).

A copy of the lease had been provided.

(ii) A copy of the notice of intention to raise proceedings for possession of a house let on an assured tenancy.

A copy of form AT6 had been provided. The form was dated 12th December 2018 and stated that proceedings would not be raised before 28th December 2018. The grounds on which the Landlords were seeking possession are grounds 8 and 11 of the Housing (Scotland) Act 1998. The AT6 was valid.

(iii) A copy of the Notice to Quit served by the Landlord on the Tenant (if applicable).

A copy of the Notice to Quit dated 12th December 2018 was provided. The Notice stated that the Landlords gave notice that the Tenants had to vacate the Property by 13th February 2019. The Notice to Quit was valid.

(iv) Evidence as the applicant has that the possession ground or grounds have been met.

A rent statement showing transactions from December 2016 was provided. The statement showed that the Tenant's rent arrears amounted to £4875 at December 2018 and £5350 as at January 2019.

(c) The application form had been correctly signed and dated by the Landlord as required by Section 65(c) of the Procedure Rules.

4.2. Requirements of Section 18(1) of the Housing (Scotland) Act 1988

This section states that the Tribunal will not make an order for possession of a property let on an assured tenancy except on one or more grounds set out in Schedule 5 of the Act.

The application stated that the application for the eviction/ order for possession was based on the following grounds of Schedule 5 of the 1988 Act:-

Ground 8: At the date of service of the AT6 and at the date of the hearing at least three months rent due from the Tenant is in arrears.

Ground 11: Whether or not any rent is in arrears on the date on which proceedings for possession are begun, the tenant has persistently delayed paying rent which has become lawfully due.

The Tribunal found that at the date of service of the AT6 (30th December 2018) and at the date of the hearing the Respondent had rent arrears in excess of three months rent. The Tribunal also found that the Respondent had persistently delayed in paying rent that was lawfully due as she made no payments in respect of the rent payments due on 13th January 2017, 13th February 2017, 13th April 2017, 13th November 2017, 13th April 2018, 13th June 2018, 13th October 2018, 13th November 2018 and 13th November 2018 the Respondent.

4.3 Requirements of Section 18(3) of the Housing (Scotland) Act 1988

For the reasons stated the Tribunal found that the rent arrears is not due to the failure or delay in payment of housing benefit.

4.4 Requirements of Section 18(6) of the Housing (Scotland) Act 1988

The Tribunal found that the requirements of section 18(6) had been met as the lease made provision for it to be ended on Grounds 8 and 11 of Schedule 5 of the Housing (Scotland) Act 1988, albeit that they acknowledged that whilst a valid Notice to Quit had been served on the Tenant, the application for the possession order had been made to the Tribunal before the Notice to Quit had expired.

4.5 Requirements of Section 19 of the Housing (Scotland) Act 1988

The Tribunal found that a valid AT6 notice had been served on the Respondent giving her more than two weeks notice that the Landlord intended to apply for an Order for Possession on Grounds 8 and 11 of Schedule 5 of the Housing (Scotland) Act 1988 and the notice had been validly served on the Tenant by Sheriff Officer on the Respondent on 30th December 2018.

4.6 The Tribunal acknowledge that Ground 8 of Schedule 5 of the Housing (Scotland) Act 1988 is a mandatory ground which means that if the requirements of Ground 8 have been met the Tribunal must grant the Order for Possession. The Tribunal have found that Ground 8 has been met as at the date of service of the AT6 (30th December 2018) and at the date of the hearing as the Respondent had rent arrears in excess of three months rent at these times. Separately in relation to Ground 11 of the Housing (Scotland) Act 1988 the Tribunal have also found that the Tenant has persistently delayed in paying rent and as the arrears have been ongoing since December 2016 the Tribunal further determine that it is reasonable to grant the Order for Possession on this ground. Accordingly the Tribunal grant the application for the Order for Possession sought.

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.

J Taylor

Legal Member

18th March 2019