



**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/20/1982

Re: Property at 9/3 Broomhouse Wynd, Edinburgh, EH11 3RJ (“the Property”)

Parties:

Andrew Easton, 3/3 Kingsknowe Court, Edinburgh, EH14 2JT (“the Applicant”)

Carla Pow, 9/3 Broomhouse Wynd, Edinburgh, EH11 3RJ (“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 a Short Assured Tenancy of the Property by the Applicant to the Respondent commencing on 1 November 2013.
2. The application was dated 16 September 2020 and lodged with the Tribunal shortly thereafter. The application lodged a notice in terms of section 19 (also known as an “AT6”) of the Housing (Scotland) Act 1988 dated 28 January 2020. The AT6 provided the Respondent with notice that proceedings would not be raised before 1 April 2020. Evidence of service of the said AT6 upon the Respondent by a Sheriff Officer on 28 January 2020 was provided with the application papers.

3. The said AT6 relies upon four grounds under Schedule 5 to the 1988 Act; Grounds 1, 8, 11 and 12. The last three grounds rely upon rent arrears of £3,168.07 being outstanding as at the date of the AT6. The lease for the Tenancy, lodged with the application, discloses a monthly rent of £600. There was thus over five months of rent arrears said to be due as at the date of the AT6.
4. The application papers included no papers evidencing that the pre-tenancy requirements for Ground 1 were satisfied.
5. Evidence of a section 11 notice in terms of the Homelessness Etc. (Scotland) Act 2003 served upon City of Edinburgh Council on 16 September 2020 was provided with the application.

The Hearing

6. On 25 November 2020, at a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting by remote telephone conference call at 11:30, I was addressed by Jamie Miller, solicitor, McEwan Fraser Legal, solicitor for the Applicant. As of 11:36, there was no appearance by the Respondent (that is, neither she nor anyone on her behalf had dialled in). My clerk confirmed that no contact had been received from or on behalf of the Respondent.
7. The Applicant’s agent stated that there had been no contact from the Respondent since service of the AT6. A payment of £450 had been made by the Respondent after service of the AT6 but nothing from February 2020 onwards. The Applicant’s agent stated that the Applicant was entirely unaware of the Respondent’s reasons for non-payment, whether she was in employment, or her attitude to the application. The Applicant had knocked at the door of the Property recently but received no reply. There was local rumours that the Respondent had moved in with her mother but no firm evidence was available. (I noted from the papers I held that intimation of the CMD papers at the Property were said to have been received by the Respondent’s son who confirmed the Respondent did still reside at the Property.)
8. I was thus satisfied that there was no appearance by the Respondent nor any attempt by her 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.
9. The Applicant’s agent confirmed the application was still insisted upon and addressed me on the current level of rent arrears, confirming that no payments towards rent had been made for many months. Arrears now stood at £8,118.07. There was nothing to suggest to the Applicant that any application for benefits was being made or that any part of the substantial arrears arose due to difficulties with benefit payments. I could also discern nothing on this issue from the papers.

10. In regard to Ground 1, the Applicant's agent confirmed that the Applicant had sought to locate evidence of occupying the Property prior to the Tenancy, and any intimation to the Respondent that he may wish to reoccupy in the future. He had located none and the Applicant's agent withdrew any reliance on Ground 1, restricting the application to Grounds 8, 11, and 12 all of which he held were well founded on the basis of the continued arrears.
11. The Applicant's agent confirmed no order in respect of expenses was to be made.

Findings in Fact

12. On 29 October 2013, the Applicant let the Property to the Respondent by lease (said to be a Short Assured Tenancy) with a start date of 1 November 2013 and an end date of 1 May 2014 ("the Tenancy"). The end date was erroneously stated as "1 May 2013" in the Tenancy Agreement due to a typographical error.
13. Under the Tenancy, the Respondent was to make payment of £600 per month in rent to the Applicant on the 1st of each month.
14. The Tenancy's terms, within a schedule prior to the signing page, 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 28 January 2020, 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 at that date of £3,168.07 (being over five months of rent arrears) as at the date of the AT6. The AT6 gave the Respondent notice that proceedings would not be raised before 1 April 2020.
16. On 28 January 2020, the AT6 was served upon the Respondent by a Sheriff Officer instructed on behalf of the Applicant and was thus competently served 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 16 September 2020, 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 AT6s.
18. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon City of Edinburgh Council on 16 September 2020 on the Applicant's behalf.

19. On 26 October 2020, 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 25 November 2020.
20. On 25 November 2020, the Respondent was in arrears under the Tenancy of £8,118.07, being over thirteen months of unpaid rent in total. Within this figure are at least ten months of consecutive unpaid rent from February 2020.
21. No information was provided to the Tribunal regarding any delay of failure in the payment of relevant housing benefit or relevant universal credit.
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 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 CMD. As at the date of the CMD, the total arrears now amounted to over thirteen months of rent arrears.
24. I gave pause to consider whether the AT6 had expired, but the six month validity of such a notice under section 19(7) of the 1988 Act counts from "the date on or after which the proceedings for possession to which it relates could have been raised". The notice period in the AT6 was generous as the Applicant could have stated a bare 28 days (with time for service) but opted for 1 April 2020. I hold that it is from 1 April 2020 that I should count and that provided the Applicant until 1 October 2020 to lodge proceedings, which he met.
25. I was satisfied from the application and supporting papers that there were no known 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 thirteen months arrears and no payments by the Respondent since at least the end of January 2020.
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. I was thus satisfied to grant an order for possession.

Decision

28. In all the circumstances, I was satisfied to make the decision 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.

25 November 2020

Legal Member/Chair

Date