



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 (“the Act”)

Chamber Ref: FTS/HPC/EV/21/2617

Re: Property at 6 Lower Bathville, Armadale, West Lothian, EH48 2JR (“the Property”)

Parties:

Mr Brian Davies, The Villa, Main Street, Blackridge, West Lothian, EH48 3RJ (“the Applicant”)

Miss Kelly Walker 6 Lower Bathville, Armadale, West Lothian, EH48 2JR; (“the Respondent”)

Tribunal Members:

Jim Bauld (Legal Member) and David MacIver (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. By application dated 23 October 2021, the applicant sought an order under section 18 of the Housing (Scotland) Act 1988 (“the Act”) and in terms of rule 65 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. On 20 December 2021 the application was accepted by the tribunal and referred for determination by the tribunal.

2. A Case Management Discussion was set to take place on 11 March 2022 and appropriate intimation of that hearing was given to both the landlord and the tenant

The Case Management Discussion

3. The Case Management Discussion (CMD) took place on 11 March 2022. The applicant was personally present. The Respondent did not attend.
4. The tribunal explained the purpose of the CMD and the powers available to the tribunal to determine matters
5. The tribunal asked various questions of the landlord with regard to the application and the extent of the rent arrears owed by the tenant.
6. The applicant confirmed that he wished the order sought to be granted

Findings in Fact

7. The Applicant and the respondent as respectively the landlord and the tenant entered into a tenancy of the property by an agreement dated 5 August 2013.
8. The tenancy was a short assured tenancy in terms of the Act
9. The tenant was obliged to pay rent of £500 per month. Payments of monthly rent were due on or before the 5th of each month
10. The tenant has accrued rent arrears totalling £4582.07. These arrears were mainly accrued by a failure by the tenant to make payments of monthly payments due between August 2020 and June 2021 with the exception of one payment made on 1 September 2020
11. On 1 March 2021, the landlord served upon the tenant the notice of proceedings for possession required by section 19 of the Act. This notice was the Form AT6 and set out the grounds for eviction which the landlord intended to rely upon.
12. The grounds for eviction narrated in the Form AT6 were grounds 8, 11, 12, 13, 14 and 16 being grounds contained within schedule 5 of the Act
13. Ground 8 requires there to be three months' rent arrears at the date of the service of the Form AT6 and at the date of the hearing
14. Ground 11 applies where the tenant has persistently delayed paying rent which has become lawfully due.
15. Ground 12 applies where rent arrears are due at the date of commencement of the possession proceedings and at the date of the service of the Form AT6
16. Ground 13 applies when the tenant has broken an obligation of the tenancy other than one related to payment of rent

17. Ground 14 applies where the condition of the house has deteriorated owing to acts of waste or neglect of the tenant.
18. Going to 16 applies where the condition of any furniture provided under the tenancy has deteriorated through ill-treatment by the tenant
19. As at 1 March 2021 the tenant was in arrears of more than three months' rent,. Rent arrears at that date stood at £3732.07
20. At 23 October 2021 rent arrears stood at £4852.07
21. As at the date of the hearing, rent arrears amounted to £4852.07 which is in excess of three months' rent arrears.
22. The tenant has persistently failed to pay rent as it fell due
23. The tenant was in arrears at the date of service of the Form AT6 and at the date proceedings were commenced
24. The grounds for eviction relating to rent arrears (namely grounds 8, 11 and 12) were all accordingly established

Reasons for Decision

25. The order for possession was sought by the landlord was based on six grounds specified in the Act and properly narrated in the notice served upon the tenant. Three of the grounds (grounds 8, 11 and 12) relate to rent arrears, The tribunal was satisfied that the Form AT6 notice had been served in accordance with the terms of the Act and that the landlord was entitled to seek recovery of possession based upon the grounds and the relevant terms of the tenancy agreement which had been lodged with the application
26. With regard to grounds 13, 14 and 16 the landlord conceded that if there were no rent arrears he would not have served a notice on these grounds nor would he have made an application to the tribunal seeking eviction on those grounds. While he was not formally withdrawing these particular grounds, the tribunal took the view that it would not be appropriate to grant an eviction order based on these grounds owing to the lack of any sufficient evidence to support these grounds. The tribunal accordingly proceeded to decide the eviction request based only on the grounds relating to rent arrears
27. The tribunal accepted the evidence presented on behalf of the landlord with regard to the non-payment of rent by the tenant between January 2019 and the date of the CMD.

28. When the 1988 Act was originally passed, ground 8 was a mandatory ground. The tribunal was required by law to grant the eviction order if satisfied that the ground was established.

29. Since 7 April 2020, in terms of changes made by the Coronavirus (Scotland) Act 2020 an eviction order on this ground can only be granted if the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact

30. Additionally since 30 September 2020, The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 have been in force. These regulations apply to any eviction being sought in terms of ground 8 of the 1988 Act. Where a notice to leave the property on that ground has been served on or after 7 April 2020 and the arrears occurred wholly or partially on or after 27 May 2020, the regulations require landlords to take certain steps prior to an order for possession being granted and to provide certain information to tenants

31. The pre-action requirements require a landlord to:

Provide the tenant with clear information (which can be by writing or email) relating to:

- *the terms of the tenancy agreement*
- *the amount of rent for which the tenant is in arrears*
- *the tenant's rights in relation to proceedings for possession of a house (including the pre-action requirements set out in this regulation and the need for an order to be granted by a tribunal)*
- *how the tenant may access information and advice on financial support and debt management*

Make reasonable efforts to agree a reasonable plan with the tenant to make payments to the landlord of future payments of rent and the rent for which the tenant is in arrears

Give reasonable consideration to:

- *any steps being taken by the tenant which may affect the ability of the tenant to make payment to the landlord of the rent for which the tenant is in arrears within a reasonable time*
- *the extent to which the tenant has complied with the terms of any agreed plan*
- *any changes to the tenant's circumstances which are likely to impact on the extent to which the tenant complies with the terms of an agreed plan*

32. The landlord provided evidence to the tribunal with regard to compliance with the pre-action requirements.. Appropriate standard form letters in the format provided by the Scottish Association of Landlords (SAL) had been sent to the tenant. Regular contact between the landlord and tenant by way of mobile phone messaging was also produced in which the tenant acknowledged the existence of the arrears. Attempts were made to agree a payment plan but the tenant failed to make payments

33. The tribunal accepted the evidence lodged by the applicant regarding compliance with the pre action requirements

34. The applicant advised the tribunal that the tenant was occupying the flat with her three children. He was unsure of their ages of the children but indicated that the eldest was attending a local high school and the two younger children attended primary school .He indicated that on a recent visit to carry out a repair that the tenant seemed to be preparing to remove. She was packing up and various boxes were already filled and ready to be moved. In the mobile messages exchanged between the parties the tenant had indicated she would seek assistance from the local council who would take steps to rehouse the tenant and her children.

The applicant advised the tribunal that the property was the only one where he was the landlord. He had purchased it with a buy to let mortgage. He had struggled to maintain the mortgage payments during the period when rent was not being paid. He had been made redundant in 2021 but had now managed to resolve the difficulties with the mortgage payments.

The applicant was also questioned with regard to any application which had been made to the tenant hardship fund which had been set up to assist tenants who had incurred rent arrears during the pandemic. He indicated that initially the tenant did not wish to make an application through this fund as she believed it to be a loan and she did not wish to owe the government money. On being advised by the tribunal that the tenant hardship fund was now grant based, the landlord indicated he was not aware of that

35. Grounds 11 and 12 have always required that the tribunal is satisfied that it is reasonable to grant the order. The pre-action requirements regulations do not apply to orders being sought on these grounds

36. In determining whether it is reasonable to grant the order, the tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties

37. The Tribunal has a duty, in such cases, to consider the whole of the circumstances in which the application is made, it follows that anything that might dispose the tribunal to grant the order or decline to grant the order will be relevant. This is confirmed by one of the leading English cases, *Cumming v Danson*, ([1942] 2 All ER 653 at 655) in which Lord Greene MR said, in an oft-quoted passage:

“[I]n considering reasonableness ... it is, in my opinion, perfectly clear that the duty of the Judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad common-sense way as a man of the world, and come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or no weight, others may be decisive, but it is

quite wrong for him to exclude from his consideration matters which he ought to take into account”.

38. In this case the tribunal finds that it is reasonable to grant the order.

39. The level of arrears is extremely high and it is unlikely that the arrears will ever be repaid. There is no suggestion that the tenant is making any attempt to meet the arrears although she has recommence paying the monthly rent. The tenant has effectively ignored the issue of non-payment of arrears for a period of over 16 months with the exception of payments of £100 in July 2021 and £50 in October 2021. No explanation has been given to the applicant in respect of the non-payment. In the case of *Grampian Housing Association Limited v. Carol Pyper* (2004 Hous. L.R. 22) where an order for eviction was sought in terms of ground 12 of the 1988 Act, the Sheriff Principal indicated that in certain cases arrears would be at such a level that the court **“would be driven inexorably to the conclusion that it would be reasonable to grant an order for possession of the defender's house”.**

40. There is no indication that either the tenant or her children have any health problems. If an order for possession is granted it is likely that the tenant and her children will be accommodated by the local authority.

41. The balance of reasonableness in this case is heavily weighted towards the landlord in this application

42. The tribunal also exercised the power within rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that a final order should be made at the CMD

Decision

The order for recovery of possession is granted

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.

Jim Bauld

Legal Member/Chair

11th March 2022

Date