



Decision with Written 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/22/1194

Re: Property at 129 Braehead Road, Kildrum, Cumbernauld, G67 2BJ (“the Property”)

Parties:

Mrs Pamela-jane Gunn, 23 Greenfinch Avenue, Broadwood, Cumbernauld, G68 9GB (“the Applicant”)

Mr Michael Keane, 129 Braehead Road, Kildrum, Cumbernauld, G67 2BJ (“the Respondent”)

Tribunal Member:

Karen Kirk (Legal Member) and Gordon Laurie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Order for Repossession against the Respondent under section 18 of the Housing (Scotland) Act 1988

Introduction

This Case Management Discussion concerned an Application for Repossession in relation to an Assured Tenancy under Housing (Scotland) Act 1988. The Hearing took place by teleconference due to the covid-19 pandemic. Parties were made aware of all decisions that could be made and what a CMD was.

1. Attendance and Representation

The Applicant was in attendance.

The Respondent was not present. His son, Michael Keane junior attended on his behalf.

The Respondent could not attend personally but instead authorised his son to attend on his behalf. The Tribunal was told that there was an unspecified medical appointment he had been waiting for. This could not be rearranged.

2. Previous Procedure

The Tribunal determined at an earlier Case Management Discussion (“CMD”) on 25th July 2022, that the issue of reasonableness could not be determined on the evidence before it at that CMD. The Tribunal fixed this CMD so that further evidence could be considered. The Tribunal issued Directions. The Applicant lodged a rent statement and copy communication between parties as directed.

3. Preliminary Matters

There were no other preliminary issues raised.

4. Summary of Oral Evidence before the Tribunal

For the Applicant

The Applicant set out that she seeks an order for repossession. The Respondent since the last CMD has not made any payments to rent and remains in the property. She explained to the Tribunal as specified in her recent written representations that she had successfully applied to have the Respondent’s Housing Benefit paid to her direct. On 12th August 2022 she received a payment of £331. This is the Respondent’s entitlement to Housing Benefit which does not meet the full monthly rental payment.

The Applicant continued to seek repossession in terms of Ground 8 and stated that the current arrears for the property were in excess of £3000. She referred to the rent statement lodged. The Applicant explained she required to move into the Property as the property she was residing in was being sold. The Applicant said that she had an extension from the party buying her current home to September to vacate

The Applicant said that she provided information in the AT6 which mentioned the various agencies the Respondent could get help from. She said she has struggled to meet the financial liabilities for the property and her own financial liabilities on the basis that there has been no rent received from the Respondent for some time. The Applicant said that the Respondent could always contact her directly and seek to look at the arrears but that he had no intention of making payment.

For the Respondent

The Respondent’s son stated that the Respondent did not oppose a Repossession order. There was a meeting with the Housing later and they

have houses coming up in the next fortnight. The Respondent's son intended on explaining to them about the hearing held by the Tribunal. The Tribunal was advised that the Respondent has been told he is the next to be rehoused by the local authority. An order for repossession was sought by the Respondent to "speed things up". The rent arrears were admitted in full and further that because of issues of paperwork in regards to another separate unrelated application for repossession lodged with the Tribunal in 2021 the Respondent had decided to withhold his rent. The money is kept and not being spent, The Respondent stopped paying the rent. He was fully aware that he is in rent arrears. There is no intention to make payment at present. The Respondent's so seemed aware that he could have negated the proceedings merely by paying the rent but there had been a conscious decision not to.

The Respondent's son told the Tribunal that they had been waiting for the application to be made and had felt they were waiting for some time due to a previous application being rejected by the Tribunal. The Respondent had sought assistance to leave the Property but could not do so voluntarily as this would affect his opportunity to obtain alternative accommodation.

Findings in Fact and Law.

- 1. The Tribunal was satisfied that a decision could be made at the Case Management Discussion and that to do so would not be contrary to the interests of the parties having regard to the overriding objective. The Tribunal had before it the necessary information it required to determine the Application. The Applicant had complied with the Directions previously issued by the tribunal.**
- 2. The Tribunal was satisfied that the Applicant was the heritable proprietor of the Property.**
- 3. The Tribunal was satisfied that the tenancy was in terms of Section 12 of the 1988 Act, parties entered into an assured tenancy on 7th April 2017.**
- 4. The contractual monthly rent for the property was £575.**
- 5. The Applicant was relying on Ground 8, under Schedule 5 of the 1988 Act to make the Application.**
- 6. The said Assured Tenancy specified in detail verbatim the grounds in Schedule 5 of the 1988 whereby the Assured Tenancy could be brought to an end.**
- 7. In terms of Ground 8 of Part 1 of Schedule 5 the Tribunal was satisfied that the respondent was in arrears of rent lawfully due of as at the date of the relevant AT6 notice on 6th April 2022 and at the date of the hearing and that these rent arrears comprised of more than 3 months' rent. the Tribunal had before it a rent statement admitted by the Respondent's son. The rent arrears were admitted in full.**
- 8. The AT6 notice was valid and had been delivered to and received by the Respondent. The relevant notice in terms of the Coronavirus Regulations has been provided.**
- 9. Notice to the Local Authority had been given.**

- 10. A full Rent Statement for the property was lodged. Rent owed from same amounted to £1725.00 at the date of the Notice on 6th April 2022. As at the date of the Hearing the rent arrears were in excess of £3000. The Tribunal found Ground 8 to be established in that the Respondent was more than 3 months in arrears both at the date on which the notice of intention to seek possession of the house was served and at the date of the hearing.**
- 11. The Tribunal considered in terms of Ground 11 there had been a**
- 12. The Tribunal made enquiry in regards the Applicant's compliance with the Pre Action Requirements in terms of The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. The Applicant had lodged with the Tribunal ongoing correspondence between parties but this was not directly relevant to the Pre Action Requirements.**
- 13. The Respondent's conduct had been to withhold rent in order to bring about an end to the Tenancy and to seek alternative housing. An earlier application before the Tribunal for Repossession had failed and this had left the Respondent waiting for resolution of matters. The Respondent then withheld rent and continues to do so. The rent arrears are admitted and he does not seek to oppose the Application. The Respondent suffers from diabetes and ill health. He no longer wishes to reside in the Property and seeks more suitable accommodation. He is actively seeking that accommodation.**
- 14. The Applicant resides in her current property with her children and that property is being sold. She has no other alternative accommodation to reside in other than the Property to which this application relates. She seeks to obtain vacant possession to reside in the property as her family home. She is struggling to meet her financial responsibilities as a result of the rent arrears for the Property, which are admitted.**
- 15. Accordingly in terms of Section 18 of the 1988 Act the Tribunal granted an Order against the Respondent for possession of the Property.**
- 16. The Tribunal on the circumstances before it and the evidence provided considered it was reasonable that an Order be granted.**

Reasons for Decision

The Tribunal had a difficult and somewhat unusual decision to make in this application. Before it both parties sought an order for repossession, The Application was based on rent arrears in terms of Ground 8 of Schedule 5 of the 1988 Act and the Tribunal considered that on the evidence provided the Ground was established. The Assured Tenancy specified in detail the Grounds for ending the Tenancy in terms of Schedule 5 of the 1998 Act. The Tribunal therefore considered in terms of rent arrears the ground was established in particular due to the additional information provided by the Applicant in compliance with the Tribunal's earlier directions. The Tenancy could be brought to an end on the basis of the rent arrears which were admitted.

The matter of reasonableness and in doing so also the extent that the Applicant had complied with the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 was less straightforward. On the face of it contrary to what the Applicant had told the Tribunal the correspondence between the parties she had lodged showed communication but not specifically that she had complied with these requirements at all. However it was clear that this was not rent arrears brought about

by financial difficulty or a change in circumstances but instead they were brought about by the deliberate conduct of the Respondent. This had been made clear. The Applicant would have been correct to assume that financial advice or the ability to make repayments would not have brought about any positive change in the rent arrears.

The Respondent no longer wishes to reside there and the Applicant was credible in her evidence that she required to reside in the property with her children. Her current home is being sold imminently. Accordingly on the matter of reasonableness and the extent to which the Applicant had complied with the pre action requirements the Tribunal finds that an Order for Repossession is appropriate and reasonable despite minimal compliance with the pre-action requirements. The Applicant had made credible and reliable submissions in support of grant of the Order. The Respondent's son had also. The Tribunal considered the circumstances of both parties and the steps taken by the Applicant as well as the conduct of the Respondent. No payment had been made for some time on the rent account. Accordingly in terms of Section 18 of the 1988 Act the Tribunal granted an Order against the Respondent 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.

Karen Kirk

19/08/2022

Legal Member/Chair

Date