



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18(1) of the Housing (Scotland) Act 1988 (Act)

Chamber Ref: FTS/HPC/EV/22/1985

Re: Property at 41/1 West Ferryfield, Edinburgh, EH5 2PT (“the Property”)

Parties:

Mrs Susan Keatinge, Mr Alastair Keatinge, 15 Fountainhall Road, Edinburgh, EH9 2LN (“the Applicant”)

Mr Bill Mercer, 41/1 West Ferryfield, Edinburgh, EH5 2PT (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for eviction and recovery of possession be granted.

Background

This is an application under section 18(1) of the Act and Rule 65 of the Procedure Rules for eviction and recovery of possession on the basis of grounds 8, 11 and 12 of Schedule 5 to the Act.

The following documents were considered by the Tribunal:

1. Application received 23 June 2022;
2. AT5 dated 27 March 2017;
3. Short Assured Tenancy Agreement (**SAT**) dated 10 April 2017;
4. AT6 dated 20 May 2022 setting out grounds 8, 11 and 12;
5. Pre Action Correspondence;
6. Certificate of Service by Sheriff Officers of AT6 dated 23 May 2022;
7. Section 11 Notice;
8. Schedule of Rent Arrears at 10 October 2022;

9. Certificate of Service of CMD Notification on Respondent dated 21 September 2022.

Case Management Discussion (CMD)

The case called for a CMD by conference call on 31 October 2022. The Applicants did not participate but were represented by their solicitor. The Respondent did not participate and was not represented.

The Tribunal delayed the start of the CMD to see if the Respondent would participate. The Respondent did not.

The Tribunal were satisfied that the Respondent had received notification of the Case Management Discussion and that the Tribunal could determine the matter if it considered it had sufficient information to do so and the procedure was fair. The notification also advised the Respondent that he should attend and the Tribunal could determine the matter in absence if he did not.

The Applicants' solicitor asked the Tribunal to deal with the matter on the basis of the documentation before it. He drew attention to the fact that the arrears had increased and he had lodged and intimated an application to increase the amount of arrears in the CV action to £7,650.

The Tribunal then considered the documentary evidence it had received from the Applicant and in so far as material made the following findings in fact:

1. The Parties let the subjects under an SAT commencing 10 April 2017;
2. An AT5 had been served on the Respondent prior to commencement of the SAT;
3. AT6 had been served on 20 May 2022;
4. Section 11 Notice had been served on the local authority;
5. Monthly rent was £850;
6. As at the date of service of the AT6 there was in excess of 3 months' rent due (£3,400 rent was due);
7. As at the date of the CMD there was in excess of 3 months' rent due (£7,650 rent was due);
8. The rental arrears were not due to any delay or failure to make payment of a relevant benefit;
9. Pre Action correspondence had been issued to the Respondent in April 2022.

The Tribunal considered and accepted the documentary evidence of the Applicants which was, in any event, uncontested. The Tribunal considered that it had sufficient information upon which to make a Decision and that the procedure was fair. Ground 8 provides:

Ground 8

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 or the date of the case management

discussion, whichever is the earlier, at least three months rent lawfully due from the tenant is in arrears.

The Tribunal considered the relevant tests for Ground 8 to be satisfied. In particular whether at the date of service of the AT6 and at the date of the CMD at least 3 months' rent was outstanding. The Tribunal determined that the tests were satisfied.

It then fell to the Tribunal to determine whether the arrears were in any part due to the failure or delay in payment of a relevant benefit. The Tribunal determined that it was not.

Despite Ground 8 having been satisfied the Tribunal still had to consider whether or not it was reasonable to grant the eviction order in the circumstances.

The Tribunal had no evidence from the Respondent or information to suggest it would be unreasonable to grant the order. The Tribunal was accordingly satisfied that it was reasonable and that the order should be granted as sought.

The Tribunal did not require to make any findings with regard to the remaining Grounds given its determination with regard to Ground 8.

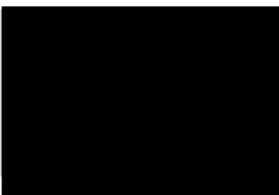
In granting the order the Tribunal was satisfied that the decision was in accordance with the overriding objective.

Outcome

- **Order for eviction and recovery of possession 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.



Legal Member/Chair

31 October 2022

Date

