



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/21/0430

Re: Property at 51 Marywood Square, Basement Flat, Glasgow, G41 2BN (“the Property”)

Parties:

Raymond Gwylam Caldwell trading as Nithsdale Property Company 96 Waverley Street, Glasgow, G41 2DY (“the Applicant”)

Ms Lyndsey McLaren, 51 Marywood Square, Basement Flat, Glasgow, G41 2BN (“the Respondent”)

Tribunal Members:

Jim Bauld (Legal Member) and Frances Wood (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 February 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 18 May 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 2 July 2021 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 2 July 2021. The applicant was represented by Helen Milne from Knights Estate Agency who are the letting agents for the applicant. 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's representative with regard to the application and the extent of the rent arrears owed by the tenant.
6. The representative confirmed that she 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 initially by an agreement dated 9 September 2009 and then latterly by an agreement dated 22 March 2015.
8. The tenancy was a short assured tenancy in terms of the Act
9. The tenant was obliged to pay rent of £450 per month. Payments of monthly rent were due on the 22nd of each month
10. The tenant has failed to make payment of all monthly payments due between 22 March 2020 and 22 June 2021. Housing benefit had previously been paid at £406 per month and payments of rent had been made through the tenancy, though these were often late. Housing benefit however, was stopped in March 2020 and the tenant had refused in telephone conversations to divulge why this had happened. She had not engaged with any attempts since March 2020 to help tackle her arrears and had regularly failed to answer the door, respond to messages or answer phone calls
11. On 19 August 2020, 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 and 12 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. As at 19 August 2020 the tenant was in arrears of more than three months' rent,. Rent arrears at that date stood at £2450.00

17. At 23 February 2021 rent arrears stood at £5.600.00

18. As at the date of the hearing, rent arrears amounted to £7,400.00 which is in excess of three months' rent arrears.

19. The tenant has persistently failed to pay rent as it fell due

20. The tenant was in arrears at the date of service of the Form AT6 and at the date proceedings were commenced

21. The grounds for eviction were accordingly established

Reasons for Decision

22. The order for possession was sought by the landlord was based on three grounds specified in the Act and properly narrated in the notice served upon the tenant. The tribunal was satisfied that the 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
23. The tribunal accepted the evidence presented on behalf of the landlord with regard to the non-payment of rent by the tenant between March 2020 and the date of the CMD.
24. 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.
25. 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
26. 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
27. 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

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

28. The landlord's representative was questioned by the tribunal with regard to compliance with the pre-action requirements. No documentation had been provided in advance to the tribunal. The representative indicated that appropriate standard form letters in the format provided by the Scottish Association of Landlords (SAL) had been sent to the tenant. The representative indicated that she was aware of the requirements and ensured that in all cases her landlords complied with them. She indicated that she had also regularly phoned the tenant to discuss matters. She had visited the property on numerous occasions prior to the introduction of the pandemic restrictions. All of her attempts to assist the tenant to deal with the rent arrears had been ignored.

29. The tribunal accepted the evidence of the representative regarding compliance with the pre action requirements

30. The representative indicated that the property was a two bedroom flat. She understood the tenant was occupying the flat with her four children. The representative indicated that the children were aged approximately 16, 13 and twins aged 4. All the children were boys. The representative indicated that the rooms in the flat were very large but she did believe that it was not suitable for occupation by that number of people. She also indicated that she believed the

tenant's partner may also be occupying the property. She also indicated she believed the tenant's sister and children also occupied the property at some point, but as she had not been in the property since March 2020 she could not be sure of any of this. She understood that if an eviction order was granted that the local council would take steps to rehouse the tenant and her children in accommodation which had more room and would be more suitable for them

31. 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

32. 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

33. 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 commonsense 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”.

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

35. 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 rent. The tenant has ignored the issue of non-payment for a period of over 16 months. No explanation has been given to the letting agent 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”.

36. 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.
37. The balance of reasonableness in this case is heavily weighted towards the landlord in this application
38. 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

2 July 2021

Legal Member/Chair

Date