



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/21/1673

Re: Property at 69 Cairngorm Gardens, Aberdeen, AB12 5BS (“the Property”)

Parties:

Mr Andrew Grant, 151 Craigievar Crescent, Aberdeen, AB10 7EN (“the Applicant”)

Ms Kamila Sieradzka, 69 Cairngorm Gardens, Aberdeen, AB12 5BS (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that order is granted against the Respondent for possession of the Property under section 18 of the Housing (Scotland) Act 1988.

- **Background**

1. An application dated 3 August 2021 was submitted to the Tribunal under Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), seeking repossession of a short assured tenancy under section 18 of the Housing (Scotland) Act 1988 (“the 1988 Act”).

- **The Case Management Discussion**

2. A Case Management Discussion (“CMD”) took place on 15 October 2021 by tele-conference. The Applicant was represented by Ms Fyffe of Laurie & Company, solicitors. There was no appearance by or on behalf of the Respondent. The application had been intimated on the Respondent by Sheriff Officer on 14 September 2021. The Tribunal was accordingly satisfied that the

Respondent had been duly notified of the date and time of the CMD and that the CMD could proceed in the Respondent's absence.

3. The Applicant's representative moved for the Order for Repossession to be granted as sought. A Notice to Quit and Form AT6 were served on the Respondent by Sheriff Officer on 7 December 2020. The Form AT6 sought to rely on the rent arrears grounds 8 and 12 under Schedule 5 to the 1988 Act. The monthly rent was £650. The rent arrears at the time of the CMD stood at £43,550. The tenancy commenced on 19 October 2015. No rental payments had been made since December 2015. It was submitted that the Applicant had been living in Australia for some time and managing the tenancy himself. The Respondent was believed to be in receipt of benefits. The Applicant had previously instructed another firm to deal with matters but delays had been caused due to invalid notices being served and proceedings being delayed.
4. It was acknowledged by the Applicant's representative that the Rent Arrears Pre-action Requirements (Coronavirus) (Scotland) Regulations 2020 had not been complied with. It was submitted that serving any such letters would have fallen on deaf ears as the Respondent had failed to respond to any previous correspondence. The Applicant's representative was unaware of the existence of the said Regulations at the time of raising the Application but nonetheless, at the time the Regulations came into force, the Respondent was already in arrears of approximately £34,000 and therefore it was submitted that the accrual of the arrears was not as a result of the covid pandemic. The Applicant had been in contact with the Respondent regarding her rent arrears but specifics could not be provided of when or by what method.
5. Reference was also made to antisocial behaviour being complained of by neighbours, albeit the application does not rely on the antisocial behaviour ground. There were not believed to be any dependants in the household. She was believed to reside alone.
6. The CMD was adjourned to a further CMD, to enable the Applicant to lodge evidence of the communication he has had with the Respondent regarding the rent arrears, and also evidence of efforts he has made to contact the local authority to have payment of benefits made directly to the landlord as a result of the arrears accrued by the Respondent.
7. A further CMD took place on 29 November 2021 by tele-conference. The Applicant was represented by Ms Fyffe of Laurie & Company, solicitors. There was again no appearance by or on behalf of the Respondent.
8. The Applicant's representative moved for the Order for Repossession to be granted as sought. Prior to the CMD the Applicant had lodged copies of emails with both Aberdeen City Council and with his former solicitor from 2016 through to 2020. Said emails showed firstly that the Applicant had taken steps to try and have the rent paid directly to him from the Respondent's benefits due to her arrears, but for reasons unknown to him this had not been put in place by the Local Authority. Further, the emails showed that he had tried to instruct his

former agents to raise a repossession action but again, for reasons unknown, this had not been done. There continued to be a lack of engagement by the Respondent. The rent arrears had continued to increase since the last CMD, with nothing having been paid by the Respondent since December 2015. The Applicant has visited the Property each time he has flown over from Australia to try and speak with the tenant, but she has failed to engage or address the arrears. The Applicant owned other rental properties which were being managed by a letting agent. However, when the Applicant instructed the letting agent to manage said properties, the agent could not take on the Property in question due to the lack of any rental being paid. He had no option but to try and manage the situation himself via instructed solicitors. Had his former agents raised proceedings when instructed, this would have been dealt with prior to the pandemic and prior to the introduction of the Rent Arrears Pre-action Requirements (Coronavirus) (Scotland) Regulations 2020. There had been a further incident of the Respondent flooding the neighbour below by leaving taps on in the Property, since the last CMD.

- **Findings in Fact**

9. The Tribunal made the following findings in fact:

- (i) The parties entered into a Short Assured Tenancy Agreement (“the Agreement”) which commenced 19 October 2015;
- (ii) A Notice to Quit and Form AT6 under section 19 of the 1988 Act were served on the Respondent by Sheriff Officer on 7 December 2020;
- (iii) The Notice to Quit required the Respondent to remove from the Property by 19 June 2021;
- (iv) The Form AT6 under section 19 of the 1988 Act relied on grounds 8 and 12 under Schedule 5 to the 1988 Act;
- (v) The Form AT6 under section 19 of the 1988 Act advised that proceedings would not be raised before 2 June 2021;
- (vi) The Respondent had failed to remove from the Property and continued to reside therein.
- (vii) The monthly rent was £650 and the arrears stood at £46,150.

- **Reasons for Decision**

10. Section 18 of the 1988 Act states as follows:

18 (1) The First-tier Tribunal shall not make an order for possession of a house let on an assured tenancy except on one or more of the grounds set out in Schedule 5 to this Act.

(2) The following provisions of this section have effect, subject to section 19 below, in relation to proceedings for the recovery of possession of a house let on an assured tenancy.

(3) If the First-tier Tribunal is satisfied that any of the grounds in Part I of Schedule 5 to this Act is established then, subject to subsections (3A) and (6) below, the Tribunal shall make an order for possession.

(3A) If the First-tier Tribunal is satisfied—

(a) that Ground 8 in Part I of Schedule 5 to this Act is established; and

(b) that rent is in arrears as mentioned in that Ground as a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit,

the Tribunal shall not make an order for possession unless the Tribunal considers it reasonable to do so.

(4) If the First-tier Tribunal is satisfied that any of the grounds in Part II of Schedule 5 to this Act is established, the Tribunal shall not make an order for possession unless the Tribunal considers it reasonable to do so.

(4A) In considering for the purposes of subsection (4) above whether it is reasonable to make an order for possession on Ground 11 or 12 in Part II of Schedule 5 to this Act, the First-tier Tribunal shall have regard, in particular, to the extent to which any delay or failure to pay rent taken into account by the Tribunal in determining that the Ground is established is or was a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit.

(5) Part III of Schedule 5 to this Act shall have effect for supplementing Ground 9 in that Schedule and Part IV of that Schedule shall have effect in relation to notices given as mentioned in Grounds 1 to 5 of that Schedule.

(6) The First-tier Tribunal shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless—

(a) the ground for possession is Ground 2 or Ground 8 in Part I of Schedule 5 to this Act or any of the grounds in Part II of that Schedule, other than Ground 9, Ground 10, Ground 15 or Ground 17; and

(b) the terms of the tenancy make provision for it to be brought to an end on the ground in question.

(6A) Nothing in subsection (6) above affects the First-tier Tribunal's power to make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, where the ground for possession is Ground 15 in Part II of Schedule 5 to this Act.

(7) Subject to the preceding provisions of this section, the First-tier Tribunal may make an order for possession of a house on grounds relating to a contractual tenancy which has been terminated; and where an order is made in such circumstances, any statutory assured tenancy which has arisen on that termination shall, without any notice, end on the day on which the order takes effect.

(8) In subsections (3A) and (4A) above—

(a) “relevant housing benefit” means—

(i) any rent allowance or rent rebate to which the tenant was entitled in respect of the rent under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971); or

(ii) any payment on account of any such entitlement awarded under Regulation 91 of those Regulations;

(aa) “relevant universal credit” means universal credit to which the tenant was entitled which includes an amount under section 11 of the Welfare Reform Act 2012 in respect of the rent;

(b) references to delay or failure in the payment of relevant housing benefit or relevant universal credit do not include such delay or failure so far as referable to any act or omission of the tenant.

11. Ground 8 of Schedule 5 to the 1988 Act states as follows:

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.

12. Ground 12 of Schedule 5 to the 1988 Act states as follows:

Some rent lawfully due from the tenant—

(a) is unpaid on the date on which the proceedings for possession are begun; and

(b) except where subsection (1)(b) of section 19 of this Act applies, was in arrears at the date of the service of the notice under that section relating to those proceedings.

13. The Tribunal was satisfied that the grounds relied upon in the Form AT6 had been met. At the date of service of the AT6 on the Respondent, there were rent arrears of £37,700. The monthly rent was £650. At the date of the Case

Management Discussion, the arrears stood at £46,150. Accordingly, both at the date of service of the AT6 and at the date the case called before the Tribunal, there were at least three months of arrears due. Further, in terms of Ground 12 the Tribunal was satisfied that some rent was lawfully due from the Respondent on the date on which the proceedings had begun. Whilst it was noted by the Tribunal that the Rent Arrears Pre-action Requirements (Coronavirus) (Scotland) Regulations 2020 had not been complied with, regard was had to the Applicant having tried to instruct his former agent to raise proceedings prior to the pandemic and which instructions had not been followed, and to the very high level of arrears and lack of any payments or engagement by the Respondent for over 5 years. The Tribunal was satisfied that in all of the circumstances, it was reasonable to grant the Order as sought.

- Decision

14. The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for possession of the Property under section 18 of the Housing (Scotland) Act 1988.

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

Date: 29 November 2021