



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/21/1911

Re: Property at 1B Newbigging, Musselburgh, EH21 7AJ (“the Property”)

Parties:

Mrs Samantha Reynolds, 4 Francis Street, Eccles, Manchester, M30 9PR (“the Applicant”)

Miss Samantha Cowie, 1B Newbigging, Musselburgh, EH21 7AJ (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member) and Elizabeth Dickson (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 10 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 a repossession order against the Respondent in terms of section 18 of the Housing (Scotland) Act 1988.
- The Case Management Discussion
 2. A Case Management Discussion (“CMD”) took place on 6 October 2021 by tele-conference. The Applicant was represented by Nicola Caldwell of TC Young, solicitors. There was no appearance by or on behalf of the Respondent. The application had been intimated on the Respondent by Sheriff Officer on 7 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 to be granted. The current arrears balance was £11,832.99. This was a reduction from the balance due at the point the application had been made. The reduction was due to 3 payments of Universal Credit being paid (£700 on 20 August, £2,104.30 on 6 September and £700 on 23 September) and one payment of £25 paid by the Respondent on 23 August 2021. This was the only payment made by the Respondent since the commencement of the tenancy. The monthly rent was £700. The tenancy commenced on 10 February 2015. The Respondent was now in receipt of Universal Credit, however the arrears had not been addressed and no payment proposals had been made by the Respondent to repay these.

- Findings in Fact

4. The Tribunal made the following findings in fact:

- (i) The parties entered into an Assured Tenancy Agreement ("the Agreement") which commenced 10 February 2015;
- (ii) A Form AT6 under section 19 of the 1988 Act were served on the Respondent on 14 September 2020 by Sheriff Officer;
- (iii) The Form AT6 under section 19 of the 1988 Act relied on grounds 8, 11 and 12 under Schedule 5 to the 1988 Act;
- (iv) The Form AT6 under section 19 of the 1988 Act advised that proceedings would not be raised before 17 March 2021;
- (v) The Respondent had failed to remove from the Property and continued to reside therein.

- Reasons for Decision

5. 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.

6. 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.

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

Whether or not any rent is in arrears on the date on which proceedings for possession are begun, the tenant has persistently delayed paying rent which has become lawfully due.

8. 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.

9. In terms of Schedule 1 of the Coronavirus (Scotland) Act 2020 which is in force at the time of determining this application, the Tribunal must be satisfied that it is reasonable to grant the order. 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 £17,351.76. The monthly rent

was £700. At the date of the Case Management Discussion, the arrears stood at £11,832.99. 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 11 the Tribunal was satisfied that the Respondent had persistently delayed paying rent which has become lawfully due. Whilst it was noted that the Respondent had made a payment on 23 August 2021 of £25, this was the only payment she had made in the entire period of the tenancy, being over six years. The arrears were substantial, and no payment arrangements had been offered or entered into by the respondent. The Tribunal was also satisfied that the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 had been complied with. The Applicant had lodged with the application a letter issued to the Respondent on 10 August 2021 which included information relating to the arrears due, and advice agencies which could be contacted for assistance. Correspondence between the Applicant, the Respondent and the local authority regarding the rent arrears dated 15 January to 1 February 2021 was also lodged. The Tribunal was satisfied that against that background it was reasonable to grant the order sought.

- Decision

10. 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.

F. Watson

Legal Member/Chair

Date: 6 October 2021