



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/22/0540

Re: Property at 31 Cloverleaf Grange, Bucksburn, Aberdeen, AB21 9FH (“the Property”)

Parties:

Places for people Scotland, Touchstone, 2 Crescent office park, Clarks Way, Bath, BA2 2AF (“the Applicant”)

Mr Johnpaul Massie, 31 Cloverleaf Grange, Bucksburn, Aberdeen, AB21 9FH (“the Respondent”)

Tribunal Members:

Lesley Ward (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

- 1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for the eviction of the respondent from the property be made on ground 8 of schedule 5 of the Housing (Scotland) Act 1988, on the basis that there are rent arrears in excess of three months and that the rent arrears are not as a consequence of a delay or failure in payment of a relevant benefit, and it is reasonable to grant the order.**
- 2. This was a case management discussion ‘CMD in connection with an application in terms of rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, (‘the rules’) and s18 of the Housing (Scotland) Act 1988, (‘the Act’). The applicant’s solicitor Mr Kenneth Caldwell attended. The respondents did not attend and was not represented. The tribunal had sight of the execution of service by sheriff officers dated 5 April 2022 and were satisfied that the respondent was aware of today’s hearing. There was a second application before the tribunal for rent arrears in terms of rule 70. The tribunal proceeded with the CMD in terms of rules 24 and 29.**

3. The tribunal had before it the following copy documents:

- (1) Application dated 24 February 2022
- (2) Tenancy agreement.
- (3) AT5.
- (4) Notice to quit dated 23 June 2021.
- (5) AT6 dated 23 June 2021.
- (6) S33 notice dated 23 June 2021.
- (7) Rent statement.
- (8) Letter to respondent dated 19 February 2019 regarding rent increase.
- (9) Proof of service of items 4, 5, 6.
- (10) Letter to respondent regarding pre action requirement dated 23 February 2021.
- (11) S11 notice.
- (12) Land certificate.
- (13) Landlord registration.

Preliminary matter

4. Mr Caldwell had sent an email to the tribunal on 20 May 2022 with an updated rent statement confirming that the rent arrears had increased to £14,466. The tribunal allowed this further document to be received although late. The tribunal also decided in fairness to the respondent that the sum sought in the rule 70 application would not be increased. The updated statement was helpful in confirming the current level of arrears. It would also be helpful to the tribunal in assessing the reasonableness of granting the eviction.

Discussion

5. Mr Caldwell was seeking an eviction order on the basis that the rent arrears currently stand at £14,466. When the AT6 was served the arrears stood at £6974.60. The monthly rent is £679.80 so the arrears are in excess of three months, both at the date of the AT6 and at today's date. It was Mr Caldwell's position that the arrears are not due to a failure or delay in payment of a relevant benefit, and it is reasonable in all of the circumstances for an eviction order to be granted.

6. Mr Caldwell submitted that when the respondent took entry to the property in 2017, he was single with no children living in the property and believed to be working in the oil industry. He was earning a salary of around £37,000 per annum with an income of around £4620 net according to the wage slip he provided at that time. The last contact the applicants had with the respondent was in January 2021 when he contacted them to say he was unemployed and was applying for Universal Credit. No further contact was made despite numerous emails and messages left for him by phone. The applicants wrote to him in December 2021 to advise that the government hardship scheme was coming to an end on 31 December 2021. He did not respond. No rent has been paid since September 2020. Mr Caldwell was not aware of the report the tribunal had received via

sheriff officers to the effect that the respondent was in the process of moving out of the property. He submitted it was reasonable in all of the circumstances for the eviction to be granted.

7. Findings in fact.

- The applicant is the owner of the property.
- The parties entered into a short assured tenancy agreement on 5 May 2017 for let of the property for the initial period from 5 May 2017 until 6 November 2017 and month to month thereafter.
- The agreed monthly rent was £660.
- The rent increased to £679.80 on 1 April 2019.
- Rent arrears began to accrue in April 2018.
- The rent arrears in June 2021 were around £6974.60.
- The applicant served a valid notice to quit dated 23 June 2021 with an ish date of 6 August 2021.
- The applicant served a valid AT6 dated 23 June 2021 on that date.
- The tenancy has come to an end and tacit relocation is not occurring
- The rent arrears at the date the application was made were around £12,413.
- The rent arrears as at 23 May 2022 were around £14,466.
- The rent arrears are not wholly or partly due to a failure in a relevant benefit.

Reasons

8. This is an undefended application for eviction from a short assured tenancy on grounds 8, 11 and 12 of schedule 5 of the Act. The tribunal was satisfied that ground 8 was met as both as at the date of service of the AT6 and at today's date there are rent arrears in excess of three months' rent. The tribunal was satisfied that the tenancy agreement was at an end given the valid notice to quit was served on 23 June 2021.
9. The tribunal was satisfied that the correct notice period of 6 months (due to the extensions of notice periods in terms of the Coronavirus (Scotland) Act 2020), was given. Proceedings were raised on 24 February 2021 and the AT6 dated 23 June 2021 and served on 23 June 2021 gave the date of 24 December 2021 for any proceeding to be raised.
10. The tribunal was satisfied that the arrears were not due to any delay or failure in payment of a relevant benefit. Rent arrears have been accruing since April 2018, long before the pandemic. The respondent may have applied for benefits in early 2021 but there were substantial arrears at that time of around £3575.60 and there was no evidence before the tribunal to suggest that any of the rent arrears are wholly or mainly due to a delay or failure in payment of a relevant benefit. The applicant's solicitors wrote to the respondent on 23 February 2022 in compliance

with the pre action requirements. The applicants also wrote to the respondent in December 2021 to notify him that the government hardship scheme was coming to an end of he wished to avail himself of it.

11. Given the amendments to the Act by the Coronavirus (Scotland) Act 2020, the tribunal must be satisfied that it is reasonable to grant to the eviction order. The tribunal noted that the arrears began to accrue before the pandemic, and they have continued to accrue since then. The arrears are substantial. The tribunal noted that the respondent does not appear to oppose the application and he may already have moved from the property. The tribunal had sufficient information before it to make a decision and the procedure had been fair. The tribunal was satisfied that it was reasonable in all of the circumstances to grant the eviction application.

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.

Lesley Ward

Legal Member

23 May 2022

Date