



**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/22/0834

Re: Property at 95 Maree Drive, Cumbernauld, G67 4LW (“the Property”)

Parties:

Mr Salah Alkirwi, Earls Homes, 47 Main Street, Cumbernauld, G67 2RT (“the Applicant”)

Ms Jessica Marchant, 95 Maree Drive, Cumbernauld, G67 4LW (“the Respondent”)

Tribunal Members:

Martin McAllister (Legal Member) and Janine Green (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

- 1. This was a case management discussion held by audio conferencing on 5th July 2022. The Applicant and Respondent participated and the Respondent was represented by Mr Jim Melvin of Coatbridge CAB.**
- 2. Prior to the case management discussion, the Applicant had submitted an updated rent statement to 2nd July 2022 showing rent arrears of £11,138.50**
- 3. By email dated 4th July 2022, Mr Melvin indicated that the Respondent would not be contesting the application for possession of the Property.**

Preliminary Matters

4. The Legal Member set out the purpose of a case management discussion.
5. The Applicant stated that he was seeking an order of eviction under Grounds 8 and 11 of Schedule 5 of the Housing (Scotland) Act 1988 (“the Act”).
6. Mr Melvin confirmed that his client was not contesting the application for eviction. He said that there was an existing order for payment which had been granted by the Tribunal on 5th March 2021 for payment of the sum of £9,308.05. Mr Melvin said that he did not represent the Respondent in that case but that the existence of the order meant that he had no submissions to make with regard to the level of arrears outstanding. He said that the existence of an order for recovery of possession may assist the Respondent in an application for housing from the local authority.
7. Having heard the position of the Respondent, the tribunal did not consider it necessary to schedule a Hearing assuming it was satisfied that, from the information before it, there were grounds to grant the order of eviction.

The Law

Schedule 5 Housing (Scotland) Act 1988

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.

Ground 11

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. Findings in Fact

8.1 The Applicant and Respondent are parties to a short assured tenancy agreement in respect of the Property dated 30th January 2009.

8.2 The commencement date of the tenancy was 2nd February 2009 to 1st

February 2010.

8.3 The Applicant served a notice to quit on the Respondent on 2nd August 2021 requiring vacation of the Property by 2nd February 2022.

8.4 The Respondent remains in occupation of the Property.

8.5 There are rent arrears of £ 11,138.50.

8.6 The required notice in terms of the Homelessness etc. (Scotland) Act 2003 has been given to the local authority.

9. Findings in Fact and Law

9.1 The tenancy continued by tacit relocation from 2nd February 2010 until it was brought to an end by service of the Notice to Quit dated 2nd August 2021.

9.2 The Applicant is entitled to recover the Property because the Respondent is in arrears of at least three months of rent lawfully due.

9.3 The Applicant is entitled to recover the Property because the Respondent has persistently delayed paying rent which is lawfully due.

Reasons

10. The Tribunal considered the documents which had been lodged with the application:

(a) Copy of the short assured tenancy agreement dated 30th January 2009.

(b) AT5 Form relating to the short assured tenancy.

(c) Notice to Quit dated 2nd August 2021 requiring the Respondent to leave the Property by 2nd February 2022.

(d) Sheriff officer's execution of service dated 2nd August 2021.

(e) AT6 form dated 31st August 2021.

(g) Copy of Notice to local authority under Section 11 of the Homelessness etc (Scotland) Act 2003.

(h) Updated Rent Statement brought down to 2nd July 2022.

(i) Copies of correspondence to respondent with regard to access to the Property and with CAB regarding attempts to resolve issues between the parties.

- 11. The Tribunal noted that the term of the tenancy stated in the short assured tenancy agreement is from 2nd February 2009 to 1st February 2010.**
- 12. The Tribunal noted that the tenancy had continued from 2nd February 2022 on a monthly basis until the Notice to Quit had been served which brought tacit relocation to an end as at 2nd February 2022.**
- 13. The tribunal noted the correspondence with the CAB and accepted that the Applicant had attempted to assist the Respondent in dealing with the arrears of rent and other issues with regard to access to the Property It was satisfied that, cumulatively, these satisfied the pre-action requirements which must be effected prior to the submission of an application for possession of a tenanted property.**
- 14. The tribunal was satisfied that the appropriate Notice to Quit had been given to the Respondent and that the required notice had been given to the local authority under Section 11 of the Homelessness etc. (Scotland) Act 2003.**
- 15. The tribunal accepted that the level of rent arrears as at the date of the case management discussion was £11,138.50. A payment order for £9,308.05 had been made against the Respondent in respect of rent arrears (FTS/HPC/CV/20/2280) on 5th March 2022 and, since the monthly rent is £540, the amount outstanding in respect of rent arrears is more than three months' rent.**
- 16. The rent statement demonstrated a pattern of non payment or late payment of rent since 2010.**
- 17. The tribunal also dealt with a case management discussion in respect of an application in respect of a claim for payment in respect of rent arrears and a claim by the Applicant for reimbursement in respect of repairs which he had carried out to the Property. That application was continued to a Hearing and it was noted that part of the Respondent's case in relation to that application was that rent was not lawfully due because of the condition of the Property. The tribunal, in coming to its determination, took no account of rent arrears other than those for which the payment order had been made.**
- 18. Prior to the amendments to the legislation as a consequence of the terms**

of the Coronavirus (Scotland) Act 2020, and the subsequent extension of its provisions to 30th September 2022, the Tribunal would be obliged to issue an order for recovery of possession of a property under Ground 8 of Schedule 5 of the Act. The Tribunal now requires to consider whether or not it is reasonable to make such an order.

19. The Respondent's position is that she is not contesting the application and Mr Melvin said that he was not instructed to make submissions as to whether or not it was reasonable to grant the order. Furthermore, he stated that the existence of the order may assist the Respondent. Balanced against the Respondent's occupation of the Property is the level of rent arrears which the Applicant has required to bear and the tribunal considered that it is reasonable, since Grounds 8 and 11 of Schedule 5 of the Act have been met, that the Applicant be able to recover possession of the Property.

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.

Martin McAllister

Legal Member: ✓

Date: 05/07/2022