



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 19 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/22/2152

Re: Property at 52 Provost Road, Flat GFR, Dundee, DD3 8AH (“the Property”)

Parties:

Mr Robert Shaun Pringle, 7/1, Learmonth Gardens, Edinburgh, EH4 1HD (“the Applicant”)

Ms Mary Henry, 52 Provost Road, Flat GFR, Dundee, DD3 8AH (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Mr G Darroch (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 should be granted.

Background

1. This is an application dated 4th July 2022 and made in terms of Rule 65 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (‘the Rules’). The Applicant is the landlord of the Property, and the Respondent is the tenant, in terms of a tenancy agreement that commenced on 8th August 2016 until 8th July 2017, and monthly thereafter, at an agreed rent per month of £400. The Applicant is seeking an order for possession under grounds 8, 11 and 12 of the Housing (Scotland) Act 1988 (“the 1988 Act”)
2. The Applicant’s representative lodged a copy of the short assured tenancy agreement, pre-action requirement correspondence, correspondence between the parties, section 11 notice and evidence of service, Form AT6 with evidence of service, and a rent statement.
3. Service of the application and notification of a Case Management Discussion was served upon the Respondent by Sheriff Officers on 26th August 2022.

The Case Management Discussion

4. A Case Management Discussion took place by telephone conference on 12th October 2022. Neither party was in attendance. The Applicant was represented by Ms Kirstie Donnelly, Solicitor.
5. The Tribunal considered the terms of Rule 29. The Tribunal determined that the Respondent had been given reasonable notice of the time and date of the CMD, together with details on joining the telephone conference. The Tribunal determined that the requirements of Rule 17(2) had been satisfied and that it was appropriate to proceed with the application in the absence of the Respondent upon the representations of the Applicant and the material before the Tribunal.
6. Ms Donnelly moved the Tribunal to grant an order for possession. The rent arrears are currently £2579. The Respondent has been in rent arrears for a considerable time. Although she is paying her monthly rent, she has failed to pay anything to the arrears since October 2021, despite coming to an agreement that she would pay £100 per month towards the arrears. The Respondent has claimed she has made payment of sums in addition to those on the rent statement, however, upon being asked to provide evidence of the additional sums, she has not done so. As far as those acting on behalf of the Applicant are aware, all sums paid have been credited to the account.
7. Ms Donnelly said the Respondent is understood to be in employment. The Applicant has complied with the pre-action requirements and has attempted to assist the Respondent by providing advice and requesting further information in order to understand the Respondent's position. The Respondent has not responded to requests for further information. The Respondent told the Applicant's letting agent that she required further time to seek alternative accommodation, but she has provided no further information in that regard.
8. Responding to questions from the Tribunal, Ms Donnelly said she had been informed that there was no change to the outstanding arrears at the end of last week. It was her position that the Applicant has suffered stress and financial loss, in that he has had to pay to maintain the Property and fulfil his landlord obligations, and there was no rental income for a period of six months. Effectively, the Respondent was treating the matter as if she had an interest-free loan and making no effort to pay the sums due. It is believed that the Respondent's daughter has previously lived with her and she appeared to be paying the rent in 2017, which would suggest the daughter is an adult. Ms Donnelly said she has not been told of any vulnerabilities in respect of the Respondent. Ms Donnelly was unaware of any particular reason why the Respondent had got into difficult paying her rent in 2021, but every effort had been made on behalf of the Applicant to assist her.

Findings in Fact and Law

9.
 - i. Parties entered into a short assured tenancy agreement in respect of the Property commencing on 8th August 2016 until 8th July 2017, and monthly thereafter, at an agreed rent per month of £400.
 - ii. A Form AT6 dated 12th May 2022 was served upon the Respondent by Sheriff Officers on the same date.
 - iii. As at the date of service of the Form AT6 there was in excess of three month's rent outstanding.
 - iv. As at the date of the CMD there was in excess of three month's rent outstanding.
 - v. The Respondent has persistently delayed paying rent which has become lawfully due.
 - vi. Rent lawfully due from the Respondent is unpaid on the date on which the proceedings for possession were begun, and at the date of service of the Form AT6.
 - vii. The Applicant has complied with the pre-action requirements set out in schedule 1 of the Coronavirus (Scotland) Act 2020.
 - viii. There was no evidence before the Tribunal that the arrears of rent were due to a delay or failure in the payment of a relevant benefit.
 - ix. The terms of the tenancy make provision for it to be brought to an end on grounds 8, 11 and 12.
 - x. The Applicant has suffered stress and financial loss as a result of the Respondent's failure to pay the rent lawfully due.
 - xi. It is reasonable to make an order for possession.

Reasons for Decision

10. The Tribunal was satisfied that the form AT6 had been correctly served, and that Grounds 8, 11 and 12 were established. There was no information before the Tribunal to suggest that rent was outstanding as a consequence of a delay or failure in the payment of a relevant benefit. The terms of the tenancy made provision for it to be brought to an end on the grounds in question.
11. In assessing reasonableness, the Tribunal took into account the limited information available about the Respondent. While she is paying her ongoing rent, there is a considerable level of rent arrears which have been outstanding

for a lengthy period, and the Respondent has not engaged in order to address the situation, nor did she appear at the CMD to put forward any circumstances that would rebut the Applicant's position that it was reasonable to grant the order.

12. The Applicant has suffered stress and loss as a result of the Respondent's failure to pay rent lawfully due, which amounts to six months' rent.

13. The Tribunal considered it was reasonable in all the circumstances of the case to grant the order sought.

Decision

14. An order for 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.

**Helen Forbes
Legal Member/Chair**

**12th October 2022
Date**