



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/22/2632

Re: Property at 82 Armadale Road, Whitburn, West Lothian, EH47 0EY (“the Property”)

Parties:

Miss Shama Rafiq, 5 Parmelia Court, Perth, PH1 5SQ (“the Applicant”)

Miss Angela Walker, 82 Armadale Road, Whitburn, EH47 0EY (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for recovery and possession should be granted in favour of the Applicant.

Background

1. An application was received by the Housing and Property Chamber dated 27th July 2022. The application was submitted under Rule 65 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on the Respondent not adhering to grounds 8, 11 and 12 of the Housing (Scotland)(Act) 1988 (“the Act”).
2. The application included:-
 - a. Short Assured Tenancy Agreement which commenced on 30th June 2017.
 - b. AT6 dated 6th July 2022 raising grounds 8, 11 and 12 with sheriff officer certificate of service dated 8th July 2022.
 - c. Section 11 Notice noting date of raising proceedings 26th July 2022.

3. On 16th November 2022, all parties were written to with the date for the Case Management Discussion (“CMD”) of 19th December 2022 at 2pm by teleconferencing. The letter also requested all written representations be submitted by 7th December 2022.
4. On 2nd December 2022, the Applicant emailed the Housing and Property Chamber with an up to date rent account for the period 1st July 2021 to 1st December 2022. This detailed that the arrears had been reduced to £1650 due to two payments of Discretionary Housing Payment totalling £600. This was notified to the Respondent.
5. On 18th November 2022, sheriff officers served the letter with notice of the CMD date and documentation upon the Respondent by letterbox service. This was evidenced by Certificate of Intimation dated 18th November 2022.

The Case Management Discussion

6. A CMD was held on 19th December 2022 at 2pm by teleconferencing. The Applicant was present and represented herself. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondent did not make representations in advance of the CMD.
7. The Applicant said that she has not had contact from the Respondent since the end of May/June 2022. She believes that the Respondent has been getting Universal Credit Housing Element for the Property. The Applicant tried to get direct payments made in May 2022 but this was refused by the DWP. The Respondent then sent the Applicant a sharp email advising that she was aware of the attempt for direct payments. On 28th September 2022 the Applicant tried again for direct payments to be made to her. Last week she heard that this had been accepted but no payment has been received yet. The Applicant has been told that it will depend on how much the Respondent has worked.
8. The Applicant believes that the Respondent may no longer be living in the Property. She visited the Property in May 2022 and looked through the curtains at the back and front of the Property. She could see that there was no furniture inside and that there was a vast amount of black bags amounting in the Property along with other rubbish. The Applicant has a brother and a friend that lives nearby. They would look to see if lights were on when passing the Property. The curtains have remained the same and there have been no lights on. The Applicant was concerned about the boiler as it had been leaking onto an electrical power unit. The Applicant obtained authority to enter through the Housing and Property Chamber. The Applicant’s brother attended with a member of the Housing and Property Chamber. The Applicant’s brother told her that it was agreed on that day that it appears that the Property has been vacated due to the state of the Property.
9. The Applicant has been struggling to pay her mortgage due to the lack of rent payments. She has had to ask her mortgage lender for reduced payments for the last four months.

10. The Applicant said that the current arrears stand at £3650. She noted that she had made an error in the latest statement that she lodged as the arrears are not £1650. The Tribunal noted that a running total of outstanding amount due would have been beneficial. The Applicant will consider this going forward.

Findings and reason for decision

11. The parties entered into an assured tenancy on 30th June 2017 for a 6 month period until 30th December 2017 which was thereafter continued on a month to month basis. No AT5 was lodged with the application though the lease was headed as a short assured tenancy. The rent payments of £500 are due on the 1st day of each month.
12. The Housing and Property Chamber received an Application dated 27th July 2022.
13. The Respondent persistently failed to pay her rent charge of £500 per month. The rent payments are due to be paid on 1st day of each month.
14. The arrears sought totalled £1650 or more. The Respondent is more than three consecutive months in arrears, she has been persistently in arrears. This includes being in arrears when the AT6 was served and when the proceedings commenced.

Decision

15. The Tribunal found that grounds 8, 11 and 12 have been established and granted an order in favour of the Applicant. The Applicant is entitled to an order of for recovery of possession.

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.

Gabrielle Miller

19th December 2022

Legal Member/Chair

Date