



**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/22/2876

Re: Property at 4 Pentland Crescent, Dundee, DD2 2BR ("the Property")

Parties:

Mr Osman Nazir, 21 Middlebank Crescent, Dundee, DD2 1HZ ("the Applicant")

Ms Aiesha Dunbar, 4 Pentland Crescent, Dundee, DD2 2BR ("the Respondent")

Tribunal Members:

Gillian Buchanan (Legal Member) and Angus Lamont (Ordinary Member)

Decision

At the Case Management Discussion ("CMD"), which took place by telephone conference on 18 September 2023, the Applicant was not in attendance but was represented by Mr Jay Lawson of MML Law. The Respondent was present and was represented by Mr Kenneth Marshall of Dundee law Centre.

In advance of the CMD the Tribunal had received from Mr MacAulay an email from Mr Lawson dated 1 September 2023 with attachment being a rent statement to that date.

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that:-

Background

A CMD had previously taken place on 21 March 2023. The Applicant did not attend on that occasion. The Tribunal therefore issued a decision refusing the application. The Applicant applied to the Tribunal to recall the Tribunal's Decision of 21 March 2023 and that application was granted by further decision of the Tribunal dated 29 May 2023. A further CMD was therefore assigned for 18 September 2023.

The Tribunal noted the following background once again:-

- i. The Applicant leased the Property to the Respondent.

- ii. The Tenancy Agreement is not produced by the Applicant.
- iii. The Minute of Agreement between the parties dated 24 April and 29 May 2019 refers to a "Short Assured Tenancy" dated 21 July 2017.
- iv. The Application proceeds under Rule 65 of the Rules.
- v. The rent payable in terms of the tenancy is £600 per month.
- vi. A Notice to Quit, Notice under Section 33 of the Housing (Scotland) Act 1988 (2th 1988 Act") and a Notice under Section 19 of the 1988 Act all dated 15 September 2021 were served by the Applicant on the Respondent by recorded delivery on 17 September 2021 seeking the Respondent's removal from the Property by 21 July 2022.
- vii. The Respondent remains in occupation of the Property.
- viii. The Application to the tribunal is dated 12 August 2022.

None of these matters are in dispute.

The CMD

At the CMD the Applicant's representative, Mr Lawson, made the following representations:-

- i. He has not received or seen the Tenancy Agreement.
- ii. That the current rent arrears outstanding and due by the Respondent are £24,330.
- iii. The last payment received from the Respondent was in a sum of £550 paid on 3 December 2020.
- iv. There has been no dialogue with Respondent since Mr Lawson's involvement began and there has been no dialogue between her and with the Applicant either. The Respondent's representative, Mr Marshall, has not been in touch.
- v. Mr Lawson was aware that legal aid was being applied for by Mr Marshall which, after initially being rejected, was subsequently granted after review.
- vi. The Applicant seeks an eviction order.
- vii. The rent arrears are very significant and it is therefore reasonable to grant an eviction order.
- viii. Mr Lawson understood the Respondent still to be waiting to be allocated a property by the local authority.

At the CMD the Respondent's representative, Mr Marshall, made the following representations:-

- i. The rent arrears are accepted. However, the Respondent has not received a rent statement for over a year.
- ii. Payment of rent was stopped due to damp and disrepair in the Property which has still not been attended to. Mr Marshall could not provide details but said he could do so if a Hearing was fixed. Rent payments had not been set aside in a separate bank account.
- iii. The Respondent had been in touch with the Applicant by text in October 2022 for his bank details as her bank account had changed and she no longer had his details. The Applicant replied by text to say his bank details had not changed. The Applicant has not helped himself by not providing bank details.
- iv. The Respondent offers to pay the rent plus £150 per month going forwards.
- v. Mr Marshall stated he had never seen such a high level of rent arrears due.
- vi. The Applicant could have applied for housing costs paid to the Respondent to paid directly to him.
- vii. The Respondent's application for local authority accommodation remains live. Mr Marshall stated the Respondent will be re-housed if an eviction order is granted.

- viii. The Applicant met the Respondent's sister a couple of months ago and said he wanted the position "sorted".
- ix. The Respondent still receives Universal Credit and is retaining the housing costs.

In response to Mr Marshall's representations Mr Lawson made the following additional remarks:-

- i. Mr Lawson had not taken instructions from the Applicant on his failure to provide bank details. However even if correct that doesn't take the Respondent terribly far. She did not chase for bank details again. She did not contact Mr Lawson for bank details. She has not set the rent aside and has spent it on other things.
- ii. The offer of £150 per month plus ongoing monthly rent is not a reasonable proposal.
- iii. The parties would both be better to move on allowing the Applicant to re-let the Property if he wishes to do so and the Respondent to secure the accommodation she needs.
- iv. The Tribunal asked Mr Lawson about compliance or otherwise with the pre-action protocols. Mr Lawson accepted these had not been complied with given the level of arrears it was still reasonable to grant an eviction order.

The Tribunal adjourned to consider the representations received.

Findings in Fact

- i. The Applicant leased the Property to the Respondent.
- ii. The Minute of Agreement between the parties dated 24 April and 29 May 2019 refers to a "Short Assured Tenancy" dated 21 July 2017.
- iii. The rent payable in terms of the tenancy is £600 per month.
- iv. A Notice to Quit, Notice under Section 33 of the Housing (Scotland) Act 1988 (2the 1988 Act") and a Notice under Section 19 of the 1988 Act all dated 15 September 2021 were served by the Applicant on the Respondent by recorded delivery on 17 September 2021 seeking the Respondent's removal from the Property by 21 July 2022.
- v. The Respondent remains in occupation of the Property.
- vi. That the rent arrears outstanding and due by the Respondent as at the CMD are £24,330.
- x. The last payment received from the Respondent was in a sum of £550 paid on 3 December 2020. The Respondent still receives Universal Credit and is retaining the housing costs. She has not set the rent aside. She has spent the housing costs received by her directly on other things.
- vii. The Applicant has not applied for housing costs paid to the Respondent by way of Universal Credit to be paid to him directly.
- viii. The Respondent's application for local authority accommodation remains live.
- ix. There has been no engagement from the Respondent or her representative since the CMD on 21 March 2023.
- x. It is reasonable to grant an eviction order.

Reasons for Decision

The Tribunal carefully considered the parties' submissions and considered whether or not it would be reasonable to grant an eviction order. The factual background was not in dispute and the rent arrears accrued were admitted to be due.

The Tribunal took into account that the rent arrears now total in excess of 3 years rent. The Respondent has made no payment to the Applicant since December 2020. Despite an apparent attempt to obtain the Applicant's bank details once in October 2022 she has made no further attempts either directly or through her representative. She has not set aside the housing costs received as part of her Universal Credit. She has spent these sums. At the rate of £150 per month as proposed by the Respondent at the CMD the arrears would take 13.5 years to clear. There has been no attempt to communicate with the Applicant or his representative.

Whilst an issue of damp and disrepair was raised at the CMD this was not seriously advanced as a defence with no details of any sort being provided.

The Tribunal considered whether the Applicant had complied with the pre-action protocols. Whilst the Applicant had not so complied the Tribunal had regard to the fact that the Respondent had been represented by Mr Marshall of Dundee Law Centre since March 2023. She therefore has had access to all the support and guidance that she would have been directed towards had such correspondence been sent as ought to have been the case. The Tribunal therefore determined that, in these circumstances, it would excuse non-compliance with the pre-action protocols.

In all the circumstances it is reasonable to grant an eviction order.

Decision

The Tribunal granted an eviction order in favour of the Applicant.

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.

G Buchanan

Legal Member/Chair

18 September 2023
Date