

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18 of the Housing (Scotland) Act 2023

Chamber Ref: FTS/HPC/EV/22/2966

Re: Property at 31a Wolfburn Road, Thurso, KW14 7UY (“the Property”)

Parties:

Ian Gunn, Cairnald House, Swiney, Lybster, KW3 6BT (“the Applicant”)

Mr Pete Bodek, 31a Wolfburn Road, Thurso, KW14 7UY (“the Respondent”)

Tribunal Members:

Melanie Barbour (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 it should grant an order for eviction in favour of the Applicant against the Respondent for possession of the property.

Background

1. An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under rule 65 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order for recovery of possession in relation to an assured tenancy under the Housing (Scotland) Act 1988 by the Applicant against the Respondent in relation to the property.
2. The application included,
 - a copy of the tenancy agreement;
 - a notice to quit with execution of service;
 - an AT6 with execution of service;
 - rent statement; and

- section 11 notice to local authority.
3. Notice of the Hearing had been served on the Respondent by sheriff officers on 19 December 2022. The tribunal were advised that the respondent had telephoned the tribunal office on 13 February 2023 indicating the papers were in too small a font and he wanted a larger text, and that he was going to hospital on 14 February 2023. The Applicant's agent and the Applicant's wife, Lisa Gunn, advised that they were unaware of the Respondent having eye sight issues; they advised that they did understand that he had breathing difficulties and did attend hospital regularly. As the Respondent had been served with the application papers; and as there had been no request to postpone the case management discussion made by the Respondent and no documentary evidence to support the issues mentioned by the Respondent on 13 February 2023, the tribunal determined that it would proceed with the case management discussion on 14 February 2023.
 4. In attendance at today's meeting was Mr Swarbrick, the Applicant's agent, of Swarbrick Law Solicitors and the Applicant's wife, Lisa Gunn.

Discussion

5. The Applicant's agent confirmed that he was seeking an order for eviction in terms of Grounds 8, 11 and 12 of schedule 5 of the Housing (Scotland) Act 1988 Act. Reference was made to the tenancy agreement between the parties; the AT6 form; notice to quit and the rental statement.
6. The Applicant's representative advised that when the AT6 notice had been served in May 2022 the rent arrears stood at £18,700. This is a sum more than three month's rent. When the application was lodged the arrears were £20,350.00. He advised that the current rent arrears as at January 2023 were £23,100.00.
7. The Applicant's agent advised that it would be reasonable to grant the order as the arrears are of significant value. The Applicant had complied with the pre-action requirements and had sent letters to the Respondent regarding his arrears. There had been no response whatsoever from the Respondent.
8. The Applicant had also had difficulties getting access to the property. By way of example he had instructed an electrician to attend at the property to do an electrical

inspection, however they had not been allowed entry to the property. The Applicant was not aware of any reason why the landlord and his agents could not get access to the property.

9. The Applicant's agent advised that he understood that the Respondent received benefits direct, they were not aware of any delay or failure in the receipt of benefits. The Applicant's wife Lisa Gunn was also in attendance, she advised that she assists her husband with the rental property. She had contacted the DWP and local authority about the Respondent's benefits, but they would not discuss matters about the Respondent with her.
10. The Applicant's agent advised that it was just the Respondent himself who resides in the property. He was not sure of his age, but believed he was receiving state pension. The property was a three bedroom property. He believed that the Respondent did have some ill-health, particularly breathing difficulties, but not sure of the extent of them.
11. Lisa Gunn advised that there was no mortgage over the property, however this rental was an income stream for the family; and non-payment of rent and level of arrears was having a significant impact on the Applicant. It had caused quite a bit of angst for him. The applicant has other properties with his wife, eight in total.
12. The Applicant was concerned that he was not getting access to the property to do inspections and for repairs. The Applicant had last got access 2 years ago when the community nurse contacted him due to water running from the house on the street.
13. Lisa Gunn, advised that the Respondent used to send a cheque for the rent to the Applicant, however these cheques became sporadic. The Applicant had gone to speak to the Respondent about the rent arrears. The Respondent advised that he was writing a book on Christianity and the rent arrears would be repaid when his book was finished.

Findings in Fact

14. The tribunal have found the following facts to be established:-

15. A tenancy agreement was entered into between the Applicant and the Respondent for the Property and exists between the parties. It commenced on 21 May 2009 until 21 November 2009; it continued on a monthly basis after the initial term.
16. Clause 5 in the tenancy agreement provides that monthly rent is £500.
17. That the rental statement showed total rent arrears outstanding at August 2022 being £20,350.00.
18. That it appeared that there had been no payments towards the rent arrears since August 2019.
19. Rent arrears as at January 2023 are £23,100.
20. The AT6 Notice was dated 17 May 2022. It confirmed first date for raising proceedings would be 3 June 2022. It referred to grounds 8,11 and 12. There was evidence of service of that notice. Rent arrears when the notice was served were £18,700.
21. The Notice to Quit was dated 17 May 2022 and sought vacant possession as at 21 July 2022. There was evidence of service of this notice.
22. The section 11 notice appeared to have been served on the local authority.
23. There was evidence showing that the pre-action requirement had been complied with.

Reasons for Decision

24. The tenancy agreement created contractual obligations, one of which is a duty on the tenant to pay rent. There was evidence before the tribunal of a valid notice to quit and AT6 Notice. These notices had been served on the Respondent.
25. The grounds of recovery were 8,11 and 12, as set out in Schedule 5 of the Housing (Scotland) Act 1988 which were in the following terms when the notice was served:-

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]1 , 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.

Ground 12: Some rent lawfully due from the tenant— (a) is unpaid on the date on which the proceedings for possession are begun; and (b) except where subsection (1)(b) of section 19 of this Act applies, was in arrears at the date of the service of the notice under that section relating to those proceedings.

26. The Tribunal considered that the terms of each ground were met in this application, there substantial rent arrears; rent had not been paid since August 2019; and there was a clear ongoing failure to make rental payment. It was clear that a significant level of rent arrears existed at the date of raising the proceedings and the rent arrears had in fact increased since that time. That being so, the next matter for the tribunal to consider is the reasonableness of granting an order for eviction.
27. The tribunal considered that factors in favour of granting the order for eviction were that : the significant level of the rent arrears; the fact that the Respondent will not engage with the landlord or his agent about payment of rent or the rent arrears; the fact that the landlord has been refused access to the property to carry out repairs and inspections; the fact that the Respondent appears to be in receipt of benefits and there appeared therefore no good reason not to pay rent. The Respondent is an adult who resides in the property by himself, there did not appear to be any children or other dependents in the property. Rent has been unpaid for over 3 and a half years.
28. Against that we note that the Respondent is in receipt of state pension and, and has health difficulties (albeit we are unclear the extent of those). He has been in the property for a number of years.
29. Balancing these factors against each other we consider that the balance clearly falls in favour of the Applicant, the level of the arrears and the total failure by the Respondent to engage at all with the Applicant are persuasive reasons alone to grant the order, taking all the other factors into account we consider it would be reasonable to grant the order for eviction.

30. Accordingly, the tribunal is prepared to make an order for eviction under Grounds 8, 11 and 12.

Decision

31. The Tribunal grants an order for eviction in favour of the Applicant against the Respondent for 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.

15 February 2023

Legal Member/Chair

Date