



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/22/3418

Re: Property at 364 Hamilton Road, Motherwell, ML1 3EG (“the Property”)

Parties:

Mrs Janet Gray, 1 Cadzow Drive, Bellshill, ML4 2QY (“the Applicant”)

Mrs Roselyn Rodger, 364 Hamilton Road, Motherwell, ML1 3EG (“the Respondent”)

Tribunal Members:

Ruth O’Hare (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order

- 1 By application to the Tribunal the Applicant sought an order for repossession against the Respondents under section 18 of the Housing (Scotland) Act 1988. In support of the application the Applicant provided:-
 - (i) Short Assured Tenancy Agreement between the parties dated 20 January 2012;
 - (ii) Notice to Quit dated 20 January 2012 terminating the tenancy as at 21 July 2012 together with proof of service;
 - (iii) Form AT5 dated 20 January 2012;
 - (iv) Form AT6 dated 19 July 2022 confirming that proceedings would not be raised earlier than 5 August 2022 together with proof of service by recorded delivery mail;

- (v) Rent Statement; and
 - (vi) Section 11 notice to North Lanarkshire Council together with proof of service by email.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 15 March 2023 to take place by tele-conference.
- 3 The Respondent was served with a copy of the application paperwork together with notification of the date and time of the Case Management Discussion by Sheriff Officers with instructions for joining the tele-conference. She subsequently submitted written representations in response to the application. In summary she advised that she used to pay rent in cash but did not receive receipts. She had problems with her housing benefit but the Applicant had subsequently received a backdated payment. The property was in poor condition. The gas fire had been condemned and the house was always cold until a new boiler was installed in September 2021. There were periods during which she had no hot water. There was damp within the property caused by a crack in the exterior wall. The back steps were broken and the outer house required renewal. Bathroom tiles had fallen off the wall and the kitchen sink had leaked.

Case Management Discussion

- 4 The Case Management Discussion took place on 15 March 2022. The Applicant was present along with her husband as a supporter. The Respondent was also present.
- 5 The Tribunal explained the purpose of the Case Management Discussion and the legal test. It asked the parties to address the Members on their respective positions. For the avoidance of doubt the following is a summary of what was discussed at the Case Management Discussion and does not constitute a verbatim account.
- 6 The Applicant advised that she had considered the Respondent's written representations. She confirmed that she had initially collected rent from the Respondent in cash but that was around five or six years ago. The arrears had increased by around £2770 since 8 August 2022 and now stood at almost £10,000. By the Tribunal's calculations that amounted to a sum of £9248.66. The Applicant confirmed that she received housing benefit payments but there had been no recent mention of any backdate. There was a shortfall between the housing benefit and the rent which the Respondent required to pay. She had repeatedly failed to do so. The Applicant noted the level of arrears and advised that she had been reluctant to take action based on the Respondent's circumstances. She felt she was in difficulty. However she believed the Respondent was now choosing to prioritise other costs over her rent. The

mention of repairs was a fabrication. The Respondent had failed to allow the Applicant access to the property. She had a number of animals within the property that she shouldn't have. There had been longstanding discussions about the rent arrears but the Respondent had ignored the Applicant's texts.

- 7 The Respondent advised that the tenancy had originally been a joint tenancy with her husband but that he had passed away. She confirmed that she had paid the Applicant cash in hand at points. She was on receipt of benefits and had six children in the property. She outlined again the repairs issues which she had referred to in her written representations. She did not agree that she was prioritising other expenses over her rent. She confirmed that she was in receipt of housing benefit which was paid directly to the Applicant. She had been unaware of her entitlement to universal credit and once advised she had applied. The Applicant had then received a backdated payment. The Respondent confirmed that she accepted there were rent arrears. She further advised that she no longer wished to stay in the property and was looking for alternative accommodation. She intended on applying for accommodation with the local authority. She no longer wished to remain in the tenancy and was seeking advice from the Council. She simply required some time to find alternative accommodation.

Findings in Fact and Law

- 8 The parties entered into a Private Residential Tenancy Agreement which commenced on 20th January 2012. The tenancy was a Short Assured Tenancy as defined by section 32 of the Housing (Scotland) Act 1998 ("the 1988 Act").
- 9 The Tenancy Agreement makes provision for the tenancy to be terminated on grounds 8 of Schedule 5 of the 1988 Act.
- 10 The Respondent has been served with Form AT6 dated 19th July 2022 citing grounds 8 of Schedule 5 of the Housing (Scotland) Act 1988 as the ground upon which the Applicant seeks repossession. The Form AT6 was served upon the Respondents by recorded delivery on 19 July 2022.
- 11 The Form AT6 complies with the requirements of section 19 of the Housing (Scotland) Act 1988 and is in the prescribed form.
- 12 The rent due under the said Tenancy Agreement is £850 per month.
- 13 As at the date of service of the Form AT6, rent arrears in the sum of £6229.81 were outstanding.
- 14 As at the date of the Case Management Discussion arrears in the sum of £9248.66 were outstanding.

- 15 The arrears of rent are not due to any failure to pay housing benefit or its equivalent. The Applicant received a backdated payment of housing benefit on 21 March 2022 in the sum of £2927.36. The Respondent receives housing benefit in the sum of £731.84 per month.
- 16 The Respondent resides with six children.
- 17 The Respondent wishes to remove from the property. The Respondent is seeking council accommodation.
- 16 The provisions of ground 8 of Schedule 5 of the Housing (Scotland) Act 1988 have been met.
- 17 It is reasonable to grant the eviction order.

Reasons for Decision

- 18 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties.
- 19 The Applicant sought an order under section 18 of the Housing (Scotland) Act 1988 and had served the Respondent with a Form AT6 notice of their intention to raise proceedings for possession under section 19 of the said Act. The Applicant had also served a Notice to Quit upon the Respondents. On the basis that the Tenancy Agreement made provision for the tenancy to be terminated on the grounds upon which the Applicant sought repossession, there was no requirement to consider the Notice to Quit and therefore it did not form part of the Tribunal's considerations in its determination of the application.
- 20 The Applicant relied upon ground 8 of schedule 5 of the said Act as the basis for the application for repossession. In terms of ground 8, the Tribunal must be satisfied that at least three months rent lawfully due is in arrears both at the date of service of the Form AT6 and the date of the Case Management Discussion.
- 21 The Tribunal accepted based on the Applicant's submissions that the rent due under the terms of the tenancy agreement between the parties was £850 per month and that at least three months rent was unpaid when the Form AT6 was served. The Tribunal further accepted based on the submissions from the Applicant's representative at the Case Management Discussion that the arrears had now increased to nearly £10,000. That was a significant figure and had accrued over a prolonged period of time. The Tribunal accepted that the Applicant had been reluctant to pursue action against the Respondent but that the situation had now become untenable.

- 22 The Tribunal further accepted that the Respondent no longer wished to reside in the property and was seeking accommodation via the local authority. The Tribunal therefore concluded that she was not in fact opposing the application based on her submissions at the Case Management Discussion. However the Tribunal did have cognisance of her request for additional time to remove from the property, as well as her personal circumstances, and considered that a suspension of the enforcement of any order may be appropriate.
- 23 Therefore on the basis of the level of arrears, and the Respondent's position regarding the application, the Tribunal ultimately concluded that it would be reasonable to grant the order in the particular circumstances of this case, on the basis that enforcement of the order would be suspended to allow the Respondent time to vacate the property. The Tribunal considered a period of three months would be appropriate. The Tribunal did not consider a hearing would be necessary in this particular case as there were no substantive issues to be resolved.
- 23 The Tribunal therefore determined to make an eviction order, with enforcement suspended for a period of three months. The decision of the Tribunal was unanimous.

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.

Ruth O'Hare

Legal Member/Chair

15 March 2023

Date