



Decision with Written 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/23/0563

Re: Property at 11 Macrae Gardens, Stewartfield, East Kilbride, G74 4UP (“the Property”)

Parties:

Mr Stewart Docherty, Mrs Jacqueline Docherty, 3 Wintergreen Drive, Stewartfield, East Kilbride, G74 4UP (“the Applicant”)

Mr Tariq Ali, 11 Macrae Gardens, Stewartfeild, East Kilbride, G74 4UP (“the Respondent”)

Tribunal Member:

Karen Kirk (Legal Member) and Gerard Darroch (Ordinary Member)

1. Introduction

This Hearing was a Case Management Discussion fixed in terms of Rule 17 of the Procedure Rules and concerned an Application for Recovery of Possession under the Housing (Scotland) Act 1988. The purpose of the Hearing being to explore how the parties dispute may be efficiently resolved. The purpose of the hearing was explained to parties. Parties understood a final decision on the Application could also be made.

2. Attendance and Representation

The Applicants were not present but were represented by Mr John Gildea, 48-50 Cadzow Street, Hamilton, ML3 6DT

The Respondent was not in attendance or represented. He was served by Sheriff Officer on 15th May 2023. No written representations had been received. The Tribunal understands he remains in the property and further notification of this

adjourned Case Management Discussion Hearing was sent by the Tribunal administration to him. There continues to be no appearance by the Respondent.

3. Background

This application previously called on the 15th June 2023. The Tribunal considered it was appropriate on that date having regard to the overriding objective of the Tribunal and in the interests of justice to adjourn the application to this further Case Management Discussion. This was to allow the Applicant's representative to lodge written submissions on the matters raised in the letter from the Tribunal dated 21st March 2023 to the representative. These had not yet been addressed and the Applicant's representative had not considered the terms of same.

4. Preliminary Matters

By email dated 26th July 2023 the Applicant's representative submitted written representations to the Tribunal alongside copy text messages between parties and an email from the Applicant's letting agency stating financial information regarding the arrears of the property.

The Applicant's representative said that he had been unable to get a rent statement and had attempted to obtain same from the letting agent. The letting agent had sent confirmation of the last payment made to arrears of £100 in June 2023.

The Tribunal were told there had been no recent contact with the Respondent.

There were no other preliminary matters raised.

5. Case Management Discussion

The Applicant's representative submitted that he sought an order for repossession. He referred to the text messages lodged between the letting agent and the Respondent confirming in his submission compliance with the pre action protocol. The submission was further that this was sufficient to provide the opportunity to the Respondent to come to a payment arrangement or acceptable terms. No steps had been taken by the Respondent and the rent arrears to continue to amass. The Applicant's representative submitted that the monthly contractual rent for the property was £725. He submitted that Housing Benefit received for the property was £475 monthly. The Respondent requires to pay £250 per month to meet contractual rent. The Respondent is only able to made sporadic payments of £100 to same and is not able to maintain a payment arrangement to meet contractual liability.

The Applicant's representative said that the AT6 notice was served correctly on the basis the Order for Repossession is sought in regards Grounds 8,11 and 12 of Schedule 5 of the 1988 Act. The submission was that the correct notice was provided and in any event the Applicant in the second place in terms of Section 19 of the 1988 Act sought that the Tribunal dispense with the requirements of the notice as

reasonable in the circumstances. The Respondent has had 5 months after notice to address matters and the submission was that he has not taken steps and there is no prejudice. The Respondent has continued not to enter the process.

The Applicant's representative further submitted that the rent arrears for the property are in excess of £8000. The last payment by the Respondent to the rent was in June 2023 of £100. A payment order for rent arrears against the Respondent was granted by the Tribunal on 15th October 2022 for the amount of £5814.

The Applicant's representative said that the Respondent has no known vulnerabilities and encounters at times various changes in employment. He has a son but no information is known further on this. There is a significant impact of the continuing rent arrears on the Applicants. The Applicant Mrs Docherty is a legal secretary and this is their only rented property, which they consider to be a pension investment. The property has a mortgage.

6. Findings in Fact

- 1. The Tribunal was satisfied that a decision could be made in the absence of the Respondent and to do so would be in the interests of the parties, in the interests of justice and having regard to the Overriding objective. The Respondent had been served personally by Sheriff Officer, had not entered into appearance and the Tribunal had adjourned matters seeking further information in terms of the Overriding objective. The Tribunal was satisfied the Respondent was aware of the application and the adjourned Hearing.**
- 2. The Applicant sought an Order for Repossession and Eviction of the Applicant in terms of Section 18 of the 1988 Act.**
- 3. The Tribunal had regard to the modification of the 1988 Act by the Coronavirus Recovery and Reform Act 2022 and the fact the Tribunal had discretion and further the Tribunal had to have regard to the extent the Applicant had complied with the pre-action protocol specified by the Scottish Ministers in the regulations.**
- 4. The Tribunal was satisfied that the Applicants were the heritable proprietors of the Property as a copy title was lodged with the Application.**
- 5. There was a Short Assured Tenancy in place between parties dated 21st May 2017.**
- 6. The Applicant's representatives have sent text messages to the Respondent in regards their duties under the pre action requirements and a copy of same was lodged.**
- 7. Notice under Section 19 of the Housing (Scotland) Act 1988 was served on the Respondent dated 6th February 2023 and proof of service lodged.**
- 8. The Tribunal was satisfied on balance that the Respondent was in terms of Schedule 5, Grounds 8,11 and 12 of the 1988 Act in arrears of rent both at the date of the CMD and of Notice under Section 19 of the 1988 Act of at least 3 months rent lawfully due. The Respondent in addition has persistently delayed in paying rent in terms of Ground 11 and that rent in**

terms of Ground 12 is unpaid to the Applicant on the date upon which the Proceedings begun.

9. As at the date of the hearing the rent arrears for the property due by the Respondent amounted to more than £8000. Monthly contractual rent is £725. The Respondent is not able to meet full contractual rent. Housing Benefit is received of £475 per month. The Respondent has made sporadic payments of £100 per months but cannot meet full contractual rent.
10. Further the Tribunal was satisfied on a balance of probabilities that the said arrears were not wholly or partly due to delay or failure of payment of the relevant benefit.
11. The Tribunal found that the requirements of Grounds 8, 11 and 12 of Schedule 3 to the Act had been met.
12. Further the Tribunal was satisfied that the rent arrears were of a substantial nature.
13. On the evidence available to the Tribunal the Respondent had no known vulnerabilities and may have a child residing with him. A Payment Order was granted against the Respondent for rent arrears on 25th October 2022 and the arrears continue to accrue. The Applicants are not professional landlord, this is their only rental property and are requiring to meet mortgage payments on the property without full contractual rent over a prolonged period. The Tribunal found an Order was reasonable in terms of the Coronavirus (Scotland) Act 2020.
14. Accordingly, the Tribunal granted an order for Repossession against the Respondents.
15. The Cost of Living (Tenant Protection) (Scotland) Act 2022 applies in this case.

7. Reasons for Decision

The Tribunal was satisfied that the Applicants were the heritable proprietors of the Property and there was a Short Assured Tenancy between parties. On the evidence provided it was appropriate having regard to the overriding objective of the Tribunal to make a determination at the CMD. The Tribunal was satisfied that the Respondent was in arrears of rent lawfully due rent owed from same amounted to over £8000. The Respondent appears unable to meet the contractual monthly amount due apart from the proportion of rent paid by housing benefit of £475. The Impact of this inability to meet the contractual rent for the Applicants is significant.

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.

Karen Kirk

1st August 2023
