



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18 Housing (Scotland) Act 1988 (“the 1988 Act”)

Chamber Ref: FTS/HPC/EV/23/1910

Re: Property at 3/1, 42 Scott Street, Dundee, DD2 2AJ (“the Property”)

Parties:

Hillcrest Enterprises Limited, 1 Explorer Road, Dundee, DD2 1EG (“the Applicant”)

Mr Neil Inglis, 3/1, 42 Scott Street, Dundee, DD2 2AJ (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

- 1. The Applicant seeks an order for possession in terms of Section 18 of the Housing (Scotland) Act 1988 (“the 1988 Act”) A copy tenancy agreement, Notice to Quit, AT6 Notice, Sheriff officer certificate of service, Section 11 Notice, letter to the Respondent, blank template letters and rent statement were lodged in support of the application. The application and AT6 state that recovery of possession is sought on ground 8A of schedule 5 of the 1988 Act.**
- 2. A copy of the application and supporting documents were served on the Respondent by Sheriff Officer. Both parties were advised that a Case Management Discussion (“CMD”) would take place on 21 September 2023 at 10am by telephone conference call. They were provided with a telephone number and passcode and advised that they were required to participate. On 4**

September 2023, the Applicant's solicitor lodged an updated rent statement and a request to amend the sum claimed in a related application (CV/23/1911) to £4113.43.

3. The CMD took place on 21 September 2023 at 10am. The Applicant was represented by Ms Brechany, solicitor. The Respondent did not participate and was not represented. He did not contact the Tribunal in advance of the CMD or lodge written representations.

Case Management Discussion

4. Ms Brechany told the Tribunal that the Respondent is still occupying the property. A visit was carried out by a member of the Applicant's staff on 7 September 2023, for the gas safety check to be carried out. The Respondent confirmed that he was aware of the CMD and intended to repay the rent arrears. However, no further payments have been received. The Tribunal noted that some of the pre action letters issued lodged with the application are blank template letters. Ms Brechany advised the Tribunal that numerous letters have been issued to the Respondent and that these contained his name, address, and details of his arrears. These include letters issued on 10 January and 3 April 2023. In addition, there have been text messages and other attempts to engage with him. Although he has failed to engage recently, he is fully aware of the arrears and that applications have been made to the Tribunal in connection with the arrears.
5. Ms Brechany referred the Tribunal to the updated rent statement. She said that no payments have been made since July 2023. Prior to that, payments were made by the DWP. The Applicant does not know why these payments have stopped. The Respondent may be in employment, but the Applicant does not know if this is the case. The Tribunal was told that the Respondent is 42 years of age and lives at the property alone. There are no known vulnerabilities. He has been in arrears of rent since October 2021, and now owes the sum of £4113.43. The arrears are having an adverse impact on the Applicant's ability to maintain their properties and invest in new ones. Mr Brechany invited the Tribunal to conclude that the ground for possession is established.

Findings in Fact

6. The Applicant is the landlord of the property.
7. The Respondent is the tenant of the property in terms of a short assured tenancy agreement.

8. The Respondent is due to pay rent at the rate of £380.15 per month.
9. The Respondent owes the sum of £4113.43 in unpaid rent to the Applicant.
10. The Applicant served an AT6 Notice and Notice to Quit on the Respondent on 10 January 2023.
11. The Applicant has issued letters in compliance with the Rent Arrears Pre Action Protocol.
12. The Respondent resides at the property alone. He has failed to engage with the Applicant in relation to the arrears of rent. He has made no payments to the rent account since July 2023.

Reasons for Decision

13. The application was submitted with a short assured tenancy agreement. The initial term of the tenancy was 25 April 2013 until 30 April 2014 with a provision that it would continue on a year to year basis, if not terminated at the end of the initial term. The Applicant also submitted a Notice to Quit and AT6 Notice, with a Sheriff Officer certificate of service. This establishes that the Notices were served on 10 January 2023. The Notice to Quit called upon the Respondent to vacate the property on 30 April 2023, an ish date. It contains the information prescribed by the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 and complies with Section 112 of the Rent (Scotland) Act 1984. The Tribunal is therefore satisfied that the Notice to Quit is valid and that the tenancy contract has been terminated. The AT6 Notice is in the prescribed format and specifies ground 8A of schedule 5 of the 1988 Act. It states that the earliest date that proceedings can be taken is 30 April 2023, giving the Respondent more than two months notice, as required by Section 19(4) of the 1988 Act. A copy of a section 11 Notice has also been lodged, with evidence that it was sent by email to the Local Authority. The Tribunal concludes that the Applicant has complied with Sections 19 and 19A of the 1988 Act.
14. Section 18 of the 1988 Act (as amended by the Cost of Living (Scotland) Act 2022) states:-
 - (1) The First-tier Tribunal shall not make an order for possession of a house let on an assured tenancy except on one or more of the grounds set out in schedule 5 to the Act.
 - (4) If the First-tier Tribunal is satisfied that any of the grounds in Part i or Part ii of Schedule 5 to this Act is established, the Tribunal shall not make an order for possession unless the Tribunal considers it reasonable to do so.
 - (4ZB) In considering, for the purposes of subsection (4) above, whether it is reasonable to make an order for possession on ground 8A in schedule 5 the First-tier Tribunal is to consider-

- (a) Whether the tenant being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit,
 - (b) The extent to which the Landlord has complied with the pre- action protocol.
15. Ground 8A of Schedule 5 states, "The tenant has accrued rent arrears under the tenancy in respect of one or more periods, and the cumulative amount of those rent arrears equates to or exceeds, an amount that is the equivalent of 6 months rent under the tenancy when the notice is served under section 19 on this ground or, if dispensed with, when proceedings are raised for an order for possession on this ground."
16. From the application form, the documents submitted with the application, and the information provided at the CMD, the Tribunal is satisfied that the Respondent has been in arrears of rent since October 2021 and owed the sum of £ 3934.84 at the date of service of the AT6 notice. He currently owes the sum of £4113.43 in unpaid rent. The Applicant is therefore entitled to rely on ground 8A of the 1988 Act.
17. The Tribunal proceeded to consider whether it would be reasonable to grant the order for possession and noted the following:-
- (a) The Applicant has issued letters in compliance with the Rent Arrears Pre Action Protocol, although these do not appear to provide all of the information specified in the protocol. However, the Tribunal is satisfied that there have been efforts to engage with the Respondent in relation to the arrears of rent, that he is fully aware of the extent of the arrears and has been offered advice and assistance in relation to same.
 - (b) The Respondent did not attend the CMD or provide any information to the Tribunal. The Tribunal noted that there is no evidence that the arrears are due to a delay or failure in the payment of a relevant benefit, such as housing benefit or universal credit. The Respondent was in receipt of universal credit for a substantial period and direct payments were made to the rent account by the DWP until July 2023. However, the Respondent did not make any additional payments to reduce the arrears and no explanation has been provided for the absence of direct UC payments since July 2023.
 - (c) The rent arrears are substantial and are increasing.
 - (d) The Respondent is understood to live at the property alone.
 - (e) The Applicant is a housing association which relies on rental income to maintain and invest in its properties. The rent arrears have therefore had an adverse financial impact.
18. Having regard to the factors listed in (a) to (e) above, the Tribunal is satisfied that it is reasonable to grant an order for possession of the property.

19. As the Applicant has complied with the requirements of the 1988 Act, and as the Tribunal is satisfied that it would be reasonable to grant the order, the Tribunal determines that an order for possession should be granted.

Decision

20. The Tribunal determines that an order for possession of the property should be granted against the Respondent.

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.



Josephine Bonnar, Legal Member

21 September 2023