



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/22/0934

Re: Property at 5 Dunvegan Court, Glenrothes, KY6 2BL (“the Property”)

Parties:

Mr Richard Graham, c/o Innes Johnstone LLP, 14 North Street, Glenrothes, KY7 5NA (“the Applicant”)

Miss Stacey Harper, 5 Dunvegan Court, Glenrothes, KY6 2BL (“the Respondent”)

Tribunal Members:

Yvonne McKenna (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is entitled to the Order sought for recovery of possession of the Property.

Background

1. This was an application in terms of rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, (‘the rules’) and s18 of the Housing (Scotland) Act 1988, (‘the Act’).
2. There was a second application before the tribunal for rent arrears in terms of rule 70 which was dealt with by the Tribunal under reference FTS/HPC/CV/22/0935 and was conjoined with this application. (That matter has been further continued to allow the principal sum sought to be amended by the Applicant.)

3. The tribunal had before it the following copy documents:

- (1) Application dated 31 March 2022
- (2) Tenancy agreement and Tenant information pack acknowledgement
- (3) Rent increase Notice
- (4) AT5 and Statutory Notice
- (5) Notice to Quit dated 4 August 2021.
- (6) AT6 dated 4 August 2021.
- (7) S33 notice dated 4 August 2021.
- (8) Certificate of Intimation of items (5), (6) and (7) by Sheriff Officers dated 6 August 2021
- (9) Rent statement and Rent arrears statement
- (10) Evidence of compliance with pre action requirements
- (11) S11 notice to local authority and proof of intimation on dated 30 March 2022

The Case Management Discussion (CMD) 29 June 2022

4. The CMD took place by teleconference at 10am on 29 June 2022.
Neither party was present and the Applicant's Representative did not attend.
5. The Tribunal Clerk contacted the Applicant's Representative Ms Forbes of Innes Johnston solicitors.
6. Ms Forbes said to the Tribunal Clerk that the firm had missed the date for the CMD. She confirmed that the e-mail address that the Tribunal had for her firm was indeed correct but that the date for the CMD had somehow been missed.

7. Ms Forbes was unable to dial to the CMD in as she was at Dunfermline Sheriff Court and was about to start a court hearing. She apologised for her error and asked if the CMD could be re-scheduled.
8. The tribunal considered the over-riding objective as set out in Rule 2. It was down to human error that the Applicant's Representative did not attend the CMD. The tribunal were of the view that in the circumstances the CMD should be rescheduled with the new date re-intimated to both parties.
9. The paperwork relating to the CMD was served on the Respondent by Sheriff Officers on 23 May 2022.

The Case Management Discussion (CMD) 15 July 2022

10. The CMD took place at 2pm on 15 July 2022 by teleconference. The Applicant was represented by Mr Alastair Johnston of Harper McLeod Solicitors for Innes Johnston Solicitors the Applicant's Representatives. The Respondent was not present and was not represented.
11. In the intervening period between the two CMDs the Applicant had lodged an updated rent statement showing that the rent arrears due for the Property amounted to £7132.50. This amount included £105 due for a replacement lock and a non attendance fee for when a heating engineer called out at a pre-arranged time. The actual arrears of rent therefore as at today's date amounts to £7027.50. The statement of arrears is dated 1 July 2022 and shows the rent due until 14 July 2022. This was intimated on the Respondent by the Tribunal.
12. Mr Johnston referred to the documents lodged with the application and sought the Eviction Order.
13. Regarding the issue of reasonableness in granting the Order sought he stated that as far as he was aware that the Respondent is still residing at

the Property. This had been confirmed by the Applicant's Representatives as recently as two days ago. The Respondent does not have any dependents as far as is known or any other pressing reasons why the Order should not be granted. Arrears have continued to accumulate. The Applicant has attempted to point the Respondent in the direction of various organisations that could assist with financial difficulties as is evidenced in the pre-action requirements documentation. The Respondent has not engaged.

Findings in Fact

14. The Respondent entered into a short assured tenancy in respect of the Property which commenced on 15 July 2016.
15. Rent was payable by the Respondent at the rate of £495 per calendar month.
16. The Applicant's Representative served the Notice to Quit and the Notice in terms of section 19 of the Act (AT6) on the Respondent by Sheriff Officers on 6 August 2021.
17. As at the date of service of the Notices, the Respondent was in arrears of rent in the sum of £2010 which is an amount in excess of 3 months rent.
18. As at the date of the CMD, the Respondent was in arrears of rent in the sum of £7027.50, which is an amount in excess of 3 months' rent.
19. There was no evidence before the Tribunal that the arrears of rent were due to a delay or failure in the payment of a relevant benefit.

Reasons for Decision

20. The Tribunal proceeded on the basis of the documents lodged and the submissions made at the CMD. The Respondent failed to lodge written submissions and to attend at either of the CMDs. The Respondent received the Notice to Quit and Section 19 Notice almost a year ago. According to the updated rent statement lodged by the Applicant, the Respondent has been in arrears of rent since May 2017. The Tribunal was satisfied that Grounds 8, 11 and 12 had been established; as at the date of service of the Notices and as at the date of the CMD, the Respondent was in arrears of rent in respect that more than 3 months' rent was lawfully due. In light of the information provided, the Tribunal was satisfied that it was reasonable for the Tribunal to grant the Order for Eviction.

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.

Yvonne McKenna

Legal Member/Chair

15 July 2022

Date