



**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/19/0215

Re: Property at 22 Dornoch Place, East Kilbride (“the Property”)

Parties:

Miss Laura McLaughlin, 19 Dunlin, East Kilbride (“the Applicant”)

Ms Sharon Wilson, 22 Dornoch Place, East Kilbride (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

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 contained,
 - a copy of the tenancy agreement;
 - copy of the AT6 form;
 - copy of the notice to quit;
 - photographic evidence of delivery of AT6; and
 - section 11 notice confirmations.

3. The application had also yesterday submitted,
 - a copy of a rental statement showing monies paid and rent due;
 - a copy of a letter seeking entry for inspection of the property; and
 - a picture of the damage to the front door.

I allowed these documents to be accepted in support of the Applicants.

4. The Applicant's representative Steven McLaughlin appeared on behalf of the Applicant. The Respondent did not attend today's hearing.
5. Notice of the hearing together with copies of the application had been served on the Respondent on 4 April 2019. Given that I was satisfied that she was aware of today's hearing I was prepared to proceed with it in her absence.

The Case Management Discussion

6. The Applicant's Representative confirmed that he was seeking an order for eviction in terms of Grounds 11, 13 and 14 of schedule 5 of the 1988 Act as the Respondent was persistently in arrears of rent; she had not performed an obligation of the tenancy; and the condition of the property had deteriorated due to the actings or the negligence of the Respondent. Reference was made to the tenancy agreement between the parties, the notice to quit; and AT6 which had been hand delivered to the Respondent.
7. The Applicant advised that the position regarding outstanding rent arrears was that since August 2018 the Respondent had not been making payments towards her rent.
8. The Applicant submitted that payment of housing benefit of £322.20 per 4 weekly was being made for the property (which equated to £349.05 per month) however the remaining monthly rent of £125.95 was not being paid. He advised that the rent arrears now stood at £1697.40 as at 2 April 2019.
9. He advised that he had attempted to engage with the Respondent to try and get the rent paid, he had also spoken to her family to see if they could assist with matters, and finally he had contacted the local council who had set up a number of meetings with the Respondent to try and meet with her and offer support, however all of these attempts had all been to no avail and she had refused or been unwilling to engage with anyone. Therefore part of each month's rent was persistently unpaid and the arrears were increasing.
10. He was unaware of any outstanding housing benefit issues affecting the Respondent, and advised that in any event she has refused or been unwilling to take up the support which was being offered to her to assist with her rent and rent arrears.

11. The Applicant's Representative then advised me that they had made a number of attempts to contact the Respondent to seek entry to the property for an inspection. The right of access to inspect the property is allowed for in clause 14 of the tenancy agreement. He advised that they had tried calling, texting and visiting the property, however they were repeatedly ignored and not allowed in. He advised that on occasion they have been at the property and they were sure that the Respondent was in as lights were going on and off, but she would not answer the door.
12. He then referred me to the photograph of the damage to the front door. He advised that the front cover had been removed and at one point the Respondent had taped a board over the letter box in order that no mail could be delivered. He advised that he believed that the inside of the door had been damaged, as he had looked through the letter box and saw damage to the door.
13. He advised that the Applicant had made repeated attempts to try and contact the Respondent to address all of these matters, however they had continually been unsuccessful in their efforts. He did not believe that she was ill and unable to address the matters, he advised she had refused all assistance offered. He therefore asked that the order for possession be granted in favour of the Applicant to recover the property.

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. It was entered into on 29 September 2017.
16. Clause 4 provides that rent of £475 was payable in advance each month on 1st of the month.
17. Clause 11.4 provides that the tenant agrees to take reasonable care of the property.
18. Clause 14 provides that the tenant agrees to give the landlord access to the accommodation for the purpose of carrying out maintenance, repair or inspection.
19. Clause 18 provides for termination of the tenancy.
20. Clause 18.4 provides that the landlord may seek recovery of possession under the grounds set out in Schedule 5 of the Housing (Scotland) Act 1988 and these grounds are thereafter set out in full in the tenancy agreement.
21. The rental statement showed that as at 2 April 2019 rent arrears were £1,697.40.

22. Other than Housing benefit the Respondent appeared to have made no payments to rent since July 2018.
23. That the Applicant had sent a letter addressed to the Respondent and dated 29 September 2018 requesting access to the property.
24. That the Applicant had not been able to enter the property since at least 29 September 2018.
25. That the front of the letter box for the property was missing.
26. That an AT6 Notice and Notice to Quit had been served by hand delivery service on the Respondent by the Applicant.

Reasons for Decision

27. Section 18 of the Housing (Scotland) Act 2018 states:-

18 Orders for possession.

(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 this Act.

(2) The following provisions of this section have effect, subject to section 19 below, in relation to proceedings for the recovery of possession of a house let on an assured tenancy.

(3) If the First-tier Tribunal is satisfied that any of the grounds in Part I of Schedule 5 to this Act is established then, subject to subsections (3A) and (6) below, the Tribunal shall make an order for possession.

(3A) If the First-tier Tribunal is satisfied—

(a) that Ground 8 in Part I of Schedule 5 to this Act is established; and

(b) that rent is in arrears as mentioned in that Ground as a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit, the Tribunal shall not make an order for possession unless the Tribunal considers it reasonable to do so.

(4) If the First-tier Tribunal is satisfied that any of the grounds in 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.

(4A) In considering for the purposes of subsection (4) above whether it is reasonable to make an order for possession on Ground 11 or 12 in Part II of Schedule 5 to this Act, the First-tier Tribunal shall have regard, in particular, to the extent to which any delay or failure to pay rent taken into account by the Tribunal in determining that the Ground is established is or was a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit.

(5) Part III of Schedule 5 to this Act shall have effect for supplementing Ground 9 in that Schedule and Part IV of that Schedule shall have effect in relation to notices given as mentioned in Grounds 1 to 5 of that Schedule.

(6) The First-tier Tribunal shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless—

(a) the ground for possession is Ground 2 or Ground 8 in Part I of Schedule 5 to this Act or any of the grounds in Part II of that Schedule, other than Ground 9... Ground 10, Ground 15 or Ground 17; and

(b) the terms of the tenancy make provision for it to be brought to an end on the ground in question.

(6A) Nothing in subsection (6) above affects the First-tier Tribunal's power to make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, where the ground for possession is Ground 15 in Part II of Schedule 5 to this Act.

(7) Subject to the preceding provisions of this section, the First-tier Tribunal may make an order for possession of a house on grounds relating to a contractual tenancy which has been terminated; and where an order is made in such circumstances, any statutory assured tenancy which has arisen on that termination shall, without any notice, end on the day on which the order takes effect.

(8) In subsections (3A) and (4A) above—

(a) "relevant housing benefit" means—

(i) any rent allowance or rent rebate to which the tenant was entitled in respect of the rent under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971); or

(ii) any payment on account of any such entitlement awarded under Regulation 91 of those Regulations;

(aa) "relevant universal credit" means universal credit to which the tenant was entitled which includes an amount under section 11 of the Welfare Reform Act 2012 in respect of the rent;

(b) references to delay or failure in the payment of relevant housing benefit or relevant universal credit do not include such delay or failure so far as referable to any act or omission of the tenant.

28. On the basis of all the evidence before me including the application, the additional documents and the verbal submissions, I found that an assured tenancy existed.

29. I also find that there are contractual obligations as set out within the tenancy agreement, including a duty to pay rent; maintain the subjects; and allow access for inspections. The tenancy agreement provided for recovery of the property where the Respondent was in breach of the grounds set out in schedule 5 of the 1988 Act. There was evidence before me of persistent non-payment of the rent since August 2018. I heard evidence of numerous attempts to contact the Respondent and assist her. However it appears that she continually failed to respond to any requests both to address the rent arrears and also to allow any one in to inspect the property.

30. I find all three grounds met. I consider that it would be reasonable to grant the order in relation to Ground 11 and ground 13 only. The damage to the property (falling in to Ground 14) appears to me to be fairly insubstantial and that issue by itself, would not in my opinion in this case, warrant an order for eviction.

31. Accordingly, I am prepared to make an order for eviction Grounds 11 and 13 having been met.

Decision

32. The Tribunal grants an order 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.

M. Barbour

Legal Member/Chair

25. 4. 19

Date

*Insert or Delete as required