



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18(1) of the Housing (Scotland) Act 1988 (Act)

Chamber Ref: FTS/HPC/EV/23/1182

Re: Property at 19A Main Street, Blackridge, West Lothian, EH48 3SA (“the Property”)

Parties:

Mr Franco Rizza, 404 Lanark Road, Edinburgh, EH13 0LX (“the Applicant”)

Ms Ye-Vann Torres, 19A Main Street, Blackridge, West Lothian, EH48 3SA (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for eviction and recovery of possession be granted.

Background

This is an application under section 18(1) of the Act and Rule 65 of the Procedure Rules for eviction and recovery of possession on the basis of Ground 8A of Schedule 5 to the Act.

The following documents were considered by the Tribunal:

1. Amended Application received 10 May 2023;
2. Short Assured Tenancy Agreement (**SAT**) commencing 28 September 2012;
3. Notice to Quit dated 19 January 2023;
4. AT6 dated 19 January 2023 setting out Ground 8A;
5. Pre Action Correspondence;
6. Certificate of Service by Sheriff Officers of AT6 and Notice to Quit dated 19 January 2023;

7. Section 11 Notice;
8. Schedule of Rent Arrears at 1 April 2023;
9. Certificate of Service of CMD Notification on Respondent dated 20 June 202.

Case Management Discussion (CMD)

The case called for a CMD by conference call on 27 July 2023. The Applicant did not participate but was represented by his solicitor. The Respondent did not participate and was not represented.

The Tribunal delayed the start of the CMD to see if the Respondent would participate. The Respondent did not.

The Tribunal were satisfied that the Respondent had received notification of the Case Management Discussion and that the Tribunal could determine the matter if it considered it had sufficient information to do so and the procedure was fair. The notification also advised the Respondent that she should attend and the Tribunal could determine the matter in absence if she did not.

The Applicants' solicitor asked the Tribunal to deal with the matter on the basis of the documentation before it. She drew attention to the fact that the arrears had increased and there had been arrears for a number of years.

The Applicant's solicitor was able to inform the Tribunal that the Respondent's mother had been in touch. The Respondent was in contact with the local authority with a view to obtaining alternate accommodation. She had lived in the Property with 2 adult sons, one had now left and the other was actively seeking accommodation. It appeared there may be health issues but this was not clear.

The Tribunal then considered the documentary evidence it had received from the Applicant and in so far as material made the following findings in fact:

1. The Parties let the subjects under an SAT commencing 28 September 2012;
2. AT6 and Notice to Quit had been served on 19 January 2023;
3. Section 11 Notice had been served on the local authority;
4. Monthly rent was £575;
5. As at the date of service of the AT6 there was in excess of 3 months' rent due (£8,467.64 rent was due);
6. As at the date of the CMD there was in excess of 3 months' rent due (£10,248.74 rent was due);
7. The rental arrears were not due to any delay or failure to make payment of a relevant benefit;
8. Pre Action correspondence had been issued to the Respondent.

The Tribunal considered and accepted the documentary evidence of the Applicant which was, in any event, uncontested. The Tribunal considered that it had sufficient information upon which to make a Decision and that the procedure was fair. Ground 8A provides:

Ground 8A

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 notice is served under section 19 on this ground or, if dispensed with, when proceedings are raised for an order of possession on this ground.

The Tribunal considered the relevant tests for Ground 8A to be satisfied. In particular whether at the date of service of the AT6 and at the date of the CMD at least 3 months' rent was outstanding. The Tribunal determined that the tests were satisfied.

It then fell to the Tribunal to determine whether the arrears were in any part due to the failure or delay in payment of a relevant benefit. The Tribunal determined that it was not.

Despite Ground 8A having been satisfied the Tribunal still had to consider whether or not it was reasonable to grant the eviction order in the circumstances.

The Tribunal had no evidence from the Respondent or information to suggest it would be unreasonable to grant the order. The Tribunal was accordingly satisfied that it was reasonable and that the order should be granted as sought.

In granting the order the Tribunal was satisfied that the decision was in accordance with the overriding objective.

Outcome

- **Order for eviction and recovery of possession granted**

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.

Alan Strain

27/07/2023

Legal Member/Chair

Date