



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber)**

Chamber Ref: FTS/HPC/CV/21/1281

Re: Property at 37 Park Avenue, Bilston, Midlothian, EH25 9SE (“the Property”)

Parties:

**Mr James Telfer, No 2 The Holding, Pentland Mains, Midlothian, EH20 9NU
 (“the Applicant”)**

**Mrs Isabelle Forrest, Ms Sandra Scollon, 37 Park Avenue, Bilston, Midlothian,
EH25 9SE (“the Respondent”)**

Tribunal Members:

Virgil Crawford (Legal Member)

Decision

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

BACKGROUND

1. By Lease dated 30 June 2016 the Applicant let the property to the Respondents;
2. Prior to the Lease being signed the Respondents were served with a Notice in terms of s32 of the Housing (Scotland) Act 1988 (“the 1988 Act”) (commonly referred to as a Form AT5). The Lease was, accordingly, a Short Assured Tenancy in terms of the 1988 Act;
3. A Notice to Quit dated 8 October 2020 and a Notice in terms of s33 of the 1988 Act dated 8 October 2020 were both served upon the Respondents by Sheriff Officers, that being done on 12 October 2020;
4. A Notice in terms of s11 of the Homelessness Etc. (Scotland) Act 2003 had been intimated to the Local Authority;

5. The Applicant raised two separate actions before the Tribunal one being an action for Eviction (reference EV/21/1137) the other being an Application seeking an Order for payment of rent arrears (reference CV/21/1281);
6. At the time of the Application to the Tribunal (27 May 2021) the rent arrears amounted to £5,268.62. As at the date of the Case Management Discussions on 2 July 2021 the rent arrears had increased to £6,220.95;
7. The Respondents accepted the level of rent arrears;
8. The Respondents did not oppose the Application for an Order for Eviction;

THE CASE MANAGEMENT DISCUSSION

9. The Applicant did not participate personally in the Case Management Discussion but was represented by Miss S Hume, of Northwood Edinburgh. The Respondents both participated in the Case Management Discussion personally;
10. In relation to the Eviction action, the Respondents stated that they wished the Eviction to be granted. They stated that they were keen to remove themselves from the property outlining a variety of reasons for that but, most significantly, indicated that an eviction order was required to enable the Local Authority to take active steps to rehouse them;
11. In relation to the rent arrears, Miss Hume made an application under Rule 14A of the The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the FTT Rules”) to amend the amount claimed. She advised that the amount outstanding as at 2 July 2021 was £6,220.95 but she requested that an order for payment for the full amount which would be due as at the date of termination of the tenancy (which would be at some point in the future) be made. The Tribunal advised that it would not be able to make an order for payment for sums which are not yet due and, on that basis, the amount now claimed was £6,220.95;
12. The Respondents accepted that amount was due. Indeed, the Respondents had previously separately lodged requests for a Time to Pay Direction. The First Respondent, Mrs Forrest, had requested time to pay at the rate of £80 per week, the Second Respondent, Sandra Scollon requested time to pay at the rate of £80 per week;
13. The Tribunal declined to deal with these Applications prior to the Case Management Discussion as firstly, the Tribunal had concerns from the financial information provided as to whether or not those payment proposals were realistic and would be able to be maintained and, separately, the Tribunal had concerns as to whether or not it was appropriate to make two separate Time to Pay Directions against two separate individuals for the same debt which was jointly and severally due. In particular, the Tribunal had concerns as to the effect upon such a direction if one of the parties failed to comply with the order while the other one was maintaining payments as required. The Tribunal considered that it was appropriate to

have a single direction for payment in relation to the debt in relation to both Respondents;

14. Having reconsidered their position, the Respondents offered a cumulo sum of £300 per calendar month towards the rent arrears. Having allowed Miss Hume an opportunity to contact the Applicant to obtain his instructions, it was intimated to the Tribunal that an offer to pay at £300 per month would be acceptable to the Applicant;

FINDINGS IN FACT

15. The Tribunal found the following facts to be established:-
- a) By Lease dated 30 June 2016 the Applicant let the property to the Respondents;
 - b) Prior to the Lease being signed the Respondents were served with a Notice in terms of s32 of the Housing (Scotland) Act 1988 (commonly referred to as a Form AT5). The Lease was, accordingly, a Short Assured Tenancy in terms of the 1988 Act;
 - c) A Notice to Quit dated 8 October 2020 and a Notice in terms of s33 of the 1988 Act dated 8 October 2020 were both served upon the Respondents by Sheriff Officers, that being done on 12 October 2020;
 - d) A Notice in terms of s11 of the Homelessness Etc. (Scotland) Act 2003 had been intimated to the Local Authority;
 - e) The Respondents did not oppose the Application for an Order for Eviction;
 - f) As at 2 July 2021 arrears of rent amounted to £6,220.95. That amount was due to be paid by the Respondents to the Applicant;

REASONS FOR DECISION

16. In relation to the Eviction Application, the Tenancy was a Short Assured Tenancy, a Notice to Quit and a Notice in terms of s33 of the 1988 Act had been served by Sheriff Officers and the Respondents requested that the Order be granted. In those circumstances, the Tribunal considered it was reasonable to grant such an Order;
17. In any event, arrears of rent were significant, now amounting to £6,220.95. The arrears were increasing on an ongoing basis and the Respondents were accepting that they were struggling to make payments of rent. In those circumstances, again, the Tribunal considered it reasonable that an Order for Eviction be granted;
18. Arrears of rent in the sum of £6,220.95 were agreed between the parties as was the offer of payment at the rate of £300 per calendar month. In those circumstances, the Tribunal, in relation to the payment action, made an Order for payment and made a Time to Pay Direction in the amount of £300 per calendar month.

DECISION

The Tribunal granted an order against the Respondents jointly and severally and severally for payment of the sum SIX THOUSAND TWO HUNDRED AND TWENTY POUNDS AND NINETY FIVE PENCE (£6,220.95) STERLING to the Applicant.

The Tribunal made a time to pay direction allowing payment at the rate of £300 per calendar month

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.

Virgil Crawford

2 July 2021

Legal Member/Chair

Date