

Housing and Property Chamber
First-tier Tribunal for Scotland



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

Chamber Ref: FTS/HPC/EV/21/1804

Re: Property at 29 Urr Road, Dalbeattie, DG5 4DA (“the Property”)

Parties:

Ms Lindsay Elizabeth Ross, Breconiehill, Castle Douglas, DG7 1PD (“the Applicant”)

Miss Katie Smith, Mr Marc Forsyth, 29 Urr Road, Dalbeattie, DG5 4DA (“the Respondent”)

Tribunal Members:

Virgil Crawford (Legal Member) and Janine Green (Ordinary Member)

Decision (in absence of the Respondents)

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

BACKGROUND

1. By Lease dated 29th October 2016 the Applicant Let the property to the Respondents;
2. The date of commencement of the tenancy was 4th November 2016. The rent payable was £420 per calendar month, payable in advance;
3. The Respondents fell into arrears of rent. A notice in terms of section 19 of the Housing (Scotland) Act 1988 (“the 1988 Act”) – commonly referred to as a Form AT6 – dated 3rd December 2020, was served upon the Respondents. As at the date of service of said notice the arrears of rent amounted to £2,507.00;
4. The Form AT6 intimated that proceedings for recovery of possession would not be raised prior to 4th June 2021. Proceedings were initiated on 16th July 2021, together with separate proceedings seeking an order for payment of rent arrears. As at the date of the raising of the proceedings the rent arrears amounted to not less than £5,447.00;

5. A notice in terms of section 11 of the Homelessness Etc.(Scotland) Act 2003 was intimated to the relevant local authority

THE CASE MANAGEMENT DISCUSSION

6. A Case Management Discussion was assigned for 12th November 2021 at 10am, to be conducted by teleconference. The Applicant was represented by Mr A Turnbull, Solicitor, Messrs Gillespie Gifford and Brown LLP, Kirkcudbright. The Respondents did not participate in the Case Management Discussion. The Tribunal was in receipt of a certificate of service by Sheriff Officers confirming that the date, time and details for joining the case management discussion, together with a set of case papers, had been intimated upon the Respondents. In then circumstances, the Tribunal, being satisfied in terms of Rule 24 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. That the Respondents had received notice of the same, determined that it was appropriate to proceed in accordance with Rule 29 of the said rules;
7. Mr Turnbull moved the Tribunal to grant both an Order for Eviction and an Order for Payment. He advised the Tribunal that, as at the date of the Case Management Discussion, the arrears of rent amounted to £7,127.00. He was, however, content to restrict the claim to the amount originally claimed in the application to the Tribunal, that being £5,44700. It had previously been indicated that there was an error within that figure and it should, in fact, have stated the arrears, at the time of the application, to be £5,487.00 but, as stated, the claim was restricted to the amount originally sought;
8. The Applicant had previously written to the Respondents seeking to agree an arrangement for payment of the arrears over a period of time but received no response;
9. Standing the significant level of arrears, an Order for eviction was also sought;

FINDINGS IN FACT

10. The Tribunal found the following facts to be established:-
 - a. Both at the date of service of the Notice under Section 19 of the 1988 Act and at the date of the case management discussion at least 3 months rent lawfully due from the Respondents was in arrears;
 - b. The Respondents have persistently delayed in paying rent which was lawfully due;
 - c. Some rent lawfully due from the Respondents was unpaid as at the date the proceedings commenced and was in arrears at the date of service of the Notice in terms of Section 19 of the 1988 Act;
 - d. A notice in terms of section 11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the relevant local authority;
 - e. As at the date of the case management discussion arrears of rent amounted to £7,127.00;

- f. The Applicant had complied with The Rent Arrears Pre-Act Requirements (Coronavirus) (Scotland) Regulations 2020;
- g. The arrears of rent were not as a result of any delay or failure in the payment of any relevant benefit;
- h. It is reasonable that Decree for Eviction be granted;

REASONS FOR DECISION

- 11. In relation to the claim for payment of arrears of rent, as at the date of the Case Management Discussion the Tribunal the arrears amounted to £7,127.00. Despite that, the Applicant was willing to restrict the claim to the amount originally requested, that being £5,447.00. That was done, it would seem, on the basis that the Applicants are anticipating difficulty in enforcement of any order for payment, irrespective of the amount. Having regard to the restricted claim being made, there was no basis for the Tribunal refusing to grant an Order for payment in the amount requested;
- 12. Having regard to the level of arrears, which are longstanding, and the absence of any information to explain the same, taken together with the fact that the Respondent had offered a reasonable repayment plan to the Respondents prior to the raising of proceedings, it was reasonable, in the circumstances, that Decree for Eviction be granted.

DECISION

The Tribunal Grants order to Officers of Court to eject the Respondents and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property at 29 Urr Road, Dalbeattie, DG5 4DA and to make the same void and redd that the Applicant or others in their name may enter thereon and peaceably possess and enjoy the same.

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.

V Crawford

12 November 2021

Legal Member/Chair

Date