



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 19 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/22/2556

Re: Property at 8 Deveron Road, Motherwell, ML1 4SU (“the Property”)

Parties:

Mrs Isabelle Parasram, 7 Bell Yard, London, WC2A 2JR (“the Applicant”)

Miss Kelly-Anne Cameron, 8 Deveron Road, Motherwell, ML1 4SU (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Mr A Lamont (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. This is an application received in the period between 26th July 2022 and 4th January 2023 and made in terms of Rule 65 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Rules”). The Applicant is the landlord of the Property, and the Respondent is the tenant, in terms of a short assured tenancy agreement that commenced on 26th January 2011, ending on 27th July 2011, and continuing monthly thereafter if not brought to an end, at an agreed rent per month of £425. The Applicant is seeking an order for possession under grounds 8, 11 and 12 of the Housing (Scotland) Act 1988 (“the 1988 Act”)
2. The Applicant’s representative lodged a copy of the tenancy agreement and Form AT5, section 11 notice and evidence of service, Notice to Quit and Form AT6 dated 18th and served 19th May 2022 with an effective date of 26th June 2022, together with evidence of service, and a rent statement showing arrears in the sum of £9133.59.
3. Service of the application and forthcoming Case Management Discussion was made upon the Respondent by Sheriff Officers on 6th March 2023.

The Case Management Discussion

4. A Case Management Discussion (“CMD”) took place by telephone conference on 6th April 2023. The Applicant was in attendance and represented herself initially. At 10.25, the letting agent, Mr Mark Breen joined the call.
5. The Tribunal considered the terms of Rule 29. The Tribunal determined that the Respondent had been given reasonable notice of the time and date of the hearing, together with details on joining the telephone conference. The Tribunal determined that the requirements of Rule 17(2) had been satisfied.
6. The Tribunal raised an issue in respect of the Notice to Quit, which had not been served to an ish date of the tenancy. This matter had been raised before acceptance of the application, but no representations had been received on this point. There was some discussion concerning section 18(6) of the 1988 Act. The Applicant indicated she would wish to proceed in terms of that provision.
7. The Applicant said the rent arrears arose from 2017 to 2018. It was her understanding that they may have arisen as a result of Housing Benefit being paid directly to the Respondent for a period, during which time the Respondent did not pass it on. Previously, the Housing Benefit had been paid directly to the Applicant. The situation then changed again, and Housing Benefit was paid directly to the Applicant, by which time a large debt had arisen. Mr Breen said the debt may also have arisen as a result of the Respondent working for a time. The arrears are currently £9133.59, as the Respondent’s rent is fully covered currently by Housing Benefit. There have been attempts made to set up payment plans to repay the outstanding debt, but no formal payment plan has ever been set up, as the Respondent becomes unresponsive. There have been times when benefits paid were less than the rent, and the Respondent has not topped-up the rent, thus adding to the arrears.
8. There have been difficulties in getting entry to the Property to carry out statutory certification, and to assess the state of the Property. Mr Breen said visits to the Property have resulted in aggression from a male residing with the Respondent, and entry has been refused. An application for a warrant for entry has now been made to the Tribunal. There are concerns that the Property is in a state of disrepair. There have been complaints from the local authority, and the Applicant has been served with landlord’s notices under anti-social behaviour legislation in late 2020/early 2021, and again in May 2021.
9. Responding to questions from the Tribunal regarding the fact that the arrears had been outstanding for some time, the Applicant said the Respondent would promise to make payment, but nothing would happen. The Applicant had been concerned that the Respondent may have been unwell, and she did

not want to bother her further. She said she took a soft approach to the situation, hoping the arrears would be paid and that eviction would not be necessary. Lockdown had then prevented any further action being taken. When lockdown ended, it was decided to start proceedings towards eviction.

10. Responding to questions from the Tribunal regarding compliance with the pre-action requirements introduced by the Coronavirus (Scotland) Act 2020 and the resultant Regulations, Mr Breen said the letting agent issued blanket correspondence to all tenants at the time of the pandemic, providing information should they get into difficulties. It was Mr Breen's position that information on how to get advice from the Citizens Advice Bureau would have been provided to the Applicant, but this had not been lodged with the Tribunal. Information would have been issued with the Notice to Quit and Form AT6. Mr Breen said the Respondent is automatically sent a monthly letter showing the level of arrears and giving advice.
11. Responding to questions from the Tribunal regarding the Respondent's circumstances, Mr Breen said she was born in 1988. She is the sole tenant. There is a male living at the Property. There may be one or two children, as there are children's toys and bicycles in the garden. It was thought that the Respondent worked in a local shop prior to the pandemic. There was no information as to whether she worked full-time, or currently, but she is in receipt of full Housing Benefit. On visits to the Property, it could be seen from the door that there was a large amount of mail stacked up, and the Property was messy. The Applicant said she did not accept that the presence of toys meant there were children at the Property.
12. The Applicant said the mortgage on the Property has increased several times recently, and the rent is no longer covering the mortgage. She is the landlord of three other properties, and joint-landlord of a further property, all of which are mortgaged. She is subsidising the properties through savings, which impacts upon her own family. The situation is causing stress and affects the family's mental health.

Findings in Fact and Law

13.
 - i. Parties entered into a short assured tenancy agreement in respect of the Property commencing on 26th January 2011, ending on 27th July 2011, and continuing monthly thereafter if not brought to an end, at an agreed rent per month of £425.
 - ii. Form AT6 was served upon the Respondent on 19th May 2022, giving notice to 26th June 2022.
 - iii. Notice to Quit was served upon the Respondent on 19th May 2022 requiring the Respondent to remove from the Property on or before 26th June 2022.

- iv. The Notice to Quit was not served to an ish date of the tenancy, and the contractual tenancy remains in force.
- v. The tenancy agreement makes provision for the tenancy to be brought to an end under grounds 8, 11 and 12.
- vi. As at the date of service of the Form AT6 there was in excess of three month's rent outstanding.
- vii. As at the date of the CMD there was in excess of three month's rent outstanding.
- viii. The Respondent has persistently delayed paying rent which has become lawfully due.
- ix. Rent lawfully due from the Respondent is unpaid on the date on which the proceedings for possession were begun, and at the date of service of the Form AT6.
- x. 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.
- xi. It is reasonable to grant an order for possession.

Reasons for Decision

14. The Tribunal took the view that the Notice to Quit was not valid as it had not been served to an ish date of the tenancy. The Tribunal was satisfied that, in terms of section 18(6) of the 1988 Act, it could grant an order for possession as the terms of the tenancy agreement make provision for it to be brought to an end on the grounds in question, despite the continuation of the contractual tenancy.
15. The Tribunal found that grounds 8, 11 and 12 were established. There was no information before the Tribunal to suggest that rent was outstanding as a consequence of a delay or failure in the payment of a relevant benefit.
16. In assessing reasonableness, the Tribunal took into account that the rent is currently covered by full Housing Benefit, which protects the Applicant from the arrears rising further at this time. However, the arrears are considerable, equating to one year and seven months' rent. The Respondent has been in arrears for several years, and has made little or no attempt to make any payment towards the arrears. The Respondent has not provided any representations to the Tribunal in this regard, and there are no current proposals for payment. The Tribunal took into account the limited information provided by the Applicant and Mr Breen concerning the Respondent's family

and living circumstances, however, it was unable to be certain of whether there are children in the Property, or any family health issues.

17. The Tribunal took into account the Applicant's circumstances, including the financial issues in respect of the rent failing to cover the mortgage, and the stress being caused to the Applicant in respect of the Respondent's behaviour in terms of anti-social behaviour and failing to allow entry to the Property. The Tribunal took into account the fact that the Applicant had taken a compassionate approach towards the Respondent over a long period in the hope that matters could be dealt with without resorting to eviction, but that had not provided any resolution.
18. The Tribunal was concerned at the lack of documentation before it to indicate that the pre-action requirements had been complied with. The letting agent ought to have lodged copies of all correspondence in this regard. The Tribunal was satisfied that the Respondent has received monthly reminders of the rent arrears, and has been notified of sources of advice and assistance on occasion.
19. The Tribunal considered that a *prima facie* case in respect of reasonableness had been made out on behalf of the Applicant, and that no information had been provided on behalf of the Respondent to shift the balance in their favour. Taking all the circumstances into account, the Tribunal considered that it was reasonable to grant the order sought.

Decision

20. An order for possession is granted. The order is not to be executed prior to 12 noon on 9th May 2023

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.

H Forbes

Legal Member/Chair

Date 6th April 2023