



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 (“the 1988 Act”) and Rule 65 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/EV/18/2270

Re: Property at 151 Ferry Road, Edinburgh, EH6 4NJ (“the Property”)

Parties:

**Mrs Julia Ramage, 3 Hermitage Gardens, Edinburgh, EH10 6DL
 (“the Applicant”)**

**Harper McLeod LLP, Solicitors, Citypoint, 65 Haymarket Terrace, Edinburgh,
EH12 5HD
 (“the Applicant’s Representative”)**

**Mr Robert Harris, 151 Ferry Road, Edinburgh, EH6 4NJ
 (“the Respondent”)**

Tribunal Members:

Susanne L. M. Tanner Q.C. (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) was satisfied that Ground 8 in Part I of Schedule 5 to the 1988 Act was established by the Applicant, in that both at the date of service of the notice under Section 19 of the 1988 Act relating to the proceedings for possession and at the date of the hearing, at least three months’ rent lawfully due from the Respondent is in arrears; that rent arrears were not a consequence of a delay or failure in payment of relevant housing benefit or universal credit; and made an order for possession in terms of Section 18(3) of the 1988 Act.

1. Findings-in-fact

- 1.1. In terms of a Short Assured tenancy between the parties dated 26 August 2017 the Respondent was lawfully due to pay to the Applicant rent in the sum of £900 per calendar month on 27th of each month, from 27 August 2017 to 21 November 2018.
- 1.2. The Applicant served a valid AT6 notice on the Respondent on 3 August 2018.
- 1.3. As at 3 August 2018 there were £3352.45 of rent arrears, which is more than three calendar months' rent.
- 1.4. As at 21 November 2018 there were £4803.77 of rent arrears, which is more than three calendar months' rent.
- 1.5. The rent arrears are not a consequence of delay or failure in the payment of relevant housing benefit or universal credit.

2. Findings in fact and law

- 2.1. At the date of service of the notice under Section 19 of the 1988 Act relating to the proceedings for possession and at the date of the hearing, at least three months' rent lawfully due from the Respondent was in arrears and the rent arrears were not a consequence of a delay or failure in payment of relevant housing benefit or universal credit; therefore Ground 8 in Part 1 of Schedule 5 to the 1988 Act is established.
- 2.2. Because Ground 8 in Part 1 of Schedule 5 to the 1988 Act is established the tribunal must make an order for possession of the Property in terms of Section 18(3) of the 1988 Act.

3. Procedural background

- 3.1. The Applicant made an application to the tribunal on 28 August 2018 in terms of Section 18 of the Housing (Scotland) Act 1988 ("the 1988 Act") and Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules").
- 3.2. The Application was amended by the Applicant's Representative at the CMD on 21 November 2018 to bring the Application into line with the "Section 5:

Possession / Eviction grounds annexe” which accompanied the Application, to advance the Application in terms of Rule 65 rather than Rule 66 of the 2017 Rules.

3.3. The Applicant sought the Respondent’s eviction from the Property in terms of Section 18 of the 1988 Act, under Grounds 8, 11 and 12 of Schedule 5 to the 1988 Act.

3.4. The Applicant lodged with the Application:

3.4.1. A paper apart entitled “Section 5: Possession/ Eviction Grounds annexe”

3.4.2. a copy of the Short Assured Tenancy agreement dated 26 August 2017;

3.4.3. a copy of the AT6 notice dated 3 August 2018 together with proof of service on 3 August 2018 by Sheriff Officers;

3.4.4. two rent statements for the periods 27 August 2017 to 19 July 2018 and 27 August 2017 to 19 August 2018;

3.4.5. a copy of the Section 11 Notice which was sent to the local authority.

3.5. The Short Assured Tenancy agreement was signed by both parties on 26 August 2017. The initial term was for the period 27 August 2017 to 26 February 2018 and since then the lease has tacitly has relocated on a calendar monthly basis. The rent payable was £900 per calendar month payable monthly in advance on the 27th of each month.

3.6. The rent statement for the period to 19 July 2018 showed that as at the date of service of the AT6 notice on 3 August 2018 there were £3352.45 of rent arrears. The rent statement for the period to 19 August 2018 showed that as at the date of the Application on 28 August 2018 there were £3715.28 of rent arrears.

3.7. The Application was accepted for determination by a tribunal on 2 October 2018. Both parties were notified by letters dated 29 October 2018 of the date, time and place of a Case Management Discussion in relation to the Application on 21 November 2018. The Respondent was invited to make written representations in response to the Application by 16 November 2018.

3.8. The Respondent did not submit any written representations.

4. Case Management Discussion (CMD): 21 November 2018, George House, 126 George Street, Edinburgh

- 4.1. A CMD took place at George House, 126 George Street, Edinburgh on 21 November 2018. It was held together with a CMD in the conjoined application for an order for payment in respect of rent arrears (Ref: CV/18/2271).
- 4.2. Mr Lewis Kemp, Solicitor from the Applicant's Representative attended on behalf of the Applicant. The Respondent attended.
- 4.3. The tribunal chair explored with the parties how the parties' dispute may be efficiently resolved and considered whether to do anything it may do at a hearing, including making a decision in terms of Rule 17 of the 2017 Rules.

5. Submissions by Applicant's Representative

- 5.1. Mr Kemp from the Applicant's Representative was instructed to seek an order for possession at the CMD.
- 5.2. The Application was amended to bring the Application into line with the "Section 5: Possession / Eviction grounds annexe" which accompanied the Application, to advance the Application in terms of Rule 65 rather than Rule 66 of the 2017 Rules. The tribunal amended the principal Application and the Respondent was directed to amend his copy of the Application.
- 5.3. Mr Kemp referred to the Short Assured Tenancy agreement which provides for rent at the rate of £900 per calendar month, payable on 27th of each month.
- 5.4. Mr Kemp made submissions about the rent arrears as at the date of the service of the AT6 notice, with reference to the rent statements lodged with the Application. The rent arrears as at 3 August 2018 were £3352.48.
- 5.5. Mr Kemp produced an updated rent statement which was lodged with the consent of the tribunal. A copy was provided to the Respondent. The arrears have increased since the date of service of the AT6 notice and as at 19 November 2018 they are now £4803.77. A further month's rent of £900 will become due on 27 November 2018 which would increase the arrears to £5703.77.
- 5.6. Clause 18.4 of the Short Assured Tenancy agreement provided notice to the Respondent in the prescribed format required by Section 19 of the 1988 Act

that possession of the Property may be recovered on one of the grounds set out in Schedule 5 to the 1988 Act, which grounds included Ground 8, the terms of which were set out in full.

5.7. It was submitted that a valid AT6 notice in terms of Section 19 of the 1988 Act was served on 3 August 2018. On that date there were at least three months' rent arrears outstanding.

5.8. Mr Lewis submitted with reference to the evidence lead that the requirements of Ground 5 of Schedule 5 to the 1988 Act are met as both at the date of service of the AT6 notice on 3 August 2018 and at the date of the CMD hearing (21 November 2018) at least three months' rent lawfully due from the Respondent was in arrears.

5.9. In relation to the terms of Rule 18(3A) Mr Kemp advised that he has no information in relation to any delay or failure in relation to the payment of housing benefit or relevant universal credit to or on behalf of the Respondent. the Housing Benefit. He stated that the rent statement shows that part of the rent is being made by the DWP. In the absence of any delay or failure in payment of such benefits the question of reasonableness of such an order does not require to be considered.

5.10. He reiterated his submission that 3 months' rent was outstanding at the date of service of the AT6 notice and at the date of the CMD hearing and that Ground 8 has been established and that an order for possession should be made.

5.11. Mr Kemp further submitted that Grounds 11 and 12 are also established but submitted that if the tribunal finds Ground 8 to be established, it may not be necessary to make findings in relation to grounds 11 and 12.

6. Submissions by the Respondent

6.1. Before inviting the unrepresented Respondent to make submissions the tribunal chair had regard to the overriding objective in Rule 2 of the 2017 Rules and ensured that the Respondent understood the nature of the proceedings which had been raised; the basis for the order for possession which was being sought; and was able to participate fully in the proceedings.

6.2. The Respondent confirmed that he has not taken any legal or lay advice or assistance in relation to the Application. He stated that he was just following the order in the letter from the tribunal to come to the CMD and that he had done so in order to find out what was happening. The Applicant confirmed

that he understood that the Applicant is seeking to evict him from the Property with an order for possession on the basis that 3 months' rent was outstanding on 3 August 2018 and is still outstanding as at the CMD; and that the arrears not the result of a delay or failure in the payment of housing benefit or relevant universal credit, so the question of reasonableness of such an order does not require to be considered.

6.3. The Respondent stated that he accepts that rent of the sum of £4803.77 is outstanding and that £3352.45 was outstanding on 3 August 2018 when the AT6 notice was served.

6.4. The tribunal chair explored the issue of housing benefit with the Respondent. Mr Harris stated that he is in receipt of housing benefit of £537.17 per calendar month but that that has not been covering the whole amount of the rent of £900 per month. He stated that it is a two bedroomed flat and that he requires a flatmate in order to cover the whole rent. He stated that because he was given notice by his landlord on 3 August 2018 he has not tried to get anyone else to move into the Property since that time. He said that for one person £900 rent is a lot and that it is supposed to be two people living in the Property. He stated that the tenancy with his landlord is in his name only and is for £900 per month. His landlord agreed that he could find someone else to move in and she would add them onto the lease, and he has emails from her to this effect. He stated that somebody moved in in around November 2017. Mr Harris further stated that he was incarcerated in prison from November to February in HMP Saughton. The DWP told his landlord, without his consent, that he was in prison. The person who had moved in had not been put on to the lease. By the time he had been released from prison the person had moved out and left him with the flat still in his name only and no way of paying the excess above the benefits. Mr Harris stated that his benefits stopped while he was in prison and recommenced as soon as he got out of prison.

6.5. Mr Harris stated that at the beginning of the lease he was working and paid the full rent. He stated that the benefits started in November and he has bank statements showing payment of benefits. He said that he still has emails from his landlord that allowed him to pay the rent in part, in instalments, to coincide with his payment dates at work.

6.6. In relation to his current position he stated that he is not working at the moment and has not done so since he got out of prison. He had been hoping to get a flatmate again to assist with the rent but his landlord had served the notice to try to end the contract. He sent an email asking her whether he could get another flat mate. The next thing that he received was paperwork for eviction. He stated that the arrears have built up because of the time he

spent in prison during which time his benefits were not paid, the fact that he does not have a flat mate and the fact that he is not working.

- 6.7. In relation to further questions from the tribunal chair about the position of the flatmate, Mr Harris indicated that the person who was living in the flat last year was Aniko Berta, who was not a friend but just somebody he found to share the flat. She paid rent to Mr Harris and he paid it to the landlord through his bank account. Mr Harris said that he got the flat on 27 August last year and Aniko moved in around October. She paid £450 per month. Mr Harris has bank statements and records of her payment. She was never put onto the lease. He was incarcerated from November. He said that he had notified the landlord by email that he had found a flatmate as there had been agreement that if he found somebody they would be put onto the lease. Mr Harris stated that that did not happen at any stage and he accepted that the liability to pay the full rent rested with him as the sole tenant.
- 6.8. Mr Harris further accepted that the rent is short every month as a result of the difference between £537.17 housing benefit and the rent due of £900. He stated that he has no means of making up the shortfall. The only way he could begin to pay rent and/or deal with rent arrears would be if he obtains a job, or someone else moves in, or both. He accepted that in the meantime the arrears will stay at the same level or increase. He stated that he is desperately trying to find a job. He is not actively trying to find someone else because he has been served with notice.
- 6.9. He asked the tribunal not to evict him from the Property, stating that he would just like some time to organise himself and then he would happily move out. He said that things have been difficult since all of the rent arrears problems started. He said that he is just looking for some time to find somewhere and to find a job and to move out. He said that he is quite happy to tidy up all the arrears and pay the rent.
- 6.10. Mr Harris accepted that the reason benefits stopped for a period of time was because of his incarceration and that there has been no delay or failure in payment of any housing benefit to which he was entitled.
- 6.11. Mr Harris stated that the first payment of £900 shown on the rent statements which had the word "deposit" next to it, he had thought that it was rent. There was a short discussion with reference to the tenancy agreement, the terms in relation to the requirement to lodge a deposit of £900 and protection of the deposit in a deposit protection scheme. The Respondent said that he did not know if his deposit was protected.

6.12. The tribunal chair explained to the Respondent the matters which required to be considered in terms of Schedule 8 and Section 18 of the 1988 Act and also advised the Respondent that if she was satisfied that Ground 8 had been established, and that there was no failure or delay in relation to payment of housing benefit, she would be bound to make an order for possession which would have the effect of evicting him from the Property. She further advised him that any order would specify the first date upon which the order for possession could be enforced and that that period may allow him some time to organise his affairs. She further advised that there is an appeal process and any decision would make reference to the provisions for permission to appeal.

7. Response from Applicant's Representative

7.1. Mr Kemp addressed the tribunal about whether a deposit of £900 was paid or whether that payment was intended to be rent. He submitted that the agreement clearly states that a deposit in the sum of £900 will be paid and that it will be lodged in a tenancy deposit scheme. Mr Kemp's primary position was that this should be left out of consideration as to whether the Respondent was in three months' rent arrears at the two relevant dates. He submitted that even if the Respondent is correct and that sum ought to be treated as rent, or if it could be claimed by the Applicant by way of a deduction for rent arrears, deducting it from the relevant amounts would still result in arrears in excess of three months' rent.

8. Reasons

8.1. On the basis of the submissions made by both parties and having regard to the supporting documents lodged and referred to by both parties, the tribunal was satisfied that as at 3 August 2018 there were £3352.45 of rent arrears due by the Respondent to the Applicant and as at 21 November 2018 there were £4803.77 of rent arrears, both of which sums exceeded three months' rent lawfully due (£2700).

8.2. Although the Respondent is in receipt of housing benefit in the sum of £537.17 per calendar month, there is no evidence that there was any delay or failure in the payment of housing benefit. The reason that benefits ceased for a period of time during the tenancy was as a result of the Respondent's incarceration in prison, during which time no benefits would have been payable. The tribunal was satisfied that any rent arrears are not a consequence of a delay or failure in the payment of housing benefit or relevant universal credit. That being the case, an order for possession is

mandatory and there is no requirement to consider the reasonableness of such an order.

8.3. In relation to the issue which was raised in respect of the deposit of £900 due and paid on 27 August 2017, the tribunal considered that the requirement to pay a deposit of £900 and the payment of the said deposit had already been factored into the calculations in the rent statements which have been produced. The tribunal therefore concluded that presence or otherwise of a deposit payment of £900 did not make any difference to the level of the rent arrears at the relevant dates, both of which exceeded three months' rent lawfully due.

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.

Ms Susanne Tanner

Susanne L M Tanner Q.C.
Legal Member/Chair

21 November 2018