



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 Act”)

Chamber Ref: FTS/HPC/EV/21/2165

Re: Property at 17 Main Street, New Abbey, Dumfries, DG2 8BY (“the Property”)

Parties:

Mr David Kingan, Overton, New Abbey, Dumfries, DG2 8QD (“the Applicant”)

Mrs Tracy Nugent or McKie and Mr John McKie, 17 Main Street, New Abbey, Dumfries, DG2 8BY; 17 Main Street, New Abbey, Dumfries, DG2 8BY (“the Respondents”)

Tribunal Members:

Steven Quither (Legal Member) and Frances Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for possession be GRANTED under s18 of the Act.

1. BACKGROUND

This is an application to bring to an end on account of arrears of rent (Grounds 8, 11 & 12 of Schedule 5 of the Act) an Assured Tenancy, commencing 27 June 2014 for 6 months and continuing thereafter by tacit relocation on a month to month basis. An associated case, under Tribunal reference FTS/HPC/CV/21/2166, for payment of unpaid rent was previously considered by the Tribunal on 1 November 2021 when an order for payment was made for £24,835, together with interest.

In terms of s18 of the Act as amended by the Coronavirus (Scotland) Act 2020, the Tribunal requires to be satisfied not only that the formal requirements of said section have been complied with but also that for any of the Schedule 5 grounds it is reasonable to make the order for repossession. Accordingly, the Tribunal now has an element of discretion in respect of those grounds in Part I of that Schedule, where previously it required to grant the order if satisfied the ground was established, one of which grounds (Ground 8) is founded upon in

this application, along with (discretionary) Grounds 11 and 12. Accordingly, there is now a greater burden on a landlord looking to recover possession under a Part I ground than previously.

The supporting documentation for this application confirmed that appropriate notice periods had been given in respect of the s19 Notice (Form AT6) and that the appropriate local authority had been notified of the application in terms of s11 of the Homelessness etc. (Scotland) Act 2003. Notices to Quit had also been sent to the Respondents on 6 January 2021 and the Tribunal also had regard to the terms of letters sent to the Respondents by the Applicant's solicitors dated 18 November and 7 December 2020 in fulfilment of pre-action requirements, providing them with advice and information about outstanding matters and possible routes to resolution

In his application, the Applicant stated that he wished possession in view of the level of arrears which had accrued (since confirmed by the Tribunal as above referred to), that all 3 of Grounds 8, 11 and 12 applied and accordingly, it was reasonable to grant the eviction order sought, given said arrears.

2. CASE MANAGEMENT DISCUSSION

A Case Management Discussion ("CMD") took place by teleconference on 23 December, when the Applicant was represented by his solicitor, Mr McCartney, from Brazenall & Orr, Solicitors, Dumfries and the First Respondent attended also for the Respondents.

The Tribunal was advised of a contention by the First Respondent that she had no documentation regarding these eviction proceedings. It enquired about this with her as a preliminary matter and confirmed that she had received documentation affixed to her door a couple of weeks or so after the Tribunal on 1 November. The Tribunal was satisfied this was the documentation referred to in the Certificate of Execution of Formal Service received from Stirling Park, Sheriff Officers, confirming service made by affixing to the Respondents' door on 24 November 2021 and clarified with the First Respondent that that documentation referred to today's CMD, where eviction was to be considered. The First Respondent requested more time to resolve the rent arrears with the Applicant. She explained that she had recently resolved an outstanding benefits issue and the rent of £320 per month would now be covered by benefits and she would propose to have it paid direct to the Applicant. In addition, she could work longer hours and pay a further £320 per month towards arrears and interest, perhaps even £350 and perhaps even more again if her husband obtained employment. She had recently contacted the Applicant's solicitor in these terms but had received no response. She had also recently made payment of £320 towards all outstanding sums. She confirmed she had received the Notice to Quit in January 2021 but could not recall receiving said letters of 18 November and 7 December 2020.

Mr McCartney advised the Applicant was aware of recent contact having been made but that any offer along the lines referred to was not acceptable to the Applicant in view of the level of arrears which had accrued and the extremely poor payment record ie prior to the recent payment the last full payment of rent had been made in March 2016 after which there had been further payments of £500 in April 2016, £230 in August 2016 and £250 in April 2017, which was the only payment made in 2017. He confirmed the Tribunal's understanding that for each of 2015 and 2018 to 2021, the recent payment excepted, there had been

no payments of rent at all, not even after commencement of these proceedings. He advised further that the Applicant did not consider the offer now made to be realistic and doubted the Respondents would adhere to any arrangement made. He did not seek to clarify the Applicant's position further regarding the offer now made, he was confident as to the clarity of his instructions.

Upon further enquiry with the First Respondent, she advised she had had ongoing financial difficulties which she was addressing and had reduced expenditure on various items, the Second Respondent was awaiting a decision on a disability benefit and there was also a claim outstanding for a disability benefit on behalf of the Respondents' 5 year old daughter, who had some health difficulties. She had not been in touch with the relevant local authority homelessness service regarding housing matters and had only been able to speak to the Citizens Advice Bureau regarding this matter on Monday 20 December. She would ensure any award of the housing element of Universal Credit was paid direct to the Applicant.

Mr McCartney reiterated the Applicant had no confidence in the Respondents adhering to any agreement reached. They had failed to engage with the Applicant at any point during the period of rent arrears. They had not replied to any correspondence about their arrears and had only contacted the Applicant's representatives on Monday 20 December, the same day as that on which they made contact with the CAB - suggesting that they were aware of the eviction proceedings. Credibility was an issue. The arrears had accumulated to a very high level over a very considerable period of time with, until very recently, no payments at all since April 2017. In any event, the suggested agreement was unrealistic given the amount of arrears. Accordingly, the Applicant was seeking the order for eviction and would not agree to any further delay

3. FINDINGS IN FACT

The parties entered into an Assured Tenancy for the property commencing 27 June 2014, which tenancy is ongoing. In terms of same, monthly rent is payable at the rate of £320 per month. As at the date of today's CMD and having regard to the Tribunal decision in associated case reference FTS/HPC/CV/21/2166, the Respondents were due and liable for arrears of rent up to 5 August 2021 in the sum of £24,835 together with any interest accrued thereon and any further sums accrued since then, under deduction of a recent payment of £320. No satisfactory proposals for payment of same had been made to the Applicant.

4. REASONS FOR DECISION

Having found that the Respondent was due and liable for arrears of rent in the sum referred to in the preceding paragraph, the Tribunal was of the view that Grounds 8, 11 and 12 founded upon by the Applicant in this application, had been established. Furthermore, that in view of said level of arrears which had accrued, it was just and reasonable to grant the order for possession now sought. Accordingly, it was content to make said order but, in view of the forthcoming festive holiday period, to afford the Respondents until the end of January 2022 before issuing same. The Tribunal suggested the Respondents make urgent contact with their local authority homelessness services. The First Respondent expressed her displeasure at the Tribunal's decision in very forthright terms before leaving the CMD abruptly.

5. DECISION

To make the order for possession sought by the Applicant.

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.


SR QUITHER

Legal Member/Chair

23 DECEMBER 2021

Date