

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) under Section 18 of the Housing (Scotland)
Act 1988**

Chamber Ref: FTS/HPC/EV/18/0681

**Re: Property at 226D Gordon House, North Deeside Road, Peterculter,
Aberdeen, AB14 0UQ ("the Property")**

Parties:

**Mr George Souter, Nostra Casa, Bucklerburn Road, Peterculter, Aberdeen,
AB14 0NN ("the Applicant")**

**Mrs Kirsty Clarke, 226D Gordon House, North Deeside Road, Peterculter,
Aberdeen, AB14 0UQ ("the Respondent")**

Tribunal Members:

Neil Kinnear (Legal Member) and Leslie Forrest (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 of the Property let on the
tenancy should be granted as sought in this application**

Background

This is an application dated 21st March 2018 brought in terms of Rule 65 (Application for order for possession in relation to assured tenancies) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant provided with his application copies of the short assured tenancy agreement, notice to quit, section 19 notice (form AT6), section 11 notice, and relevant executions of service. All of these documents and forms had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland) Act 1988*, and the procedures set out in that Act had been correctly followed and applied.

He submitted that the Respondent had a long history of non-attendance and non-cooperation with various authorities and in particular the Tribunal.

The Tribunal then rose to consider the request from the Respondent and the submissions by the Applicant opposing that request.

The overriding objective of the Tribunal is to deal with proceedings justly. This includes *inter alia* dealing with the proceedings in a manner which is proportionate to the complexity of the issues and the resources of the parties; ensuring, so far as practicable, that the parties are on equal footing procedurally and are able to participate fully in the proceedings; and avoiding delay, so far as compatible with the proper consideration of the issues in terms of Rule 2 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

Rule 28 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended allows the Tribunal discretion on an application by a party to adjourn a hearing on cause shown.

The Tribunal refused the Respondent's request to postpone for the following reasons:

- 1) The request was made very late, and the supporting letter from the GP provided at a point where it would not be considered until the morning of the hearing.
- 2) The letter from the GP is very unspecific. Notably, it does not express any view on the medical basis for the Respondent's condition, its authenticity, and nor does it indicate any prognosis as to when or if the Respondent might be fit to attend the Tribunal in future.
- 3) The Applicant was strongly opposed to the request. He submitted that the procedural history of this application showed repeated delaying tactics on the part of the Respondent. The delay in progressing this application was causing him considerable stress, and substantial financial hardship as a result of having to meet mortgage payments and other charges associated with the property in circumstances where he continued to not receive the rental payments for the property from the Respondent. The property was his sole source of income beyond his pension, he being 72 years of age and retired for 12 years.
- 4) The Tribunal noted that at the first Case Management Discussion on 20th June 2018, the Respondent refused to enter the room in which the Tribunal was sitting as a result of anxiety. The hearing was conducted with the Respondent listening to what was being said at the hearing from an adjoining waiting area by way of a mobile phone connection, and latterly by the Tribunal clerk shuttling between the Tribunal room and that adjoining waiting area to ask for the Respondent's responses to questions from the Tribunal after she indicated that she was no longer able to speak through the mobile phone connection.
- 5) The Tribunal suggested a continuation of the Case Management Discussion by conference call, as a result of the Respondent indicating through the Tribunal clerk that she felt that she was becoming too anxious to further

conditional fee agreements have been restricted, some litigants may have little option but to represent themselves. Their lack of representation will often justify making allowances in making case management decisions and in conducting hearings. But it will not usually justify applying to litigants in person a lower standard of compliance with rules or orders of the court. The overriding objective requires the courts so far as practicable to enforce compliance with the rules ...it is now well established that the fact that the applicant was unrepresented at the relevant time is not in itself a reason not to enforce rules of court against him ... The rules provide a framework within which to balance the interest of both sides. That balance is inevitably disturbed if an unrepresented litigant is entitled to greater indulgence in complying with them than his represented opponent. Any advantage enjoyed by a litigant in person imposes a corresponding disadvantage on the other side, which may be significant if it affects the latter's legal rights ... Unless the rules and practice directions are particularly inaccessible or obscure, it is reasonable to expect a litigant in person to familiarise himself with the rules which apply to any step which he is about to take...there cannot fairly be one attitude to compliance with rules for represented parties and another for litigants in person, still less a general dispensation for the latter from the need to observe them. If, as many believe, because they have been designed by lawyers for use by lawyers, the [rules of court] do present an impediment to access to justice for unrepresented parties, the answer is to make very different new rules ... rather than to treat litigants in person as immune from their consequences”.

- 11) It appears to the Tribunal that it has made reasonable allowances for the Respondent to allow her to participate in the proceedings. However, it would not be appropriate for the Tribunal to allow the Respondent not to comply with its Procedural Rules and to grant her greater indulgence in complying with them, which would create a corresponding disadvantage to the Applicant if it did so.
- 12) To grant a postponement in circumstances where the Respondent has failed to comply with an earlier direction to provide details from her GP of the nature of her condition and what steps the Tribunal might take to assist her in participating in these proceedings, and standing the previous procedural history of this case and the lack of any indication that a further postponement would result in her attendance on a subsequent date, the Tribunal considered that it would be unjust to continue this matter further and refused the request for postponement.

The Tribunal then proceeded with the hearing in the absence of the Respondent in terms of Rule 29 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, being satisfied that the requirements of Rule 24(1) have been duly complied with.

The Applicant and his daughter, Pauline Souter, a police forensic examiner based in Edinburgh both gave evidence. The Tribunal found them both to be credible and reliable witnesses. They gave their evidence in a clear and straightforward manner, and the Tribunal accepted the evidence which they both gave.

determining that the Ground is established is or was a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit.

The Applicant had submitted a document to the Tribunal ("Outstanding Rent Arrears as of 5 September 2018") with his application. This had been copied by the Tribunal to the Respondent. This specified Rent Amounts due for the period of November 2017 to September 2018 and notes payments received during the same period.

The Minute of Lease indicates at Clause 3.1 a due rent amount of £750.00 per calendar month to be paid by the Respondent and this amount is consistent with the amount due noted on the above referenced document as submitted to the Tribunal.

The gross amount of rent due for the period is therefore calculated as £8,250.00 (eight thousand two hundred and fifty pounds), being eleven months of rent due.

The Applicant stated that the only payments that had been paid to him were related to Housing Benefit payments paid as no sums had been paid by the Respondent to him directly. The Applicant had produced copies of Remittance Advice notices from Aberdeen City Council showing payments made relating to rent due for November and December 2017, January, May and July 2018. In total the payments made to the Applicant for these periods amounted to £3,193.33. The Tribunal was able to verify that the amounts shown on the Remittance Advice notices were consistent with this figure.

The Applicant in his submission had estimated that a further payment relating to August 2018 for £524.97 would be made by the Council before the date of this hearing, however the amount actually paid was £542.47.

The Tribunal was satisfied that these amounts were accurate and the Respondent had made no claim to the contrary.

As such, there is an amount of unpaid rent for the period noted of £4,514.20 (Four Thousand Five Hundred and Fourteen Pounds and Twenty Pence), being the difference between the amount due (£8,250) and the amount paid (£3735.80).

Analysis of the Remittance Advice notices supplied and the Applicant's submission showed that in each month of the period noted, a shortfall of rent remained unpaid. Additionally, for the period February 2018 to June 2018, no payments at all had been made. Included with his submissions, the Applicant provided evidence that Housing Benefit entitlement had been withdrawn from the Respondent on several occasions.

The Tribunal was therefore satisfied that rent payments had been persistently late or unpaid for significant periods of the tenancy, and that rent remains unpaid as at the date of the hearing (as well as the date of application).

The tenancy documentation makes reference at Clause 4.1 to a Tenancy Deposit of £750 to be paid by the Respondent prior to the date of entry, however the Applicant stated that only £700 had actually been paid and is placed on deposit with an approved Tenancy Deposit Scheme.

responsible for damage to the fabric of the Property and has breached the terms of the lease in that regard. She has failed to engage or participate in these proceedings.

The Tribunal has not been satisfied that rent is in arrears as a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit in terms of section 18(4A) of the Act. There has been no evidence to establish any such reason for rent arrears.

For the above reasons, the Tribunal considers it reasonable to make an order for possession and shall do so.

Decision

In these circumstances, the Tribunal will make an order for possession of the Property let on the tenancy as sought in this application.

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.

Neil Kinnear

Legal Member/Chair

06/09/18

Date