



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18(1) of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/19/1058

Re: Property at 41/1 Lochrin Place, Edinburgh, EH3 9RB (“the Property”)

Parties:

Mrs Jennifer Graham, Broomlands House, Beattock, Moffat, Dumfries, DG10 9PG (“the Applicant”)

Ms Maud Billion, 41/1 Lochrin Place, Edinburgh, EH3 9RB (“the Respondent”)

Tribunal Members:

Alastair Houston (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession be made in favour of the Applicant.

1. Background

- 1.1 This is an application under Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”) being an application for an order for possession of a property let on an assured tenancy. The application was accompanied by copies of the written tenancy agreement between the parties, a statement of the rent account, a notice (“Form AT6”) under Section 19 of the Housing (Scotland) Act 1988 (“the 1988 Act”) and a notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
- 1.2 The Applicant was seeking an order for possession on the basis of Grounds 8, 11 and 12 of Schedule 5 of the 1988 Act. The Respondent had, through her representative Shelter Scotland, submitted a letter as written representations.

2. The Case Management Discussion

- 2.1 The Case Management Discussion took place on 9 July 2019. The application was conjoined with the connected application FTS/HPC/EV/19/1059, being an application for civil proceedings arising out of the assured tenancy, namely payment of the rent alleged to be outstanding. The two applications were dealt with together at the Case Management Discussion.
- 2.2 The Applicant was represented by Mr Di Rollo of Coulters Lettings Ltd. The Respondent was personally present. Shelter Scotland had previously intimated that they would not be attending on her behalf.
- 2.3 Mr Di Rollo firstly confirmed that he believed that both applications were insisted upon. He had spoken to the Applicant recently who had advised that she wished to proceed. A payment had been received from the local authority on 8 July 2019, reducing the outstanding balance of arrears. The exact figure could be confirmed with his accounts department.
- 2.4 The Respondent confirmed that she understood the basis of both applications. She accepted that rent had gone unpaid. Her monthly rent due under the tenancy agreement was £775.00. She believed that £2144.00 had been paid by the local authority by way of housing benefit on 8 July 2019 however she understood the present arrears to total approximately £5600.00.
- 2.5 She advised that the arrears accrued during the latter part of 2018. She and her partner, with whom she resides, had been running a business. This failed in September 2018. She had accrued a large amount of debt and, additionally, had had family issues.
- 2.6 In response to questions from the Legal Member, the Respondent confirmed she had been receiving Income Support from 19 December 2018. Housing Benefit had also been in payment prior to this date, since approximately September 2018. She received the full rental charge by way of Housing Benefit. This had been paid to her and she had not paid it over to her landlords or their agents due to her financial difficulties. She and her partner resided with their three children aged 6, 4 and 3.
- 2.7 She had not made an offer of payment of the arrears as she had been unable to afford to. Her current income was Income Support and associated child benefits. Housing Benefit was in payment and would be paid from next month.
- 2.8 At this point, the Legal Member adjourned for a short period in order for Mr Di Rollo to confirm the amount of rent outstanding. Following this adjournment, Mr Di Rollo confirmed the total balance was £4838.83.

2.9 The Respondent confirmed that she accepted this amount was due. Mr Di Rollo advised that he had only spoken to the Applicant on 7 July 2019, prior to the payment being received from the local authority. The legal member adjourned for a further short period, having been minded to continue the Case Management Discussion for Mr Di Rollo to take firm instructions in light of the payment and for the parties to negotiate a resolution if possible. The adjournment was to allow a further date to be identified if needed.

2.10 Following the adjournment, Mr Di Rollo advised he had spoken with the Applicant who had confirmed that, despite the payment received from the local authority, she was insisting on both applications. The Respondent, on advice from Shelter Scotland, queried the rule under which the application was made. The Legal Member confirmed it had been made under Rule 65 of the Rules. The Respondent also highlighted that she believed that housing benefit had not been paid for three months from April 2019, albeit it had started again, due to the letting agents advising the local authority that the Respondent was not residing at the Property. Mr Di Rollo had no knowledge of this.

3. Reasons For Decision

3.1 The Legal Member proceeded on the basis of the parties' submissions and the papers lodged by both parties. It was the opinion of the Legal Member that no hearing was required. The amount of rent outstanding was not in dispute. The Respondent conceded that, for a period of in excess of three months in the latter part of 2018, she had received the full rent charge by way of housing benefit and had failed to pay it to the Applicant.

3.2 Ground 8 of Schedule 5 of the 1988 Act states as follows:-

Both at the date of the service of the notice under section 19 of this Act relating to the proceedings for possession and at the date of the hearing or the date of the case management discussion, whichever is the earlier, at least three months' rent lawfully due from the tenant is in arrears.

Sections 18(3) and (3A) of the 1988 Act state as follows:-

(3) If the First-tier Tribunal is satisfied that any of the grounds in Part I of Schedule 5 to this Act is established then, subject to subsections (3A) and (6) below, the Tribunal shall make an order for possession.

(3A) If the First-tier Tribunal is satisfied—

*(a) that Ground 8 in Part I of Schedule 5 to this Act is established; and
(b) that rent is in arrears as mentioned in that Ground as a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit,*

the Tribunal shall not make an order for possession unless the Tribunal considers it reasonable to do so

Ground 8 is one of the Grounds in Part 1 of Schedule 5 of the 1988 Act. At the date of service of the Form AT6, being 15 March 2019, the Respondent owed arrears of rent totalling £4650.00, far in excess of the equivalent of three month's rent. As of the Case Management Discussion, the Respondent accepted the total balance was £4838.83. Ground 8 of Schedule 5 of the 1988 Act was therefore established. Even if the Respondent's position regarding the issues with housing benefit from April 2019 were accepted, it appeared that this was now back in payment and she had conceded that housing benefit had been in payment for a number of months in 2018 and that she had not paid this to her landlord. It was noted by the Legal Member that the tenancy agreement between the parties made provision for it to be brought to an end prior to its *ish* on the basis of all of Grounds 8, 11 and 12 of Schedule 5 of the 1988 Act.

- 3.3 The Legal Member was of the opinion that there was nothing material in dispute between the parties. The amount of rent outstanding was agreed. The Legal Member considered that a Hearing was not necessary in respect of the Application and granted the order in favour of the Applicant. It was the opinion of the Legal Member that in excess of three month's arrears could not be said to be a consequence of a delay or failure in payment of the relevant housing benefit and, accordingly, the Tribunal was required to make an order for possession in favour of the Applicant in the absence of a stateable defence of the part of the Respondent.

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.

Alastair Houston

Legal Member/Chair

Date

9 July 2019