

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(1) of the Housing
(Scotland) Act 1988**

Chamber Ref: FTS/HPC/EV/18/2897

Re: Property at 33/6 Craigentenny Road, Edinburgh, EH7 6NB (“the Property”)

Parties:

Ms Rebecca Venters, 206 Dean Road, Bo’ness, Falkirk, EH51 0HH (“the Applicant”)

Miss Samantha Gowers, 33/6 Craigentenny Road, Edinburgh, EH7 6NB (“the Respondent”)

Tribunal Members:

**Colin Dunipace (Legal Member)
Ann Moore (Ordinary Member)**

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for eviction and recovery of possession be granted.

Background

1. This is an Application in terms of section 18(1) of the Housing (Scotland) Act 1988 and Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. Possession of the property is sought on the basis of Grounds 8, 11 and 12 of Schedule 5 to the Act.
2. This Application was lodged on 26 October 2018, and in support of this Application the following documents were also lodged;
 - a) A copy of the Tenancy Agreement dated 17 December 2014
 - b) Notice to Quit dated 31 May 2018 and execution of service dated 4 June 2018
 - c) AT6 Notice dated 8 October 2018 and execution of service (Track and Trace recorded postal delivery) dated 10 October 2018
 - d) Form 11

e) Email to local authority intimating Form 11

3. Possession of the property was sought under Grounds 8,11 and 12. The Application states that in terms of Clause 1.1- of the Tenancy Agreement that the Respondent undertook to pay rent to the Applicants in the sum of £650 per month, and that the Respondent had fallen into arrears of rent. The Application stated that as at the date of the raising of proceedings that the outstanding sum due in respect of rent was in the sum of £3,269.40.

Procedural History

1. This matter called as a Case Management Discussion on 8 January 2019 in George House, George Street, Edinburgh. The Applicant was represented at that time by Ms Swanson of Messrs TC Young Solicitors. The Respondent was present at this Discussion but was not represented. At that time the Respondent had indicated that there was an outstanding Housing Benefit claim, and that this claim included an application in respect of the arrears of rent. In these circumstances a full Hearing was fixed for 8 March 2019.

The Hearing

1. At the Hearing the Applicant was not present but was represented by Ms Morrison of Messrs TC Young, Solicitors. The Respondent was personally present at this Hearing.
2. On behalf of the Applicant, Ms Morrison moved that the Order be granted. In support of this Application Ms Morrison stated that possession was sought on mandatory Ground 8, namely that as at the date of the raising of the Application, and that as at the date of the Hearing that there was a sum due in respect of arrears of rent in excess of 3 months rent. Ms Morrison indicated that the current amount due in respect of arrears of rent was in the sum of £3,361.50. Ms Morrison also advised that whilst the Applicant was now receiving payments of Housing Benefit in the full sum of the rent due, and that these payments had been received since November 2018, that no payments had been made in respect of the outstanding arrears of rent.
3. The Respondent indicated to the Tribunal that she continued to reside at the property with her husband and three children. The Respondent advised that she had submitted a claim for Housing Benefit, and lodged a statement from Edinburgh City Council dated 26 October 2018 showing that her claim for Housing Benefit had been granted. The Respondent advised that she had understood that her claim for Housing Benefit had included a claim in respect of the arrears due, but confirmed that having discussed this with the Council that she ascertained that they had no record of this claim and that any such claim was now time-barred. The Respondent confirmed that she was unable to make any proposals in respect of the outstanding arrears of rent.

Findings in Fact

1. The parties entered into a Short Assured Tenancy on 17 December 2015. The monthly rent in respect of the subjects was in the sum of £650 per calendar month.
2. As at the date of service of the AT6 that the rental arrears exceeded 3 months rent.
3. As at the date of the Hearing the rental arrears were in the sum of £3361.50.
4. That the arrears of rent were not due to any delay or failure in payment of a relevant benefit and that as at the date of the Hearing that there was no outstanding claim in respect of these arrears.

Reasons for Decision

The Tribunal considered the relevant evidence, both in terms of the written submission made by the parties and also the oral submissions made at the Hearing. The Tribunal considered whether it had been established that as at the date of the service of the AT6 and at the date of the Hearing that at least 3 months rent was outstanding. Having considered the available evidence the Tribunal was so satisfied. The Tribunal also noted that Ground 8 was a mandatory Ground for possession in respect of which the Tribunal has no discretion unless it was satisfied that the rent in arrears is as a consequence of a delay or failure in the payment of relevant housing benefit. The Tribunal was not satisfied that this applied in the present case and was accordingly satisfied on the basis of the available evidence that the terms of Ground 8 had been satisfied and that the Order should be granted as sought. The decision of the Tribunal was unanimous in this regard.

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.

C.Dunipace

Legal Chair

Date

8/3/19