



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/19/1319

Re: Property at 351 1/R Clepington Road, Dundee, DD3 8AY (“the Property”)

Parties:

Mrs Rosalind Prophet or Herriots, 4/287 Bank Street, South Melbourne, Vic 3205, Australia (“the Applicant”)

Ms Danielle Campbell, 351 1/R Clepington Road, Dundee, DD3 8AY (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member)

Decision

The First-tier Tribunal for Scotland has decided to grant an order against the Respondent for possession of the Property under section 18 of the Housing (Scotland) Act 1988. **The order will be issued to the Applicant after expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent.**

The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in their name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application dated 1 May 2019 the Applicant’s solicitor applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for

an order for recovery of possession of the Property under Section 18 of the Housing (Scotland) Act 1988.

2. On 31 May 2019, the Tribunal accepted the application under Rule 9 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Regulations").
3. On 13 June 2019, the Tribunal enclosed a copy of the application to both parties and invited the Respondent to make written representations to the application by 1 July 2019. The Tribunal also advised parties that a Case Management Discussion under Rule 17 of the Regulations would proceed on 24 July 2019. This paperwork was served on the Respondent by Sarah Ferguson, Sheriff Officer, Perth on 17 June 2019 and a certificate of execution was received by the Tribunal.
4. The Respondent did not make any written representations by 1 July 2019.

Case Management Discussion

5. The Tribunal proceeded with the Case Management Discussion on 24 July 2019. The Applicant was represented by Mrs Royle, Messrs Baillie Shepherd, Solicitors. Initially there was no appearance by or on behalf of the Respondent. Ms Robertson from Rockford Ltd, the Applicant's letting agent attended as an observer.
6. The Tribunal had before it the Application with an AT5, a Short Assured Tenancy Agreement between the Applicant and the Respondent, signed and dated 28 September 2017, a continuing Short Assured Tenancy Agreement signed and dated 3 August 2018, a rent statement to 28 April 2019, an AT6 Notice under Section 19 of the Housing (Scotland) Act 1988 dated 15 March 2019 and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Dundee City Council dated 1 May 2019.
7. The action was conjoined with an application for payment of rent arrears against the Respondent as tenant and her grandmother as guarantor which proceeded under reference FTS/ HPC/CV/19/1363. The Case Management Discussion immediately followed on from the Case Management Discussion under the arrears action.
8. Mrs Royle moved the Tribunal to grant an order for eviction under Section 18 of the Housing (Scotland) Act 1988. The Applicant and the Respondent entered into a Short Assured Tenancy Agreement dated 28 September 2017

and a continuing Short Assured Tenancy on 3 August 2018 in relation to the Property. Under these agreements, the Respondent agreed to pay monthly rent of £575 to the Applicant. She submitted the Respondent had fallen into arrears of rent and that the arrears are increasing and currently stood at £4441.65. She further explained that the Applicant's letting agent had attempted on numerous occasions to contact the Respondent after she stopped paying rent. The last payment of £70 was made on 15 April 2019. Payments before then had been sporadic and did not cover the full amount of the rent due.

9. Mrs Royle advised the Tribunal that Dundee North Law Centre had written to her firm on behalf of the Respondent on 28 March 2019. Mrs Royle explained that this letter contained an offer to pay the arrears by instalments, but this had been refused. Neither she nor her client's agents had heard anything further. Previous offers had been made, but not adhered to.
10. Mrs Royale referred the Tribunal to the Notice of Intention to Raise Proceedings for Possession served on the Respondent on 15 March 2019 (AT6 Notice) under Section 19 and Grounds 8, 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988. In terms of the AT6 Notice, proceedings could not be raised to repossess the Property before 2 April 2019. The Tribunal noted the AT6 Notice was served by Recorded Delivery post on 15 March 2019 and had been signed for by the Respondent on 16 March 2019. The requisite Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 had been sent to Dundee City Council on 1 May 2019. As the arrears were over 3 months both at the date of the application to the Tribunal on 1 May 2019 and at the date of the Case Management Discussion, Mrs Royale moved for an order for eviction under Ground 8 of Schedule 5 of the 1988 Act being a compulsory ground of repossession.
11. After her submission, but before the Tribunal had given its decision in either action, both the Respondent and her grandmother who was the Second Named Respondent in the arrears action appeared. They were flustered and anxious they were late and explained they had been delayed in traffic and had been sitting in the waiting room for over 10 minutes.
12. Despite the Tribunal having heard the Case Management Discussions in both cases, in the interest of justice, the Respondent having now appeared, the Tribunal proceeded again with the Case Management Discussion after proceeding again with the Case Management Discussion under the arrears action, to give the Respondent an opportunity to participate in the proceedings.

13. As the Respondent had admitted the level of arrears of £4441.65 in the arrears action and as she had been candid in stating to the Tribunal that she was not in a position to pay the monthly rent of £575, the Tribunal explained to the Respondent that the Applicant was seeking her eviction from the Property on a compulsory ground of eviction, namely Ground 8, as she was in arrears of rent of more than three months both at the date of the Application and at the date of the Case Management Discussion. The Respondent accepted the position.
14. The Tribunal however explained it needed to consider whether the failure to pay the rent which formed the basis of the action under Ground 8 of Schedule 5 of the Housing (Scotland) Act 1988 was as a result in a delay or failure of payment of Housing Benefit or Universal Credit. The Respondent explained she worked as a care assistant on a zero hours contract. A couple of months ago she had gone online to enquire about Universal Credit. She explained the Department of Works and Pensions ("DWP") would contact her when she could apply for Universal Credit. The DWP had not been in contact with her. When asked by the Tribunal as to whether she had chased this up with the DWP or made enquiries with the DWP she stated she had not. When asked about whether she had sought money advice, she stated she had not.
15. Mrs Royle repeated her submissions made before the Respondent had appeared, namely the Respondent was in more than 3 months in arrears and had been since December 2018. Previous offers to allow the Respondent to clear the arrears had been made to the Respondent but not adhered to. The last offer was by Dundee North Law Centre on 28 March 2019 which followed the service of the AT6 and which offer had been rejected by the Applicant. The last payment was £70 on 15 April 2019. No further payments had been made. Despite the Respondent having enquired online about Universal Credit, she had not applied for Universal Credit. Meanwhile the arrears were accruing at the rate of £575 per month with the Respondent not being able to pay and Mrs Royle's client being put to considerable expense. The AT6 had been served on the basis of the provisions of the tenancy agreement. She submitted therefore that the Applicant had established a case under Ground 8 of Schedule 5 of the Housing (Scotland) Act 1988 and that the arrears had not been caused by a delay or failure to pay Housing Benefit or Universal Credit. The Tribunal had to grant the order.
16. The Tribunal again explained the significance of the mandatory ground of repossession to the Respondent. The Respondent explained she was fully expecting to be evicted from the Property. If the order were granted this would allow her to approach Dundee City Council with a view to being rehoused.

Findings in Fact

17. By way of a Short Assured tenancy agreement between the Applicant and the Respondent signed and dated 28 September 2017 and a continuing Short Assured Tenancy Agreement between the Applicant and the Respondent signed and dated 3 August 2018, the Applicant agreed to Lease the Property at a monthly rent of £575 to the Respondent. The Respondent is liable to pay £575 per month to the Applicant in terms of Clause 3 of both tenancy agreements. Both agreements provided for the tenancy to be brought to an end on Ground 8 of Schedule 5 of the Housing (Scotland) Act 1988.
18. The Respondent had fallen into arrears of rent. The last payment to account was £70 on 15 April 2019. The Respondent has made no payments of rent since. Current arrears are £4441.65. The Respondent had been over 3 months in arrears since December 2018.
19. The arrears were not as a consequence of a delay or failure of Housing Benefit or Universal Credit.
20. On 15 March 2019, an AT6 Notice was served on the Respondent by Recorded Delivery post in terms of Section 19 and founding on Grounds 8, 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988.
21. Both at the date of service of the AT6 and at the date of the Case Management Discussion, the Respondent was more than three months in arrears of rent.
22. A Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 was served on Dundee City Council by way email on 1 May 2019.

Reasons for Decision

23. In terms of Section 18(3), subject to Sections 18(3A) and 18(6) of the Housing (Scotland) Act 1988, the Tribunal shall make an order for possession if satisfied that any of the Grounds of Possession as set out in Part I of Schedule 5 are established.
24. In terms of Section 18(3A) if the Tribunal is satisfied that Ground 8 is established and that the arrears are as a consequence of a delay or failure in the payment of relevant housing benefit or relevant Universal Credit, it shall not make an order unless it considers it reasonable to do so.

25. In terms of Section 18(6) of the Housing (Scotland) Act 1988, the Tribunal shall not make an order for repossession of an assured tenancy, not being a statutory assured tenancy, unless amongst other grounds, the ground of possession is Ground 8 and the terms of the tenancy allow for it to be brought to an end on the ground in question.
26. Ground 8 in Part I of Schedule 5 states *“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, at least three months’ rent lawfully due from the tenant is in arrears”*
27. The Tribunal considered the issues set out in the application. The Applicant’s solicitor provided evidence of non-payment of rent in the form of the rent statement and provided evidence that the Respondent had agreed to pay rent of £575 per month. The Respondent accepted she was liable to pay monthly rent of £575 and that she was in arrears amounting to £4441.65. The Tribunal was satisfied on the basis of the documents before it and the supporting oral submissions made on behalf of the Applicant that the Applicant in terms of Section 18(6) of the Housing (Scotland) Act 1988 was entitled to rely on Ground 8 of Schedule 5 of the 1988 Act which was written into the tenancy agreement.
28. The Tribunal was satisfied on the basis of the tenancy agreement, rent statement and the supporting oral submissions made on behalf of the Applicant and by the Respondent herself that the arrears were not as a consequence of a delay or failure in Housing Benefit or Universal Credit.
29. The Tribunal was satisfied the Respondent was at the date of the AT6 being served and at the date of the Case Management Discussion more than three month arrears of rent.
30. The Tribunal concluded that the Applicant had established a case under Ground 8 of Schedule 5 of the Housing (Scotland) Act 1988 and was entitled to repossession of the Property under Section 18 of the Housing (Scotland) Act 1988. Accordingly, the Tribunal granted the order 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.

S Evans

Legal/Member/Chair

Date

2 August 2019.