



**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/24/0522

Re: Property at 7 Lyne Terrace, Penicuik, EH26 8HF (“the Property”)

Parties:

Mr Douglas Millar, 8 Spylaw Park, Edinburgh, EH13 0LS (“the Applicant”)

Miss Emma Fraser, 7 Lyne Terrace, Penicuik, EH26 8HF (“the Respondent”)

Tribunal Members:

Gabrielle Miller (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 recovery and possession should be granted in favour of the Applicant. The Order is superseded until 21st June 2024.

Background

1. This case should be read in conjunction with FTS/HPC/CV/23/3391.
2. An application was received by the Housing and Property Chamber dated 11th January 2024. The application was submitted under Rule 65 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on the Respondent not adhering to grounds 11 and 12 of the Housing (Scotland)(Act) 1988 (“the Act”).
3. On 7th February 2024, the Applicant’s representative emailed the Housing and Property Chamber attaching a rent account for the period 1st March 2027 to 1st February 2024 showing outstanding arrears of £5823.22.

4. On 12th February 2024, all parties were written to with the date for the Case Management Discussion (“CMD”) of 20th March 2024 at 10am by teleconferencing. The letter also requested all written representations be submitted by 4th March 2024.
5. On 14th February 2024, sheriff officers served the letter with notice of the hearing date and documentation upon the Respondent by letterbox service. This was evidenced by Certificate of Intimation dated 14th February 2024.
6. On 21st February 2024, the Respondent emailed the Housing and Property Chamber attaching a copy of a letter showing her entitlement to Housing Benefit from the DWP. This showed that there was to be a payment of £1186.78 to be paid on 17th March 2024. The ongoing entitlement from 25th December 2023 to 28th January 2024 at £183.82 per week. Then an entitlement from 29th January 2024 at a rate of £201.93. From this later date a cycle of payments of £807.68 per four weeks. This submission only had page one out of seven attached.
7. On 23rd February 2024 the Applicant’s representative emailed the Housing and Property Chamber asking for the Respondent to provide the remaining six pages of the DWP letter.
8. On 26th February 2024 a Time To Pay Direction (“TTPD”) was lodged by the Respondent. It offered £10 per week. It noted that the Respondent was unemployed and in receipts state benefits. The TTPD was dated 13th February 2024.
9. On 8th March 2024 the Applicant’s representative emailed the Housing and Property Chamber refusing the TTPD due the length of time that it would take to pay the outstanding amount.

Case Management Discussion

10. A CMD was held on 20th March 2024 at 10am by teleconferencing. The Applicant was not present but was represented by Mr Lee Simpson and Mr Matthew Wilcken from Saltouns Property Letting. The Respondent was present and represented herself.
11. Mr Simpson said that the arrears rose to £6317.84. There has been a payment from the DWP for £1186.78. The arrears are now reduced to £4951.06. He said that the ongoing rent payments are now being received. He said that they were short of the rent each month. The Tribunal noted that the payments are four weekly so this would need to be converted to a monthly rate to allow a comparison to be made. When comparing directly (multiplying the four weekly amount by four then multiplying by 52 and then dividing by 12) the rent is being paid by DWP at a rate of £874.99. This leaves a shortfall of 51p per month that the Respondent needs to pay to prevent arrears accruing further.
12. Mr Simpson said that the Respondent has a history for missing payments in the lead up to Christmas or directly after Christmas. He said that they have sent Pre Action Requirement letters monthly. This had referenced sources of money

advice and benefits advice. Mr Simpson said that in July 2023 the Respondent's benefit payments had stopped.

13. Mr Simpson said that the TTPD, in the conjoined case, was refused as it would take around 13 years to repay. The Applicant would consider £100 per month if that was an affordable option for the Respondent.
14. The Respondent said that she has not yet had money advice. She has spoken to Citizens Advice Bureau ("CAB") who have sent out forms for her to fill in to help her assess her income. The Respondent said that she has seven children. Her eldest son, who is 31, moved back into her house last year after a relationship breakdown. He was working and this affected her benefits. She also had her 25 year old son living with her. He was not signing on or working although he could not contribute to her rent. This also caused problems with her benefits. The Respondent has her 20 year old daughter living with her. Her daughter is claiming benefits. She has a 17 year old son who is away at college but returns at the weekends and during the holidays. In addition the Respondent's three youngest children are living with her. They are aged 13, 12 and 10. The 13 year old and 12 year old are at high school together. They are in the same year. Both are profoundly deaf and are supported in mainstream schooling. They have cochlea implants. Her youngest child is at primary school.
15. The Respondent said that she was not in a position to oppose an order being granted.
16. The Respondent has spoken to her local authority. She has been on their housing list for many years. She is to meet with them in the week following this CMD to discuss the outcome. She is looking to find suitable accommodation for her and her three youngest children.
17. The Respondent said that she felt that she could not afford this property in the long term. She does not oppose an order being granted but does not know where she is going to go when she has to leave it. She does not dispute the level of the arrears. She has support from Families First. She is hoping to be rehoused in the same area to allow her children to continue at their schools. Her children's secondary school is to write a letter of support. She did not lodge the remaining pages of her benefit letter as they related to her Universal Credit entitlement.
18. The Tribunal was content that it was appropriate to grant an order for eviction.

Findings in Fact and reasons for decision

19. The parties entered into a Short Assured Tenancy on 5th April 2013 until 31st October 2013 and on a month to month basis thereafter. An AT5 was signed by both parties on the 3rd April 2013. The rent payments of £800 are due by the first day of each month. On or around 1st August 2023 the rent was increased to £850 per month.

20. The Respondent has persistently not made rent payments. There have been more than 3 missed payments. The amount outstanding has risen to £4951.06, beyond that which was sought in the application which was £3461.12.
21. The Respondent's housing benefit has only been sorted in recent weeks. The changes have been as a result of her older children moving in and out of the Property.
22. Two of the Respondent's children are profoundly deaf. They attend mainstream secondary school together. Moving schools at this stage of the term may impact them particularly as there will no doubt be support measures to be put in place within the school. The Tribunal supersedes the Order to allow for the 14 day notice to remove to be served once the school term has ended. This is in the interest of justice. The rent charge is being fully covered by the Respondent's benefits save for 51p per month.
23. The arrears due to the Applicant amounts to £4951.06. An order for this amount was made in the conjoined case. The Respondent admits the amount claimed by the Applicant.
24. The Respondent is not opposing an order being granted.
25. There were no issues of reasonableness before the Tribunal that it considered would prevent an order being granted.

Decision

26. The Tribunal found that grounds 11 and 12 have been established and the granted an order in favour of the Applicant. The Applicant is entitled to for an Order of for recovery of possession. The Order is superseded until 21st June 2024.

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.



20th March 2024

Legal Member/Chair

Date