



**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 Section**

Chamber Ref: FTS/HPC/EV/24/2527

Re: Property at 137 Broomfield Crescent, Edinburgh, EH12 7LU (“the Property”)

Parties:

Mactaggart & Mickel, 1 Robertson Street, Glasgow, Glasgow City, G2 8JB (“the Applicant”)

Ms Ashley Mackay, 137 Broomfield Crescent, Edinburgh, EH12 7LU (“the Respondent”)

Tribunal Members:

Mary-Claire Kelly (Legal Member) and Angus Lamont (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for eviction.

Background

1. By application dated 31 May 2024 the applicant seeks an order for eviction relying on ground 11 (persistent delay in paying rent) and ground 12 (rent arrears) both in schedule 5 of the Housing (Scotland) Act 1988. The application was conjoined with application reference FTS/HPC/CV/24/2530 seeking an order for payment in respect of outstanding rent arrears.
2. The following documents were submitted with the application:
 - Short assured tenancy agreement
 - Pre action letters to the respondent
 - Form AT6 with proof of service

- Notice to quit with proof of service
 - Notice under section 11 of the Homelessness Etc. (Scotland) Act 2003.
 - Rent account from 1 February 2022 to November 2024
3. A case management discussion (“cmd”) was assigned for 14 November 2024

Case management discussion – 14 November 2024- teleconference

4. The applicant was represented by Ms Young, Letting Agent, DJ Alexander Lettings Ltd. The respondent was not in attendance. The respondent had been served with papers by Sheriff Officers by letterbox delivery on 9 October 2024. The Tribunal was satisfied that that she had been properly notified of the cmd and proceeded in her absence in terms of rule 29.
5. Ms Young sought an order for possession. She referred to the updated rent account which had been lodged in advance of the cmd. This showed that arrears had increased from £3361.50 when the application had been submitted to £7709.15 at 1 November 2024. The rent account showed that no payments had been received from the respondent since April 2024. The account also showed that the account had been in arrears since February 2022.
6. Ms Young advised that the respondent continued to reside in the property. She stated that the letting agents had made continued efforts to engage with her to discuss the rent arrears and enter into a repayment arrangement. She stated that in addition to the 2 pre action letters which had been lodged dated 5 January 2024 and 5 February 2024 the letting agents had been contacting the respondent regularly to ask her to discuss the arrears situation. Ms Young stated that as part of the standard debt collection processes text messages would have been sent to the respondent. She would also have received visits and telephone calls with a view to resolving the situation. Ms Young stated that the letting agents had contacted universal credit in March 2024 to check whether it might be possible to have any benefits paid directly to the applicant. This was refused and it appeared that no housing benefits were in payment. Ms Young advised that there had been no contact with the respondent since February 2024.

7. Ms Young stated that as far as the letting agents were aware the respondent resided alone in the property.

Findings in fact and law

8. Parties entered into a short assured tenancy agreement with a commencement date of 14 July 2010.
9. Monthly rent due in terms of the agreement is £731.51.
10. A valid notice to quit and AT6 (notice of proceedings of possession) were served on the respondent on 28 February 2024.
11. The AT6 specified that the applicant intended to raise proceedings for eviction relying on grounds 11 and 12.
12. Rent arrears as at the date the application was submitted amounted to £3361.50.
13. Rent arrears as at the date of the cmd amounted to £7709.15.
14. The respondent has been in arrears of rent since February 2022.
15. The last rent payment received from the respondent was in April 2024.
16. The applicants' agents have made regular attempts to engage with the respondent to discuss her rent arrears.
17. The respondent has failed to respond to the applicant's agents' correspondence, text messages, visits and telephone calls.
18. The applicant has complied with the pre-action protocol as required in terms of section 18 (4A) of the Housing (Scotland) Act 1988 in respect of grounds 11 and 12.
19. It is reasonable to grant an order for eviction

Reasons for the decision

20. Rule 18 states:

Power to determine the proceedings without a hearing

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

21. The Tribunal was satisfied that having regard to the undisputed facts of the case it was able to make a determination and that it was not contrary to parties' interest to do so at the cmd without the need for a further hearing.

22. The Tribunal took into account the written and oral submissions and the various documents lodged by the applicant.

23. The Tribunal was satisfied that the form AT6 which had been produced complied with the requirements of section 19 of the 1988 Act.

24. Ground 11 in schedule 5 of the Housing (Scotland) Act 1988 states that it is a ground for recovery of possession:

whether or not any rent is in arrears on the date on which proceedings for possession are begun, the tenant has persistently delayed paying rent which has become lawfully due.

25. Ground 12 in schedule 5 of the Housing (Scotland) Act 1988 states that it is a ground for recovery of possession if:

Some rent lawfully due from the tenant—

(a) is unpaid on the date on which the proceedings for possession are begun; and

(b)except where subsection (1)(b) of section 19 of this Act applies, was in arrears at the date of the service of the notice under that section relating to those proceedings.

30. Section 18 of the 1988 Act further specifies:

(4)If the First-tier Tribunal is satisfied that any of the grounds in Part I or II of Schedule 5 to this Act is established, the Tribunal shall not make an order for possession unless the Tribunal considers it reasonable to do so.

(4A)In considering for the purposes of subsection (4) above whether it is reasonable to make an order for possession on Ground 11 or 12 in Part II of Schedule 5 to this Act, the First-tier Tribunal shall have regard, in particular, to]—

(a)]the extent to which any delay or failure to pay rent taken into account by the Tribunal in 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, and

(b)the extent to which the landlord has complied with the pre-action protocol specified by the Scottish Ministers in regulations.

26. The Tribunal determined that grounds 11 and 12 were established in respect of the level and duration of rent arrears.

27. In relation to question of reasonableness the Tribunal determined that the applicant had complied with the pre-action requirements. The Tribunal made this determination taking into account the pre action requirements letters which had been produced. The Tribunal also had regard to the Ms Young's submissions at the cmd setting out that the letting agents attempts to engage with the respondent including sending text messages, telephoning and visiting the property.

28. The Tribunal was satisfied that the arrears amounted to £7709.15 as at the date of the cmd. The respondent had not lodged any information which sought to demonstrate that the arears were in any part due to issues with benefits. The

information provided by Ms Young in relation to the application for direct payment of benefits suggested that universal credit housing payments were not in place.

29. The Tribunal took into account the information provided by Ms Young. The Tribunal noted the high level of arrears, which continued to rise and that no payment had been made by the respondent since April 2024. There had also been no contact from the respondent since February 2024.
30. The Tribunal gave particular weight to the fact that the respondent had not taken any steps to oppose the application or lodge a defence.
31. The Tribunal gave weight to the fact that the respondent had resided in the property for 14 years but in the absence of any opposition to the application and taking into account the high level of arrears the Tribunal considered that this factor did not outweigh the factors in favour of granting an order.
32. In the foregoing circumstances the Tribunal determined that it was reasonable to grant an order for eviction.

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.

Mary Claire Kelly

Legal Member/Chair

14 November 2024

Date