



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/19/1542

Re: Property at 81 Buttars Road, Dundee, DD2 4LP (“the Property”)

Parties:

Mr John Hume, The Business Centre, Dundee Airport, Riverside Drive, Dundee, DD2 1UH (“the Applicant”)

Mrs Audrey Robbins, 81 Buttars Road, Dundee, DD2 4LP (“the Respondent”)

Tribunal Members:

Ruth O’Hare (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for repossession against the Respondent.

- 1 By application dated 21 May 2019 the Applicant sought an order for repossession of the property against the Respondent. The Applicant submitted the following documentation in support of the application:-
 - (i) Copy Tenancy Agreement between the Applicant and Respondent dated 8th and 11 June 2015;
 - (ii) Form AT6 dated 16th April 2019 citing grounds 8 and 11 of Schedule 5 of the Housing (Scotland) Act 1988 and stating that proceedings would not be raised before 17th May 2019;
 - (iii) Notice to Quit dated 16th April 2019;
 - (iv) Proof of service of the above Notices by recorded delivery;
- 2 In response to a request from the Tribunal the Applicant subsequently provided a full rent statement and Notice served upon Dundee City Council under section 11 of the Homelessness (Scotland) Act 2003. The Applicant

further provided written consent from the heritable proprietor of the property Kerry Busfield that he was authorised to let the property on her behalf.

- 3 By Notice of Acceptance of Application dated 30th August 2019 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 17th October 2019.
- 4 A copy of the application paperwork together with notification of the Case Management Discussion was served on the Respondent by Sheriff Officers on 11th September 2019.
- 5 By letter dated 10th October 2019, Dundee North Law Centre intimated to the Tribunal on behalf of the Respondent that neither they nor the Respondent would be attending the Case Management Discussion and would not be disputing the terms of the application.

The Case Management Discussion

- 6 The Case Management Discussion took place on 17th October 2019. The Applicant was in attendance. The Respondent did not attend and the Tribunal took note of the written representation from her agent confirming that she would not be disputing the terms of the application. The Tribunal therefore considered it was able to continue with the Case Management Discussion in the absence of the Respondent.
- 7 Mr Hume confirmed that the arrears of rent as at the date of the Case Management Discussion amounted to £4592.60. He advised that he had received a call from Dundee City Council and had been asked if the Respondent could remain in the property but he was unwilling to allow this in light of the history of arrears. It appeared that the Respondent was seeking to be rehoused by the local authority.

Findings in Fact and Law

- 8 The parties entered into a Short Assured Tenancy Agreement in respect of the property dated 8th and 11th June 2015. The term of the tenancy was 18th June 2015 to 17th June 2016 and annually thereafter.
- 9 The Short Assured Tenancy Agreement makes provision for the tenancy to be terminated on any of the grounds for repossession as set out in Schedule 5 of the Housing (Scotland) Act 1988 ("the 1988 Act")
- 10 In terms of Clause 2 of the said Tenancy Agreement the Respondent is due to pay rent of £630 per month.

- 11 On 16th April 2019 the Applicant sent a Form AT6 Notice of Intention to Raise Proceedings for Possession by recorded delivery to the Respondent. The Form AT6 cited grounds 8 and 11 of Schedule 5 of the 1988 Act by Sheriff Officers.
- 12 As at the date of service of the Form AT6, arrears in the sum of £3298 were outstanding.
- 13 As at the date of the Case Management Discussion, arrears in the sum of £4592.60 are outstanding.
- 14 The arrears are not the result of any failure of payment of housing benefit or its equivalent.

Reasons for Decision

- 15 The Tribunal was satisfied that it was able to continue with the Case Management Discussion in the absence of the Respondent. The Tribunal took into account the response from Dundee Law Centre on the Respondent's behalf which confirmed that she would not be disputing the application and would not be attending the Case Management Discussion.
- 16 The Tribunal was further satisfied that it was able to make a determination of the application at the Case Management Discussion and that to do so would not be prejudicial to the interests of the parties.
- 17 In this case the Applicant sought repossession on grounds 8 and 11 of the Housing (Scotland) Act 1988 ("the 1988 Act"). The Respondent had been properly served with a Form AT6 giving notice of the Applicant's intention to raise proceedings on those grounds
- 18 The Tribunal further accepted that the grounds relied upon were set out in the Tenancy Agreement and there was no requirement therefore in terms of section 18(6) of the 1988 Act for the Applicant to terminate the contractual tenancy between the parties prior to raising proceedings. The Tribunal did not therefore have to make a determination on the validity of the Notice to Quit.
- 19 The Tribunal therefore considered whether the grounds relied upon had been met. Ground 8 is a mandatory ground. It states that the Tribunal must make an order for repossession where there is at least three months rent outstanding both at the date of service of the AT6 and at the date of determination of the application, unless there is evidence to show that the arrears are due to a failure to pay housing benefit or its equivalent.

- 20 The Tribunal was satisfied having regard to the written and verbal submissions from the Applicant that arrears of rent in the sum of £3298 had been outstanding when the AT6 was served and arrears as at the date of the Case Management Discussion were £4592.60. The Tribunal further noted that there was no evidence before it to suggest that the arrears were a result of issues with housing benefit and that the Respondent had explicitly stated that she did not dispute the terms of the application. On that basis the Tribunal considered that the provisions of ground 8 had been met. The Tribunal did not therefore require to make a determination on ground 11 and the reasonableness of granting the order.
- 21 The Tribunal therefore made an order for repossession against 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.

R. O'Hare

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Legal Member/Chair

17/10/19

Date