



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/21/3214

Re: Property at 3 Ground Left Morgan street, Dundee, DD4 6LX (“the Property”)

Parties:

Mr Stewart Rodger, Lazarim, 30 Albany Road, Dundee, DD5 1NT (“the Applicant”)

Miss Charis Kidney, 3 Ground Left Morgan Street, Dundee, DD4 6LX (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Frances Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be determined without a Hearing and made an Order for Possession of the Property.

Background

By application dated 13 January 2022, the Applicant sought an Order for Possession of the Property under Section 18 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Grounds relied on were Ground 8, 11 and 12 of Schedule 5 to the 1988 Act. The application was accompanied by copies of a Short Assured Tenancy Agreement between the Parties commencing on 1 March 2017 at a rent of £430 per month and, if not brought to an end by either Party by 28 February 2018, continuing thereafter on a monthly basis until brought to an end by either Party serving at least two months’ written notice on the other Party, a Form AT6 Notice given under Section 33 of the 1988 Act and a Notice to Quit, both dated 11 May 2021. The Notice to Quit required the Respondent to remove from the Property by 30 November 2021 and the Form AT6 Notice, which stated that the Grounds relied on were Grounds 8, 11 and 12, advised the Respondent that proceedings would not be raised before 1 December 2021. The Applicant also provided evidence of delivery of both Notices on 12 May 2021, Rent

Statements showing arrears of £3460.11 as at 11 May 2021 and £4,480.16 as at 4 April 2022, and copies of letters, dated 6 July and 30 August 2021 from Messrs Thorntons Law LLP to the Respondent in compliance with the Scottish Government's Pre-Action Requirements, signposting the Respondent to sources of advice and assistance.

On 23 March 2022, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 13 April 2022. At the request of the Respondent's representatives, Dundee Law Centre, that date was extended by the Tribunal to 3 May 2022.

On 29 April 2022, Dundee Law Centre made written representations on behalf of the Respondent, in which they disputed the level of arrears being claimed. The most recent Rent Statement began with a balance of rent arrears carried over from previous letting agents but provided no evidence of the same. The Respondent had been sequestered, the effect of that being that any rent arrears prior to 1 December 2020 should be deducted from the balance. They stated that the Respondent was on a low income and was in receipt of Universal Credit and Personal Independence payments and that the Applicant was receiving directed payments from the Department of Work and Pensions from deductions from the Respondent's entitlement. They provided an Extract from the Insolvency Register which stated an Award date of 1 December 2020 and a Discharge date of 1 June 2021, all under the Minimal Assets Procedure.

On 4 April 2022, the Applicant's letting agents, EasyLets Ltd, Dundee confirmed that the Applicant accepted that arrears of £3,293.74 accrued prior to 1 December 2020 were irrecoverable from the Respondent, but considered that they remained unpaid, so should be considered by the Tribunal in determining whether it was reasonable to make an Order for Possession.

Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the morning of 12 May 2022. The Applicant was represented by Mr Neil Dymock of EasyLets Ltd, Dundee. The Respondent was present and was represented by Ms Joyce Horsman of Dundee Law Centre.

Mr Dymock confirmed to the Tribunal that the arrears of rent presently stood at £4,577.68. He accepted that £3,293.74 of this amount was irrecoverable from the Respondent but pointed out that the Applicant was £4,577.68 out of pocket and had suffered considerable financial disadvantage over a very long period of time. There had not been a single month since they had taken over the letting agency in 2019 that a month's rent had been paid in full, so the arrears continued to increase every month. Ms Horsman told the Tribunal that the Respondent hoped to relocate and had a pending application for local authority housing. She had no proposals to make in relation to reducing the rent arrears. She accepted that the arrears, after deduction of the irrecoverable sum of £3,293.74, were due to the Applicant. She wished the tenancy to end and would not offer a defence to the eviction action.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to decide the application without a Hearing.

The Tribunal was satisfied that the Scottish Government's Pre-Action Requirements had been met.

The Tribunal noted that the sum of £1,500, brought forward as arrears when the letting agents changed in 2019, was included in the figure of £3,293.74 which the Parties agreed was irrecoverable from the Respondent, so it was not necessary for the Tribunal to consider that matter further.

Ground 8 of Schedule 5 to the 1988 Act applies where, both at the date of service of the Form AT6 Notice (in this case 12 May 2021) and at the date of the Hearing, at least three months' rent lawfully due from the tenant is in arrears. The Tribunal was satisfied that, at the date of service of the Form AT6 Notice, the rent was more than three months in arrears, as the effect of the sequestration of the Respondent did not take place until 1 June 2021 and the Notice had been served on 12 May 2021. Thereafter, however, the arrears fell by £3,293.74. The result was that, as at the date of the Case Management Discussion, the arrears due from the Respondent were £1,283.94, short, by £6.06, of three months' rent. Accordingly, the requirements of Ground 8 had not been met and the Tribunal had no option but to dismiss the application under this Ground.

Section 18 of the 1988 Act states that the Tribunal shall not make an Order for Possession except on one or more of the Grounds set out in Schedule 5 to the Act and that if it is satisfied that any of the Grounds in Part II of Schedule 5 is established, the Tribunal shall not make an Order unless it considers it reasonable to do so.

Ground 11 of Part II of Schedule 5 to the 1988 Act applies where, whether or not any rent is in arrears on the date when proceedings for possession are begun, the tenant has persistently delayed paying rent which has become lawfully due, and Ground 12 of Part II of Schedule 5 applies where some rent lawfully due by the tenant is unpaid on the date on which proceedings for possession are begun and was in arrears on the date of service of the Form AT6 Notice.

The Tribunal was satisfied that the Form AT6 Notice included all of Grounds 8, 11 and 12. Ground 12 was clearly established and was not disputed. The Rent Statements provided by the Applicant's agents showed that on no occasion since at least September 2019, had the Respondent paid the full monthly rent. Accordingly, the Tribunal decided that Ground 11 had also been established.

The Tribunal then had to consider whether, in terms of Section 18 of the 1988 Act, it was reasonable to make an Order for Possession. The Tribunal noted that, although her sequestration had resulted in £3,293.74 of the rent arrears being irrecoverable from the Respondent, the Applicant had suffered very serious financial consequences through no fault of his own. There was not a single month since at least September 2019 that the full month's rent had been paid. The Respondent was paying £300 per month, and this was being topped up by £32.48 by the DWP, so the arrears were increasing by just under £100 per month and the evidence given on behalf of the Respondent had offered no prospect of the situation improving. Having taken into account all the evidence before it, the Tribunal decided that it would be reasonable to make an Order for Possession

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.

G Clark

Legal Member/Chair

12 May 2022
Date