



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 (“the 1988 Act”) and Rule 65 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/EV/18/2758

Re: Property at 185 Langside Gardens, Polbeth, West Lothian, EH55 8QS (“the Property”)

Parties:

Mr Barry Holt, 25/1 Belgrave Crescent, Edinburgh, EH4 3AL (“the Applicant”)

Thorley Stephenson, 20 Hopetoun Street, Edinburgh, EH7 4GH (“the Applicant’s Representative”)

Ms Patricia Meek, 185 Langside Gardens, Polbeth, West Lothian, EH55 8QS (“the Respondent”)

Paul Reynolds, Housing and Money Advisor, Finance and Property Services, Advice Shop, Housing and Money advice team (“the Respondent’s Representative”)

Tribunal Member:

Susanne L. M. Tanner Q.C. (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) was satisfied that Ground 8 in Part I of Schedule 5 to the 1988 Act was established by the Applicant, in that both at the date of service of the notice under Section 19 of the 1988 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; that rent arrears were not a consequence of a delay or failure in payment of relevant housing benefit or universal credit; and made an order for possession in terms of Section 18(3) of the 1988 Act.

Reasons

1. Procedural Background

- 1.1. The Applicant's Representative made an application to the tribunal on 16 October 2018 in terms of Section 18 of the Housing (Scotland) Act 1988 ("the 1988 Act") and Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules").
- 1.2. The Applicant sought the Respondent's eviction from the Property in terms of Section 18 of the 1988 Act under Grounds 8, 11 and 12 of Schedule 5 to the 1988 Act.
- 1.3. The Applicant lodged with the Application:
 - 1.3.1. A paper apart entitled "Section 5: Possession/ Eviction Grounds".
 - 1.3.2. a copy of the Short Assured Tenancy agreement in the name of the parties dated 12 June 2008;
 - 1.3.3. a copy of the AT5 Notice from the Applicant's letting agents with proof of receipt by the Respondent dated 10 April 2018;
 - 1.3.4. a copy of a Section 19 'AT6' notice dated 21 September 2018 which refers to Paper Apart 1 and 2; with proof of service on 22 September 2018
 - 1.3.5. Section 11 notice sent to the local authority;
 - 1.3.6. Rent statement 1 August 2016 to 1 June 2018;
- 1.4. The Application was accepted for determination by a tribunal on 22 October 2018. Both parties were notified by letters dated 19 November 2018 of the date, time and place of Case Management Discussion ("CMD") in relation to the Application on 12 December 2018. The Respondent was invited to make written representations in response to the Application by 19 November 2018. Both parties were advised that they were required to attend the CMD. The parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application which may involve making or refusing an eviction order. The parties were also advised that if they do not attend the CMD this will not stop a decision or order being made if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair.

1.5. The Respondent did not submit any representations by 19 November 2018.

1.6. On 11 December 2018 representations were submitted by Paul Reynolds, the Respondent's Representative, for whom the Respondent had submitted a mandate on 5 October 2018 giving him authority to represent her. The Respondent's Representative made an application for a postponement of the CMD. The reason given was that the Respondent intends to settle the full arrears balance in 6 weeks. Mr Reynolds advised that the Respondent has made contact with the Department for Work and Pensions and is due arrears of benefit, namely, employment and support allowance – severe disability premium. As of 3 December 2018 the arrears due were calculated at 50 weeks at 64.30pw, totalling £3215. Mr Reynolds also advised that this may take up to 6 weeks to be paid. He further advised that she would also set a standing order to meet the shortfall between her local housing allowance and rent lawfully due which is less than £5 per calendar month. Mr Reynolds moved the tribunal to adjourn for a 6 week period to allow the arrears payment to be made and the arrears balance to be cleared in full.

1.7. The tribunal crossed over the Respondent's Representative representations to the Applicant's Representative and sought a response. The Applicant's Representative confirmed that they wished the CMD to go ahead.

1.8. On 11 December 2018 the tribunal considered the Respondent's Representative's postponement request and the Applicant's Representative's opposition and decided to refuse the request. Parties were advised that the tribunal had made the decision to refuse the request to postpone the CMD and advised parties that it would go ahead as scheduled. Parties were also advised to bring or be prepared to advise the tribunal about any evidence they wish to submit e.g. in the relation to the DWP payments. A copy of the letter was sent by email to the Respondent's Representative.

2. CMD: 12 December 2018 at 1000h, George House, 126 George Street, Edinburgh

2.1. Alastair Laird from the Applicant's Representative attended the CMD on behalf of the Applicant.

2.2. The Respondent and her Representative did not attend the Case Management Discussion, nor did they make contact with the tribunal or its administration to advise that they could not attend, having been advised that the postponement application had been refused and that the CMD would proceed.

- 2.3. The tribunal noted that the Short Assured Tenancy was signed by both parties on 12 June 2008. The initial term was for the period 25 April 2008 to 25 October 2008. Since then the lease has tacitly been renewed on a six monthly basis. The rent payable was £310 per calendar month payable monthly in advance on the 25th of each month.
- 2.4. The rent statement for the period from 1 August 2016 to 1 June 2018 shows rent payable at £430 per calendar month.
- 2.5. The tribunal Chair asked Mr Laird if he had evidence of when the rent increases took effect. Mr Laird said that he did not have anything in relation to this matter on his file, but in any event it did not directly affect the evidence in relation to Ground 8 of Schedule 5 which required 3 months of rent arrears as at the two dates specified.
- 2.6. The rent arrears as at 1 June 2018 are shown as £2251.61. On the basis of rental payments of £430 per calendar month, the rent was over three months in arrears as at 1 June 2018. An updated rent statement was produced by Mr Laird at the CMD which showed rent arrears of £2266.58 at 21 September 2018 (the AT6 was served on 22 September 2018) and £2281.55 as at the date of the CMD on 12 December 2018.
- 2.7. The rent statement shows Housing Benefit being paid throughout the period 1 August 2016 to 1 June 2018.
- 2.8. The tribunal Chair asked Mr Laird if he had taken instructions from the Applicant in relation to the Respondent's proposals. Mr Laird said that he had not had the chance to discuss the latest proposals but that his instructions were firm to seek eviction on the grounds specified. Mr Laird submitted that the arrears of benefit are for employment housing benefit, not housing benefit. The Applicant wants an eviction order for that so that they can take steps as soon as they can arrange it. Mr Laird further stated that he and the Applicant are aware that there could be a recall application made if the tribunal makes an eviction order today given that the decision would be taken in the absence of the Respondent. Mr Laird stated that if the Respondent makes an application for recall that parties will be in the same position arguing the same facts.
- 2.9. There is no information before the tribunal to suggest that there has been any delay or failure in payment to the Respondent of housing benefit or relevant universal credit. The benefits of which the Respondent is awaiting payment are employment and support allowance – severe disability premium. The

tribunal was satisfied that any rent arrears are not a consequence of a delay or failure in the payment of housing benefit or relevant universal credit.

3. The tribunal makes the following findings-in-fact:

- 3.1. There was a short assured tenancy between the former owner of the Property and the Respondent for the initial period 25 April 2018 to 25 October 2018 and thereafter the tenancy has continued by tacit relocation on six calendar monthly basis.
- 3.2. Rent was initially £310 per calendar month, payable in advance on the 25th of each month.
- 3.3. As at 1 August 2016 there were rent arrears of £1696.63.
- 3.4. From 1 August 2016 to date the rent was £430 per calendar month.
- 3.5. From 24 August 2016 to 28 November 2018 the Respondent received Housing Benefit in the sum of £423.84 per calendar month to 31 August 2017 and £425.01 per calendar month from 27 September 2018 to 28 November 2018.
- 3.6. The Section 19 notice (AT6) was served on 26 April 2018.
- 3.7. As at the date of service of the Section 19 notice on 21 September 2018 there were at least 3 months of rent arrears, namely £2266.58.
- 3.8. The AT6 notice specified that the Applicant was intending to raise proceedings for possession of the Property on Grounds 8, 11 and 12 of Schedule 5 to the Housing (Scotland) Act 1988 ("the 1988 Act").
- 3.9. As at the date of the hearing on 12 December 2018 there were in excess of three months' rent arrears lawfully due from the Respondent to the Applicant.
- 3.10. The rent arrears are not a consequence of a delay or failure in the payment of Housing Benefit or relevant universal credit.

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.

Susanne Tanner

12 December 2018

Susanne L. M. Tanner Q.C.
Legal Member/Chair