

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for eviction/ possession of a Rented Property in terms of Rule 65 of the Procedure Rules.

Chamber Ref: FTS/HPC/EV/18/3162

Re: 5 Stenhouse Gardens, Edinburgh, EH11 3JL ("the Property")

Parties:

Raymond Lumsden residing at 551/8 Lanark Road, Edinburgh, EH14 1TQ ("the Applicant")

Brian Warner residing at 13 Meadow Lane, Edinburgh, EH8 9NR ('the Applicant's Representative')

Ms Jaqualine Fraser, 5 Stenhouse Gardens, Edinburgh, EH11 3JL ("the Respondent")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal")

Tribunal Member: Jacqui Taylor (Legal Member) James Battye (Ordinary Member)

Background

1. The Applicant applied to the Tribunal for eviction/ possession of the Rented Property under section 18(1) of the Housing (Scotland) Act 1988, in terms of Rule 65 of the Procedure Rules. The application was dated 19th November 2018. The application states:

Ground 8: Persistent Non Payment or short rent amounting now to £9,650

2. Initial documents lodged with the Tribunal were:-

- Short Assured Tenancy agreement dated 25th June 2014.
- Form AT6 dated 5th September 2018, giving notice that proceedings will not be raised before 25th September 2018. The grounds of possession detailed on the AT6 are grounds 8,11 and 12.
- Certificate of Intimation by Thomas Hannah, Sheriff Officers, in respect of delivery of the AT6 to the Tenant on 7th September 2018.
- Section 11 Notice addressed to City of Edinburgh Council.

- Statement of Rent arrears showing arrears of £9,650 as at December 2018.
 - Statement signed by Raymond Lumsden dated 20th November 2018 authorising Brian Warner to act on his behalf.
3. By Minute of Acceptance dated 24th January 2019 Graham Harding, Convener with delegated powers, intimated that the application comprising documents received between 23rd November 2018 and 28th December 2018 was accepted for determination by the Tribunal.

Case Management Discussions

4. This case called for Case Management Discussions (CMD) on 5th March 2019, 6th April 2019 and 21st June 2019.

The Note of the CMD held on 26th April 2019, in summary, explained that it was the Applicant's position that the rent arrears at 26th April 2019 amounted to £10,700. The Respondent denied that. The Note stated that both parties had bank statements to verify their respective positions. The application was continued to a CMD on 21st June 2019.

The Note of the CMD held on 21st June 2019, in summary, also explained that it was the Applicant's position that the rent arrears as at 21st June 2019 amounted to £10,494.69. The rent arrears as at the date of service of the AT6 was £8,394.69. Mr Fraser, the Respondent's father denied that. Consequently the hearing was fixed for 30th July 2019. The CMD continued to direct the parties as follows:

'The Applicant is required to lodge with the Tribunal at least 14 days in advance of the hearing date:-

- (a) A rent statement showing the rent statements and arrears to (1) the date of service of the AT6 and (2) the date of the next hearing.
- (b) Bank statements in a redacted form or other records showing the rental payments received from the Respondent and that the Respondent failed to pay the months detailed in the rent statement;
- (c) Confirmation of the rent increase, the date the rent was increased and the mechanism that gave rise to the rental increase.

The Respondent requires to formally appoint Mr Fraser as her Representative. The Respondent also requires to lodge any documentation proving the rental paid by her at least 14 days in advance of the hearing date.'

5. Additional Documents lodged by the parties.

- 5.1 Mr Fraser had sent the Tribunal Administration documents by email on 10th June 2019. This was referred to in the Tribunal Note of CMD dated 21st June 2019. The Tribunal had not accepted these documents as the Respondent had not officially appointed her father as her representative at that time. The Respondent sent the Tribunal administration a letter dated 25th June 2019 giving permission for her father to represent her at the hearing scheduled to take place on 30th July 2019. The Respondent's father did not resubmit the documents he had sent to the Tribunal administration on 10th June 2019. The clerk at the hearing on 30th

July 2019 printed out the documents at the hearing on 30th July 2019 and provided the Applicant and the Tribunal members with copies. The parties were offered an adjournment to allow them time to consider the documents but they advised that this was not required.

The documents lodged by email on 10th June 2019 were:

- 5.1.1 A letter from Mr Warner, for the Applicant, to the Respondent dated 18th July 2018 which stated 'Mr Lumsden has advised that the rent is £100 in arrears together with July's rent of £750 making a total outstanding of £850. Please bring these arrears up to date immediately.'
- 5.1.2 Text messages 1st August ' (i) Larry you need to have a word with Jackie she is in serious arrears with her rent. (ii) I will how much in arrears at the moment are you going way back ? (iii) No I have ignored that at this point she is £850.'
- 5.1.3 Text messages 19th August (i) Larry I am starting proceedings to remove your daughter from the property I am sorry but cant put up with non payment of rent. (ii) Its the council it should be sorted soon and back dated to clear any money due.'
- 5.1.4 Copy letter from the Applicant to the Respondent dated 1st September agreeing to the lease being for a minimum period of five years if the lease conditions are adhered to and the rent payments are paid on time.
- 5.1.5 An excerpt of an advice letter to the Respondent- date and author are not disclosed.
- 5.1.6 A copy of the second page of the lease with shows the rent as at £650 per month and that no deposit is payable.
- 5.1.7 A copy of a text with a hand written note stating '8th March 2019. Don't want Payment. No Payment from April as Landlord contacted Council to stop payment.' The body of the text messages state: 'So U don't want the £850 I have in my bank for you?' 'NO.' 'So what do you want then?' 'I am raising an action for your removal from the property tomorrow with lawyer I am not prepared to put up with these arrears and your continuing late payments.'
- 5.1.8 A handwritten note detailing the cost of repairs/ improvements made to the property by the Respondent. The total cost is £2,578.
- 5.1.9 A copy of text messages in the following terms: 'So its court then yes? You really want to do all this ? The letter wont cost you anything or do anything to upset you so why are you resistant, we both know I'm not owe you 10k and for all the money I've spent on your property just to bring it up to standard should even out any difference. You adding up rent that never existed.' 'No more texting or contact now.'
- 5.1.10 A notice of increased rent dated 6th July 2017 stating that the rent was being increased to £750 beginning on 1st September 2017. The notice was signed by the Landlord but had not been signed by the Tenant.
- 5.1.11 A copy of the landlord's contact details.
- 5.1.12 A copy of a letter from the Applicant to the Respondent dated 6th May 2019 advising that he would not seek to recover rent arrears in respect of her lease of the Property provided that she has vacated the Property by 21st June 2019.
- 5.1.13 A copy of the Respondent's bank account statement for the period 1st March 2018 to 4th February 2019 showing total payments to the Applicant of £9,600.

5.2 Additional Documents lodged with the Tribunal by the Applicant on 16th July 2019:

Arrears of Rent Table which showed the arrears of rent. A summary of the Table is as follows:

Year	Rent Due	Rent Paid	Shortfall	Cumulative shortfall
From July 2014	£3900 (monthly rent £650)	2760	1140	1140
2015	£7800 (monthly rent £650)	6100	1700	2840
2016	£7800 (monthly rent £650)	6240	1560	4400
2017	£7800 (monthly rent £600)	6650	1150	5550
2018	£8900 (monthly rent £750)	7850	1050	6600
To June 2019	£5250	£3855.31	£644.69	£7244.69

6. Hearing on 30th July 2019

This case called for a Case Management Discussion at 2pm on 29th July 2019 at Riverside House, Georgie Road, Edinburgh, EH11 3AF.

The Applicant was accompanied by his representative Brian Warner.

The Respondent was not present and was represented by her father Lawrence Fraser. She had sent the Tribunal a letter dated 25th June 2019 giving permission for her father to represent her at the hearing.

Mr Warner advised the Tribunal that he had lodged a rent statement showing the arrears due by the Respondent to amount to £6,400 at 6th September 2018 and £7,244.69 at June 2019. He had not lodged bank statements to verify the rent statements as they extended to over 200 pages and included information on many other properties owned by the Applicant. He advised that the rent statement shows that in 2016 alone the Respondent had missed four rent payments. He also advised that the rent was increased from £650 to £750 per month and that no formal documents were served on the Respondent in connection with the increase as it was a verbal agreement. He was not sure of the exact date of the increase, but they would take it to be February 2018, being the date the Respondent first paid £750. He explained that the Applicant received the Housing Benefit payments direct from the Council from March 2019.

Mr Lumsden advised that at the beginning of the lease the Respondent was anxious to move in as soon as possible. He paid over £1,000 to have a kitchen delivered and

Mr Fraser, the Respondent's father, fitted the kitchen. He disputes the suggestion that Mr Fraser paid money on repairing or improving the Property.

Mr Fraser advised the Tribunal that his daughter was in receipt of Housing Benefit throughout the whole period of the lease.

The background to the dispute between the parties is that the Respondent had asked the Applicant for a reference and if this was provided she had agreed to voluntarily move out of the Property. However no reference was provided. Also when she moved into the Property she carried out works to repair and improve the Property the total cost of which was £2,578 and the Applicant agreed to reduce the rent by £50 per month until these costs had been paid off. He advised that his daughter had not made an application to the Tribunal in respect of the Property not complying with the Repairing Standard.

He does not agree with the rent statement provided by the Applicant. The letter he has produced from the Applicant to his daughter dated 18th July 2018 states that the total arrears are £850. Also the Text from the Applicant to Mr Fraser dated August 2018 also states that the arrears are £850. The bank statement he has produced verifies the rent payments made by his daughter, the Respondent. His daughter did not receive demand letters from the Applicant claiming arrears of thousands of pounds.

7. Decision Following Hearing on 30th July 2019:

7.1. Requirements of Section 65 of the Procedure Rules.

'Section 65 (a) states that the application under section 18(1) of the 1988 Act must state:

(a) (i) **the name, address and registration number of the Landlords.**

The application sets out the Applicant's details as Landlord.

(ii) **the name and address of the Landlord's representative.**

The application sets out the Applicant's Representative's details.

(iii) **the name and address of the Tenant.**

This section had been completed with the Respondent's details.

(b) Section 65 (b) states that the application must be accompanied by the following documents:-

(i) **The Tenancy Agreement (if available).**

As already stated, the tenancy agreement had been produced.

(ii) **A copy of the notice of intention to raise proceedings for possession of a house let on an assured tenancy.**

A copy of form AT6 had been provided. The form was dated 5th September 2018 and stated that proceedings would not be raised before 25th September 2018. The grounds on which the Landlord was seeking possession were grounds 8,11 and 12. A certificate by Thomas Hannah, Sheriff Officer, dated 7th September 2018 confirming service of the AT6 on the Respondent on 7th September 2018 was also produced. The Tribunal were satisfied that the AT6 notice was valid and it had been timeously served on the Tenant and it gave the Tenant more than the required period of two weeks notice.

(iii) A copy of the Notice to Quit served by the Landlord on the Tenant (if applicable).

No copy of the Notice to Quit had been provided.

(iv) Evidence as the applicant has that the possession ground or grounds have been met.

A rent statement showing transactions from July 2014 to November 2018 was provided. The statement showed that the arrears amounted to £9,650. However no bank statements had been produced verifying the amount of the arrears.

(c) The application form had been correctly signed and dated by the Landlord as required by Section 65(c) of the Procedure Rules.

7.2. Requirements of Section 18 of the Housing (Scotland) Act 1988

This provision states that the Tribunal will not make an order for possession of a property let on an assured tenancy except on one or more grounds set out in Schedule 5 of the Act.

The application stated that the application for the eviction/ order for possession was based on Ground 8 of Schedule 5 of the 1988 Act:-

Ground 8: At the date of service of the AT6 and at the date of the hearing at least three months rent due from the Tenant is in arrears.

This provision also requires the Tribunal to be satisfied that the rent arrears are not as a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit and that the lease terms make provision for it to be brought to an end on the ground in question.

7.3 The Tribunal make the following findings in fact:

7.3.1 The parties entered in to a Short Assured Tenancy of the Property dated 25th June 2014. The commencement date of the lease was 25th June 2014. The lease was for the period to 25th December 2014 and month to month thereafter.

7.3.2 The rent due in terms of the original lease was £650 per month. The Landlord advised the Tenant that the rent had been increased to £750 on 1st September 2017, in terms of the Notice of Increased Rent dated 6th July 2017, exhibited by the Respondent. However the Respondent had not signed the Notice the Applicant sent in an attempt to increase the rent. Further, no evidence was provided by the Applicant to the effect that he complied with the terms of section 24 of the Housing (Scotland) Act 1988 which sets out the procedure to be followed to increase the rent of an assured tenancy. As per the Respondent's bank statement the rent payments made by the Respondent between March 2018 and February 2019 varied. Payments of £50, £100, £600, £650, £700 and £750 were made. No evidence has been produced to the effect that the parties jointly agreed that the rent had been increased to £750 per month. Consequently the Tribunal find that the rent due by the Respondent under the lease was £650 per month.

7.3.3 The total rent arrears as at 18th July 2018 amounted to £850. This is

confirmed by the letter from the Applicant to the Respondent dated 18th July 2018 and the text from the Applicant to Mr Fraser dated 1st August. It is the Applicant's position that the rent arrears at July 2018 amounted to £6,400, in terms of the rent statement that he produced. However the Applicant did not provide copies of any rent demand letters he had send to the Respondent referring to this amount, despite having been directed to provide this evidence in the Note of the CMD dated 21st June 2019. Also the Applicant's rent statement and arrears computation have not been verified by production of the Applicant's bank statements. The Tribunal find that the Applicant's rent statement is not reliable. The Applicant's rent statement states that the Respondent made payments of £7,920 between March 2018 and February 2019 whereas the bank statement provided by the Respondent shows that she paid £8,100. Accordingly, on the basis of the evidence submitted, the Tribunal accept the Respondent's position that the total rent arrears at 18th July 2018 amounted to £850.

- 7.3.4 The Respondent made rent payments to the Applicant of £7,920 between March 2018 and February 2019, verified by the bank statement produced by the Respondent. The rent due during this period on the basis that the rent was £650 per month amounted to £7,150. The Tribunal noted that the rent due during this period on the basis that the rent was £750 per month was £8,250.
- 7.3.5 The Applicant served the AT6 on the Respondent on 7th September 2018. The rent arrears as at this date amounted to £300 on the basis that the rent was £650 per month. The Tribunal noted that the rent arrears at this date were £1,000 if the monthly rent figure of £750 was applied.
- 7.3.6 There were no arrears at June 2019 on the basis that the rent was £650 per month. The Tribunal noted that the rent arrears at this date were £794.69 if the monthly rent figure of £750 was applied. The parties did not provide any information as to the rent payments made during July and accordingly the Tribunal accept the figures for the month of June as representing the rent due at the date of the hearing.
- 7.3.7 The Tenancy agreement sets out in full the terms of Ground 8.
- 7.3.8 The rent arrears were not due to a delay or failure in payment of a relevant benefit.

7.6 The Tribunal determined that the monthly rent due by the Respondent was £650 per month and the rent arrears as at the date of service of the AT6 was £300 and at the date of the hearing the rent account was in credit by £305.31. Both figures are less than three months rent (£1,950).

The Tribunal separately noted that if the Tribunal had made an error in their finding that the rent due by the Respondent amounted to £650 per month and it was actually £750 per month the rent arrears at the date of service of the AT6 was £1,000 and at the date of the hearing it was £794.69. Both figures are less than three months rent (£2250).

Accordingly the Tribunal find that the Respondent was not at least three months in arrears of rent at the date of service of the AT6 and at the date of the hearing.

Consequently the Tribunal dismissed the Application.

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.

Jacqui Tayor

7th August 2019

Legal Member