

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18 and 19 of the Housing (Scotland) 1988)

Chamber Ref: FTS/HPC/EV/18/0211

Re: Property at Flat 15 12 Pilrig Heights, Leith, Edinburgh, EH6 5BB (“the Property”)

Parties:

Places For People Homes Ltd, C/O Touchstone, 2 Crescent Office Park, Clarks Way, Bath, BA2 2AF (“the Applicant”)

Miss Helen Brough Bolton Stirling, Flat 15 12 Pilrig Heights, Leith, Edinburgh, EH6 5BB (“the Respondent”)

Tribunal Members:

Lesley Johnston (Legal Member)

Decision (in presence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for Possession of the property should be granted.

Background

This case called for a Case Management Discussion in respect of an application for an order for possession in terms of section 18 and 19 of the Housing (Scotland) Act 1988 (‘the 1988 Act’).

The grounds upon which the order is sought are grounds 11 and 12 of schedule 5 of the 1988 Act.

Conjoined with this application is another application involving the same parties; tenancy; and property. The conjoined application is in respect of a payment order of rent arrears (Case ref: 18/0213). A separate statement of reasons and decision has been issued in respect of the conjoined application.

Mr Matheson, Solicitor, appeared for the Applicant. He was instructed on behalf of principal agents for the Applicant, Patten & Prentice LLP.

The Respondent was personally in attendance. She was not represented.

Submissions

Submissions for the Applicant

The Applicant moved for an Order of Possession to be granted on the basis that the Respondent had persistently delayed in making payment of rent to the Applicant (Ground 11) and that there were rent arrears lawfully due at the time when proceedings began and when the notice of proceedings was served upon the Respondent.

Mr Matheson submitted that the Notice of Proceedings had been correctly served and the correct period of notice (2 weeks) had been given of proceedings in terms of the AT6 Notice served on 27 December 2017. In his submission, grounds 11 and 12 were met.

Mr Matheson submitted that the Tribunal, in considering whether or not to make an order for eviction on grounds 11 and 12, required to be satisfied that it was reasonable to grant the Order.

In that regard, he submitted that the Respondent resides alone in the property. He submitted that the Respondent had represented to the Applicant that she could make payment of rent arrears following conclusion of court proceedings initiated at the instance of the Respondent against her former employers. However, in his submission, it was not reasonable to require the Applicant to wait until the conclusion of court proceedings, nor in circumstances where it is unclear whether the Respondent will be successful in those proceedings.

I asked Mr Matheson to address me on the level rent due to be paid by the Respondent since the lease referred to £630 per calendar month, and the application referred to £665 per calendar month.

Mr Matheson referred me to the rent statement lodged with the application to account for the increases in rent. While no documentation was produced by the Applicant to evidence the increase in rent, the Respondent accepted that the rent had increased to £665 in around February 2016. I refer to my findings in fact below.

Mr Matheson's position was that rent increased to £695 from February 2018 to date.

Mr Matheson made an application to amend the application in respect of the arrears outstanding to today's date. I allowed a short adjournment to allow him to take instructions from the principal agent in the case to ascertain the level sought and to clarify the position on why three payments of rent had been made by the Respondent in the sum of £680 on 31 July, 7 and 29 September 2017.

Following the adjournment, Mr Matheson submitted that the Respondent had erroneously made three payments in the sum of £680 on 31 July 2017, 7 29 September 2017. In fact, the level of rent due by her on those dates was £665.

Due to the three payments of £680 being over and above the sum that the Applicant considered to be due in respect of those months, her account had been in credit on 29 September 2017 in the sum of £45. That credit was reflected in the Rent Statement. However, thereafter, from 28 October 2017 she had fallen into and continued to be in arrears.

Mr Matheson submitted that, having taken instructions on the matter, the Applicant did not insist in the rent increase from 1 February 2018 and that he was content to rely upon the level of rent accepted by the Respondent to be due, in the sum of £665 per month from 1 February 2016.

Accordingly, Mr Matheson moved to amend the level of arrears narrated in both applications to £3,245 in terms of Rule 13(2) of the The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017. The amendment updated the level of arrears to the date of the hearing. He submitted that the amendment raised no new issue.

The sum of £3,245 took account of the rent arrears to date in the sum of £3,305 less the abatements conceded by him for the payments due on 1 February and 1 March 2018 totalling £60 ((£695 - £665) x 2 months = £60 abatement).

Mr Matheson lodged an updated rent statement in support of his submission showing that the Respondent had made payment of the £700 on 5 March 2018. A copy was provided to the Respondent.

Mr Matheson also submitted a letter from the Respondent dated 2 March 2018 enclosing a letter from the Respondent's solicitors regarding the litigation to which the Respondent had referred. He submitted that the payment proposal made by the Respondent was based on the outcome of a litigation where there was no guarantee of success. It was not reasonable for the Respondent to wait until the outcome of that hearing to receive payment of the rent arrears.

Submissions for the Respondent

The Respondent submitted that she had tried to keep in touch with the Landlord's representative regarding her rent arrears.

She advised that she is in receipt of Universal Credit. She receives around £440 to £438 per month. Half of that sum is in respect of housing. She accepted that her assessment for Universal Credit was correct. Last week she discovered that she could apply for discretionary housing benefit. She considers and has been advised by the Council that the discretionary housing benefit would be enough to meet her rent going forward. However, it would only allow her to make payment of one month of rent arrears.

I asked the Respondent if she had experienced any problems in receiving her Universal Credit payments. She advised that she had not experienced delayed or missed payments and that she received the sum due to her on a regular monthly basis.

During the course of her submission, the Respondent accepted that:

1. she has a tenancy at the property and that it is a short- assured tenancy;
2. the Tenancy Agreement enclosed with the Application is the lease agreement entered into by her and the Applicant
3. she has fallen into rent arrears following being unemployed for some time.
4. her rent had increased from £630 to £650 in October 2014.
5. that her rent increased again from £650 to £665 in February 2016.

The Respondent submitted that she thought her rent had increased again to £680 on 31 July 2017 which is why she had made three payments in that sum on 31 July, 7 and 29 September 2017. When asked if she was made aware of the increases in rent to £650 and £665 respectively, the Respondent advised that she was aware and that she was appreciative of the very modest increases in rent during her tenancy.

The Respondent submitted that she had made a payment of £700 on 5 March 2018. However, she accepted that, notwithstanding that payment she was still in rent arrears as at the date the proceedings were raised and the section 19 Notice was served on her and at the date of today's hearing.

The Respondent placed a great deal of reliance on litigation proceedings that are ongoing just now between her and her former employer. She submitted that she was likely to be successful in those proceedings and that she had achieved success in the case thus far. She submitted that if successful, the award of damages will be such that all of her rent arrears will be cleared. She advised that a hearing was due to take place in the case on 3 April 2018. She confirmed that the letter dated 2 March 2017 enclosing the letter from her solicitors was the letter issued by her to the Applicant. She advised that an offer of settlement had been made by the other side previously in the case which she had refused. Her solicitor was hopeful that she might receive another offer of settlement and that the litigation would be resolved without reaching a substantive hearing.

In addition, the Respondent submitted that she had contacted the Applicant in order to discuss possible settlement proposals of rent in January 2018. She had not proposed any particular level of payment or made any settlement proposal to the Applicant. The Applicant had advised her that they would not discuss any proposals for settlement with her.

Findings in Fact

I have made the following findings in fact:

1. That the Applicant and the Respondent entered into a short-assured tenancy on 30 May 2012;
2. That the tenancy is in respect of the property Flat 15, 12 Pilrig Heights, Leith;
3. That the tenancy agreement dated 11 May 2012 presented with the application regulates the tenancy;
4. That clause 22 of the tenancy agreement makes provision for it to be brought to an end on grounds 11 and 12 of Schedule 5 to the Act;
5. That the rent due in terms of the lease between the parties was initially £630 per calendar month;
6. That the rent increased to £650 in October 2014;
7. That the rent increased to £665 in February 2016;
8. That the Respondent fell into rent arrears from 28 October 2017 to date;
9. That the Respondent made one payment of £700 on 5 March 2018;
10. That an AT6 giving Notice of Proceedings was served on the Respondent on 27 December 2017;
11. That proceedings were commenced on 25 January 2018, the date on which the application was received by the Housing and Property Chamber;
12. That as at the date on which these proceedings commenced (25 January 2018) the Respondent was in arrears of rent in the sum of £1,950
13. That as at the date on which the AT6 (Notice of Proceedings) was served on the Respondent, the Respondent was in arrears in the sum of £1,285;
14. That as at the date of the hearing, the Respondent continued to be in arrears of rent in the sum of £3,245

Reasons for Decision

I carefully considered the material presented to me and the submissions made by both parties.

1. The application to amend

I allowed the Applicant's application to amend the current level of arrears outlined in the application to £3,245 in terms of Rule 13(2) on the basis that the application was made in the presence of the Respondent and raised no new issue. I heard submissions from the Respondent regarding the amendment and the level of arrears as today's date. She accepted that she continued to be in arrears to the date of the hearing, even although she had made payment of £700 on 5 March 2018.

I exercised my discretion to allow the amendment to update the level of arrears outlined in the application. However, it should be noted that even if I had not granted the application to amend, the grounds for eviction outlined below would still have been satisfied on the facts.

2. The application for Order for Possession

(i) The Schedule 5 grounds (11 and 12)

In light of the fact that the Respondent accepted that she was in arrears of rent as at the date the proceedings were commenced and the date on which the Notice of Proceedings was served, I consider that Ground 12 of Schedule 5 is established on the facts.

Notwithstanding my findings in relation to ground 12, I also consider that on the agreed facts, the Respondent can be said to have persistently delayed paying rent which has become lawfully due on the basis that the Respondent accepted that she had failed to make any payment of rent when it became due on 28 October 2017 until the payment made by her on 5 March 2018. I therefore consider that Ground 11 of Schedule 5 of the 1988 Act is established on the facts.

(ii) Reasonableness

In terms of section 18(4) of the 1988 Act, if the First-tier Tribunal is satisfied that any of the grounds in Part II of Schedule 5 to the Act are established (in this case, grounds 11 and 12) the Tribunal shall not make an order for possession unless the Tribunal considers it is reasonable to do so.

I next considered whether or not it was reasonable to make an order for possession.

First, I do not consider that the Respondent's failure to make payment of rent arrears is on account of any delay or failure in the payment of housing benefit or universal credit. The Respondent accepted that she was in receipt of the amount to which she is entitled in terms of Universal credit and that it has been paid timeously and in the correct amount.

While she is considering applying for a top-up by way of discretionary housing benefit, she accepted that a payment in that regard would only meet payment of rent going forward and would meet only one month of rental arrears. The Respondent was also unsure as to the sum of money she would receive in this

regard. On the basis that the application for discretionary housing benefit has not yet been submitted by her, and it being a discretionary payment, she is not guaranteed to receive any award, I did not consider that it would be unreasonable to grant an Order on this basis.

I also carefully considered the Respondent's primary argument that she is likely to be successful in an ongoing litigation against her former employer which will likely clear the arrears and that it would therefore be unreasonable for me to grant the Order.

In this regard, I took account of the letter provided by the Respondent to the Applicant on 2 March 2018 and the attached letter from her solicitor dated 28 February 2018. The letter advises that the Respondent was successful in persuading the court at a diet of debate that her opponent's defence was inadequate. However, the court allowed her opponent leave to amend their defence. The letter confirms that the case will call again on 3 April 2018 following the allowance of the amendment procedure. The letter concludes by advising the Respondent that the case is still some way from a final conclusion.

I do not consider that it would be reasonable to expect the Applicant to wait until the conclusion of a litigation to which they are not a party to (1) receive payment of unpaid rent arrears; and (2) recover possession of the property. Prospects of success and the date of conclusion of that litigation are unknown and while the Respondent submitted that her likely success would be met by a payment of damages or otherwise a settlement offer sufficient to clear the rent arrears in their entirety, there is no guarantee of success in her litigation and no guarantee of the level of damages or settlement that she might receive.

In all the circumstances of the case, I consider that it would be reasonable to grant an order for possession of the property, grounds 11 and 12 having been established.

Decision

To grant an Order against the Respondent for possession of the Property under section 18 of the Housing (Scotland) Act 1988.

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.

Lesley Johnston

Legal Member/Chair

15 / 3 / 2018
Date