

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 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/18/2242

Re: Property at 3 Assembly Street, Edinburgh, EH6 7BL (“the Property”)

Parties:

Mr Saif Ullah, CO Beveridge Kellas Solicitors, 52 Leith Walk, Edinburgh, EH6 5HW (“the Applicant”)

Miss Kerry-Anne Paterson, 3 Assembly Street, Edinburgh, EH6 7BL (“the Respondent”)

Tribunal Members:

Virgil Crawford (Legal Member)

Representation:

Applicant: Represented by Miss E Roman, Messrs Beveridge & Kellas SSC, Solicitors, Edinburgh

Respondent: Not represented

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

BACKGROUND

1. This Application, seeking an order for eviction, called along with a separate application for rent arrears proceeding under Tribunal Reference CV/18/2243. The order for eviction was sought on the ground of the rent arrears claimed in the separate application. Both applications were considered together;
2. A case Management Discussion was held in each case on 19 November 2018. The Tribunal issued a full written note in relation to the proceedings on that date. In brief, however, the Applicant was represented on that date by Miss E Roman, Messrs Beveridge & Kellas SSC, Edinburgh. The Respondent was not represented and she attended late. The Tribunal had, in fact, already granted an order in each case by the time the Respondent attended. An explanation for her late attendance having been provided, the Tribunal thereafter exercised its power to review its own decisions, in terms of Rule 39 of the First Tier Tribunal for Scotland Housing and Property Chamber

- Rules of Procedure 2017 ("the FTT Rules"), recalled both decisions and, after hearing Parties, adjourned both Case Management Discussions until 4th January 2019 at 10am within George House, 126 George Street, Edinburgh;
3. The principal reason for the adjournment was to enable the Respondent to progress an application for housing benefit, including an application for this to be backdated. If this was done it was likely to significantly reduce any arrears, if not remove the arrears completely. The Respondent accepted that there were arrears of rent but the Tribunal, in terms of s18(3A) of the Housing (Scotland) Act 1988 ("the 1988 Act"), in considering an order for eviction, was obliged to consider whether any arrears of rent were due to any delay or failure in payment of housing benefit and, if so, whether it was reasonable for an order for eviction to be granted. In addition, any backdated award of housing benefit would clearly have bearing on any order which may be made for payment of arrears;
 4. The Respondent confirmed she was aware of the address at 126 George Street where the Case Management Discussions would proceed on 4th January 2019 at 10am;

THE CASE MANAGEMENT DISCUSSION

5. The cases both called again on 4th January 2019 at 10am. The Applicant was again represented by Miss E Roman. The Respondent failed to attend and was not represented;
6. The Applicant had, prior to the Case Management Discussions on 4th January 2019, lodged copies of e mail correspondence from the income and benefits department of City of Edinburgh Council to the Applicant's son, dated 30th November 2018 confirming that there had been no application for housing benefit by the Respondent, and an e mail from the Applicant's son to the Respondent dated 14th December 2018 encouraging her to make an application and to request a receipt for the same;
7. The Applicant's representative advised that there had been no further payment of rent received, no payment of housing benefit and, on the basis of the e mails referred to, no application for housing benefit by the Respondent. The arrears of rent had continued to increase and now amounted to £7,055.62. In the circumstances, the Applicant's representative moved the Tribunal to:-
 - a) Grant an order for eviction;
 - b) In terms of Rule 13 of the FTT Rules, to allow the sum claimed by way of rent arrears to be amended to £7,055.62 and thereafter to grant an order for payment in that amount;
 - c) In terms of Rule 40 of the FTT Rules, to make an award of expenses against the Respondent in relation to the Case Management Discussions held on 19th November 2018 and subsequent procedure;
8. Having considered all of the information available to the Tribunal, the Tribunal:-
 - a) Granted an order for eviction,
 - b) In terms of Rule 13 of the FTT Rules, to allowed the sum claimed by way of rent arrears to be amended to £7,055.62 and thereafter granted an order for payment in that amount;
 - c) Refused to make an award of expenses against the Respondent;

FINDINGS IN FACT

9. The Tribunal found the following facts to be established:-
- a) That in terms of a lease dated 10th March 2009 the Applicant was landlord of the Property and the Respondent was the tenant;
 - b) The rent payable was £650.00 per calendar month;
 - c) A Notice to Quit and a notice in terms of s19 of the 1988 Act were served on the Respondent, by Sheriff Officers, on 22nd May 2018. A notice in terms of s11 of the Homelessness etc. (Scotland) Act 2003 had been intimated to City of Edinburgh Council;
 - d) Rent had not been paid from, and including, 10th February 2018. As at 4th January 2019, therefore, the rent arrears amounted to £7,055.62;
 - e) The arrears were not as a result of any delay or failure in the payment of Housing benefit;
 - f) As at the date of the application to the Tribunal and the date of the Case Management Discussions on 4th January 2019, at least 3 months rent lawfully due from the Respondent was in arrears;
 - g) The Respondent has persistently delayed in paying rent which had become lawfully due;
 - h) Some rent lawfully due by the Respondent was unpaid on the date of commencement of the proceedings and was in arrears as at the date of service of the notice in terms of s19 of the 1988 Act;

REASONS FOR DECISION

10. In relation to the matter of rent arrears, it was accepted by the Respondent at the Case Management Discussions on 19th November 2018 that there were significant arrears of rent. The only issue was whether those arose as a result of a delay or failure in the payment of housing benefit. The Respondent was given an opportunity, by way of an adjournment of the proceedings, to make or progress any appropriate application for benefit and to provide proof of that. She had indicated an intention to obtain professional advice in relation to the proceedings also and the Tribunal advised her that following the adjournment of the Case Management Discussions on 19th November 2018 she should take immediate steps to obtain professional advice, should ensure she takes all steps possible to progress any application for housing benefit and to provide proof of that to the Tribunal. She failed to do so. She failed to attend the adjourned Case Management Discussions on 4th January 2019. The e mails previously referred to indicated that there had been no application for housing benefit. In the absence of an application for benefit the Tribunal could not hold that there had been any delay nor failure in payment of benefits. In the circumstances it was appropriate to grant both an order for payment of arrears accrued to date and an order for eviction;
11. In relation to the request for an order for expenses against the Respondent, the Tribunal considered this matter carefully. An award of expenses is governed by Rule 40 of the FTT Rules which provides as follows:-
- 40.—(1) The First-tier Tribunal may award expenses as taxed by the Auditor of the Court of Session against a party but only where that party through*

unreasonable behaviour in the conduct of a case has put the other party to unnecessary or unreasonable expense.

(2) Where expenses are awarded under paragraph (1) the amount of the expenses awarded under that paragraph must be the amount of expenses required to cover any unnecessary or unreasonable expense incurred by the party in whose favour the order for expenses is made.

12. The First Tier Tribunal, Housing and Property Chamber, is generally expected to be a cost free process for Parties. While there is provision made within Rule 40 of the FTT Rules for an award of expenses, it is clear that the circumstances in which expenses may be awarded are limited. Unlike in most court proceedings where expenses might ordinarily be expected to follow success, in Tribunal proceedings ordinarily there will be no award of expenses. An award of expenses requires there to be unreasonable behaviour in the conduct of a case which has put the other party to unnecessary or unreasonable expense. The Tribunal asked to be addressed on that issue. The Applicant's representative suggested that the unreasonable behaviour arose from the Respondent attending the previous Case Management Discussions late, unnecessarily extending the length of time spent dealing with the cases on 19th November 2018, thereafter intimating that she had made an application for benefit and believed the problem to be caused by a delay with the local authority progressing the application, and thereafter the information provided to the effect that there has been no application for benefits at all. That behaviour has, as stated, resulted in additional time than might otherwise have been necessary being expended at the Case Management Discussions on 19th November 2018, the need to attend the Case Management Discussions on 4th January 2019 and additional work in advance of then by way of preparing an inventory of productions and submitting the same to the Tribunal. This was occasioned by false representations by the Respondent in relation to her application for housing benefit;
13. In considering the matter of expenses the Tribunal should consider the matter in three stages:-
- i. Has there been unreasonable behaviour in the conduct of the case on the part of either party;
 - ii. If so, should the Tribunal exercise its discretion to make an award of expenses;
 - iii. If so, in relation to which parts of the proceedings should any such award relate.
14. In these cases, the Tribunal was not satisfied that the first stage had been overcome. While it is the case that the Respondent attended late on 19th November 2018, an explanation was provided for that at the time and the explanation was accepted by the Tribunal as being a reasonable one. Thereafter, while it is the case that the Respondent then raised the issue of non payment of housing benefit, it was clear that, historically, she had been in receipt of Housing benefit. The papers lodged in support of the applications made that clear and it was not disputed at the previous Case Management Discussions. While the Respondent thereafter appears not to have made nor progressed an application for housing benefit, the Tribunal was not satisfied that that amounted to unreasonable behaviour in the conduct of the case. In those circumstances, therefore, no award of expenses could be made.

15. Even if the Tribunal was wrong in that particular consideration, if it had reached the stage of exercising its discretion, it is unlikely that any award of expenses would have been made. The Respondent was, of course, entitled to attend the Case Management Discussions on 19 November 2018. While her late attendance was regrettable, as already discussed, a reasonable explanation was provided. Her representations about housing benefit referred to her past receipt of that benefit and her expectation that she would still be entitled to it. Given the terms of s18(3A) of the 1988 Act the Tribunal required to consider that matter further and adjourned the cases to do so. The cases were then dealt with, with orders being granted, when they next called. The procedure followed was in no way unusual nor exceptional and, in the circumstances, the Tribunal would have been unlikely to have exercised its discretion in favour of making an award of expenses;
16. While it did not form any part of the Tribunal's reasoning, the Tribunal did comment that if any award of expenses was made an account of expenses would need to be prepared and thereafter taxed by the auditor of the Court of Session. That process in itself would incur costs and outlays. It seems clear that the Respondent is a person who is in receipt of state benefits. In those circumstances, while it is of course a matter for the Applicant, the likelihood of recovering any expenses from that respondent is doubtful and, even if an award of expenses had been made, it might be questioned as to whether it was wise to incur any additional expense at this stage.

DECISION

The Tribunal grants order to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth and from the Property at 3 Assembly Street, Edinburgh, EH6 7BL and to make the same void and redd that the Applicant or others in their name may enter thereon and peaceably possess and enjoy the same.

The order is not to be executed prior to 12 noon on 11 February 2019

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.

Virgil Crawford

4 January 2019

Legal Member/Chair

Date