



**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/21/0571

Re: Property at 7 Hill Court, South Queensferry, EH30 9LR (“the Property”)

Parties:

Mrs Mina Hoskins, 38 Springfield View, South Queensferry, EH30 9RZ (“the Applicant”)

Mr Andrew Malarky, Mrs Laura Malarky, 7 Hill Court, South Queensferry, EH30 9LR (“the Respondents”)

Tribunal Members:

Karen Kirk (Legal Member) and Leslie Forrest (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an order against the Respondents for possession of the Property under section 18 of the Housing (Scotland) Act 1988.

This Case Management Discussion Hearing concerned an Application for an Order for Possession under Section 18(1) of the Housing (Scotland) Act 1988. The hearing took place by teleconference due to the covid-19 pandemic. The manner, procedure and purpose of the hearing was explained to parties. Parties were aware a final decision could be made.

1. Attendance and Representation

The Applicant was represented by her solicitor, Kirsty Morrison, TC Young Solicitors, 7 West George Street, Glasgow G2 1BA.

The Respondent Andrew Malarky was present.

2. Preliminary Matters

There were no preliminary matters raised by either party. The Tribunal confirmed to parties that written representations has been received from the Respondent and further productions had been received from the Applicant. All parties confirmed to the Tribunal that they have received these documents.

3. The Case Management Hearing

The Applicant's position

Ms Morrison for the Applicant submitted that the Application proceeded under Rule 65 and the 1988 Act. She sought an order for repossession under Ground 8, schedule 5 of the Housing (Scotland) Act 1988. She advised that the Tenancy commenced on 1st August 2017 and that rent was £650 per calendar month. Ms Morrison confirmed in terms of Section 19 the Applicant had served an AT6 on both parties on 11th August 2020 by Sheriff Officer. A Notice To Quit had been served on 13th August 2020. The Applicant relied on ground 8 and Mr Morrison submitted that more than 3 months arrears were due. Ms Morrison said that at service of the Application the arrears were £11050 and at today's date the arrears were £16,900. Ms Morrison further submitted for the Applicant that the pre action requirements under the coronavirus provisions had been complied with. She referred to letters lodged in process. She also referred correspondence seeking payment. She submitted it was reasonable that an order for repossession be granted under ground 8, schedule 5 of the 1988 Act.

The Respondent's position

The Respondent set out that in addition to his written representations that his wife during the 2019 had found out she was pregnant and went on mat leave with her employer. She was still on maternity leave when furlough started and as a result the Respondent said she was marked as a leaver but she was now in a process to have her employment reinstated. The Respondent said he was been working in a pub but his occupation is in events and broadcasting. He said he felt that his standing had been affected by members of the local community being told about the circumstances of the property.

The Respondent made submissions about difficulties with the Applicant and those acting for her. He said he and his family did not want to live there any more. They were concerned if they just left that they would be considered intentionally homeless. He said the landlord was not registered until recently . He confirmed that the Respondents resided together with 4 children from ages 5 months to 13 years. He said the family needed a house move and they had been on the housing waiting list. They were hoping for a local authority property to be made available. The Respondent confirmed as per his written representations that he did not dispute the level of arrears, the date of the

tenancy and the notice received. He said he did not consider there was much that could be said but wanted to set out his position.

4. Findings in Fact and Law

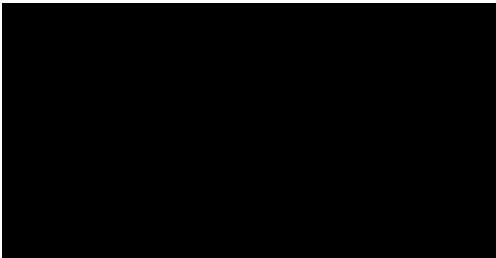
- In terms of the Overriding objective of the Tribunal the Tribunal determined that it was appropriate to make a final determination in the Application at the Case Management Discussion.
- The Tenancy for the property commenced on 1st August 2017.
- The contractual monthly rent for the property was £650 per calendar month.
- A Notice to Quit was served by Sheriff Officer on 13th August 2020.
- In terms of Section 19 of the 1988 Act the Applicant served by Sheriff Officer a Form AT6 on the Respondents on 13th August 2020.
- As at the date of service of the Notice of Proceedings rent arrears due were £11,050, this amount was well in excess of three months rent.
- The Respondent's last payment towards rent was made on 1st March 2019.
- As at the date of the hearing rent arrears due was £16500.
- The Applicant had in terms of The Rent Arrears Pre- Action Requirements (Coronavirus)(Scotland)(Regulations) 2020 sent letters to the Respondents providing information to obtain financial advice and seeking to discuss payment and assistance.
- The Respondent had no outstanding benefits claims and confirmed he and his family were actively seeking new accommodation as the property was no longer suitable.

Reasons for the Decision

The Tribunal noted that a number of material elements in the application were not in dispute. The level of arrears at service were agreed as were the level of arrears at the date of the hearing. The tenancy terms, commencement and service of the notices were all agreed. It was clear that the impact of the pandemic on the Respondents had been significant although the Tribunal noted that they were in financial difficulty from April 2019. There was also written information from the Applicant confirming she was in financial difficulty given no rent had been received since March 2019. The Respondents were no longer wishing to reside in the property and had made active steps to find other accommodation. There had been no attempts to make any form of payment to the rent and no active steps were on the evidence given to obtain benefit assistance to meet rent. Whilst the Tribunal had due regards to the Respondents circumstances as well laid out orally and in written representations they considered that it was reasonable in balancing the interests of both parties in their discretion that an order for Repossession be granted.

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.



05/05/2021

Legal Member/Chair

Date