



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 of the Housing (Scotland) Act 1988 and Rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Chamber Ref: FTS/HPC/EV/22/2248

Re: Property at 6 Burrelton Gardens, Dundee, DD3 9QT (“the Property”)

Parties:

Mr Paul Goodman, 7 Marchfield Crescent, Dundee, DD2 1LE (“the Applicant”) per Rentlocally Tayside and Fife, Lindsay Court, Gemini Crescent, Dundee DD2 1SW (“the Applicant’s Agents”)

Ms Leighann Malone, 6 Burrelton Gardens, Dundee, DD3 9QT (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member) and Gordon Laurie (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory process for eviction and recovery of possession having been established, it is reasonable to grant the Order sought and so the Tribunal granted the Order with effect from 9 January 2023.

1. By application received between 6 July 2022 and 10 August 2022 (“the Application”), the Applicants’ Agents applied to the Tribunal for an Order for possession of the Property based on the termination of the tenancy. The Application comprised copy Notice to Quit bringing the tenancy to an end on 3 July 2022 with proof of service, copy short assured tenancy agreement with relevant AT5 between the Parties with an entry date of 10 July 2020, and copy notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to Dundee City Council, being the relevant local authority. A statement of rent due and owing amounting to £8,819.45 and a record of reminder letters to the Respondent accompanied the Application. The Application was accepted by the Tribunal and a Case Management Discussion (the “CMD”) was fixed for 16 November 2022 at 10.00 by telephone conference. The CMD was intimated to the Parties.

2. Prior to the CMD, on 14 November 2022, the Respondent wrote to the Tribunal to explain that she would not attend the CMD as she had a college commitment. She accepted that she has substantial rent arrears and explained that, due to her zero hours work contract she had not been aware of the extent of her housing benefit entitlement and how much rent she required to pay. She explained that she was not aware that, when her benefits changed to Universal Credit, housing benefit would stop. She advised that she cannot work due to health issues and that she expects to receive a housing allowance backdated to 31 August 2022 as part of her college bursary. Her current income is Universal Credit and Child Benefit, the latter of which will reduce when one of her children reaches the age of eighteen years. The Respondent's letter was copied to the Applicant. The Applicant responded that the rent arrears had increased to in excess of £12,000.00.

CMD

3. The CMD took place on 15 November 2022 at 10.00 by telephone. The Applicant took part on his own behalf. The Respondent did not take part.
4. The Tribunal explained that the purpose of the CMD was to identify the facts of the matter, to establish if the ground for the Application is satisfied and to determine if it is reasonable for the Tribunal can grant the Order. The Tribunal noted from the Application that the correct statutory procedures had been carried out and that the tenancy had been terminated properly.
5. The Tribunal, having regard to the Respondent's letter of 14 November 2022, asked the Applicant if there was anything he wished to add in respect of the reasonableness aspect of the Application. The Applicant explained that the Respondent had had a history of rent arrears since the beginning of the tenancy in 2016 but that the arrears had increased significantly since September 2021 when she stopped making any payments. He explained that he had been unable to obtain housing benefit for the Respondent from the local authority as the Respondent had not made the appropriate claim. The Applicant advised the Tribunal that, in spite of the numerous contacts by the Applicant's Agents to the Respondent, she had not engaged in any way and has not entered into a payment plan with the Applicant. As far as the Applicant was aware, the Respondent has four children of whom the youngest is around fifteen years. He was not aware of any health issues nor that the Respondent attends college.

Issue for the Tribunal

6. The issue for the Tribunal is to determine if the statutory ground is established and if it is reasonable to grant the Order. The Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal "*may do anything at a case management discussionincluding making a decision*". The Tribunal took the view that it had sufficient information to make a decision and so proceeded to determine the Application.

Findings in Fact

7. From the Application, the Respondent's letter of 14 November 2022 and the CMD, the Tribunal made the following findings in fact: -

- i) There is a short assured tenancy of the Property between the Parties;
- ii) The tenancy was terminated by Notice to Quit on 3 July 2022;
- iii) The Respondent has not vacated the Property and remains residing at the Property;
- iv) The Respondent has not paid rent since September 2021;
- v) Rent arrears in excess of £12,000.00 have accrued and are due and owing by the Respondent to the Applicant;
- vi) The Respondent is in further education and in receipt of benefits;
- vii) The Respondent has not attempted to reach agreement with the Applicant for payment of the rent due.

Decision and Reasons for Decision

8. The Tribunal had regard to all the information before it and to its Findings in Fact.

9. The Tribunal then considered if it could be satisfied that it is reasonable to issue an eviction order on account of those facts and on all of the information before it. The Tribunal had regard to the fact that the Respondent has not paid rent since September 2021 and has not made any attempt to reach an agreement with the Applicant, nor has she made attempts to claim housing benefit. The Tribunal took the view that continuing the tenancy on this basis places an additional and continuing financial burden on both Parties. Accordingly, the Tribunal was satisfied that it is reasonable to issue an eviction order. However, in the circumstances the Tribunal considered it appropriate to allow the Respondent sufficient time to secure local authority or social rented accommodation and so determined that the date on which the Order should come into effect is 9 January 2023.

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.

Karen Moore

Legal Member/Chair

16 November 2022
Date