



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 (“the Act”)

Chamber Ref: FTS/HPC/EV/23/1195

Re: Property at Reimshill Bungalow, Fyvie, Turriff, AB53 8JX (“the Property”)

Parties:

Sir George Forbes-Leith, Tifty, Fyvie, Turriff, Aberdeenshire, AB53 8JT (“the Applicant”)

Mr Ian Burnett, Reimshill Bungalow, Fyvie, Turriff, AB53 8JX (“the Respondent”)

Tribunal Members:

Jim Bauld (Legal Member) and Mike Scott (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that that the application for the order for possession should be granted

Background

1. By application dated 13 April 2023, the applicant sought an order under section 18 of the Housing (Scotland) Act 1988 (“the Act”) and in terms of rule 65 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.
2. On 3 May 2023 the application Was accepted by the tribunal and referred for determination by the tribunal.

3. A Case Management Discussion was set to take place on 9 August 2023 and appropriate intimation of that hearing was given to both the landlord and the tenant

The Case Management Discussion

4. The Case Management Discussion (CMD) took place on 9 August 2023. The applicant was not personally present but was represented by his solicitor, Mr Aaron Doran from Raeburn Christie Clark Wallace, Aberdeen. The Respondent was not personally present but was represented by Ms Carole Munro from North West Aberdeenshire Citizens' Advice Bureau (NWACAB)
5. The tribunal noted that agreement had been reached between the parties with regard to the disposal of the application.
6. The application was based on rent arrears which had been £7,340 at the date of service of the relevant pre-action notices and which now amounted to £8110.
7. The respondent's representative agreed that the ground for eviction was established and that it would be reasonable for the tribunal to grant the order. She indicated that the respondent consented to the order.
8. It was noted that parties remained in discussion, and that enforcement of the order will be arranged by the parties.

Findings in fact

9. The applicant and the respondent as respectively the landlord and the tenant entered into a tenancy of the property on 7 August 1995.
10. The tenancy was a short assured tenancy in terms of the Act

11. The tenant was initially obliged to pay rent of £240 per month. Rent had been increased at various points during the tenancy and the current monthly rent was £395.
12. Payments of monthly rent were due on the 1st day of each month
13. On 2 December 2022, the landlord served upon the tenant the notice of proceedings for possession required by section 19 of the Act. This notice was the Form AT6 and set out the ground for eviction which the landlord intended to rely upon.
14. The ground for eviction narrated in the Form AT6 was ground 8A being a ground contained within schedule 5 of the Act
15. That ground requires there to be six months' rent arrears at the date of the service of the Form AT6 and at the date of the hearing
16. At the date of service of the hearing rent arrears amounted to £7,340 which is in excess of six months' rent arrears.
17. At the date of the hearing rent arrears amounted to £8,110 which is in excess of six months' rent arrears.
18. The applicant has complied with the requirements of The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020
19. The ground for eviction was accordingly established

Reasons for Decision

20. The order for possession was sought by the landlord based on a ground specified in the Act and properly narrated in the notice served upon the

tenant. The tribunal was satisfied that the notice had been served in accordance with the terms of the Act and that the landlord was entitled to seek recovery of possession based upon that ground and the relevant terms of the tenancy agreement which had been lodged with the application

21. An eviction order on this ground can only be granted if the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.
22. The tribunal noted that it was conceded by the respondent's representative that would be reasonable to grant the order. The tribunal agrees that in the light of the level of the rent arrears and the circumstances narrated by the parties that it is reasonable to grant the order.
23. The level of arrears is extremely high and it is unlikely that the arrears will ever be repaid. In the case of *Grampian Housing Association Limited v. Carol Pyper* (2004 Hous. L.R. 22) where an order for eviction was sought in terms of ground 12 of the 1988 Act, the Sheriff Principal indicated that in certain cases arrears would be at such a level that the court **"would be driven inexorably to the conclusion that it would be reasonable to grant an order for possession of the defender's house"**.
24. The tribunal agrees that this is a case where the arrears are at a level that such a conclusion would be reached and notes and accepts the concession from the respondent's representative that the order should be granted.
25. The tribunal acknowledges the assistance provided by both representatives and thanks them for the professional and courteous manner in which they conducted the case

Decision

The order for recovery of possession is 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.

James Bauld

9th August 2023

Legal Member/Chair

Date