



**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/19/0474

**Re: Property at 100 Letham Way, Dalgety Bay, Dunfermline, Fife, KY11 9FT
("the Property")**

Parties:

**Mrs Eileen Galbraith, 117 Lady Nairn Avenue, Kirkcaldy, KY1 2AT ("the
Applicant")**

**Ms Kelly Kay, 100 Letham Way, Dalgety Bay, Dunfermline, Fife, KY11 9FT ("the
Respondent")**

Tribunal Members:

Melanie Barbour (Legal Member)

Decision (in absence of the Respondent)

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

Background

1. An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under rule 65 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 ("the 2017 Rules") seeking an order for recovery of possession in relation to an assured tenancy under the Housing (Scotland) Act 1988.
2. The application contained,
 - a copy of the tenancy agreement;
 - copy of the AT6 form;
 - copy of the notice to quit;
 - letters regarding the arrears;

- rent statement ; and
 - section 11 notice.
3. There been two case managements hearing in respect of this case on 25 June 2019 and 14 August 2019 reference is made to the terms of each case management discussion note.
 4. A notice for direction dated 11 July 2019 was issued in respect of the case management discussion on 14 August 2019. Reference is made to that notice of direction.
 5. The Applicant attended today's case management discussion. The Respondent did not attend today's hearing. The Respondent had not attended either of the earlier case management discussions.
 6. Notice of the today's hearing had been sent to the Respondent on 26 August 2019 by recorded delivery mail. Given that I was prepared to proceed in her absence.
 7. At the last case management discussion there had been a discussion about the tenancy agreement which regulated the Respondent's tenancy. The agreement submitted to the tribunal appeared to have commenced in November 2017 but had not been signed until 6 December 2017. The question was raised as to whether it was therefore an assured tenancy. The case was continued for the tribunal to consider the terms of the tenancy agreement and as the Applicant was constrained in the time she could remain at that case management discussion.

The Case Management Discussion

8. The Applicant confirmed that she was still seeking an order for eviction.
9. She advised however that she believes that the Respondent has now vacated the property. She advised that a neighbour had contacted her earlier this week to say that the house was empty. She had gone to the house the next day and found that it appeared from looking into the windows to have been emptied of furniture. There was some rubbish and debris in the rooms and the garden but there did not appear to be anyone living there.
10. She advised that she had contacted the Respondent on Tuesday by text and had received a response on Wednesday. The Respondent stated in the text that "*she does not live in the property anymore and hadn't done so for weeks*". The Applicant advised that prior to that text, the last contact was in early September regarding payments towards rent and arrears.
11. She advised that the rent arrears for the property were currently £1738.71. The last payment she had received was in September for £750. She advised that the Respondent had contacted her in early September to advise that she had also applied for discretionary housing benefit to repay the arrears, however nothing had been forthcoming.

12. In terms of the tenancy agreement, she advised that during the course of the tenancy the Respondent had lived on and off with her partner. She believed that her partner had left in around November 2017 and this was the time when the Respondent had approached the Applicant and requested that a new tenancy agreement be entered into. The Applicant advised that she was happy to do so. The Respondent told her that she needed this new agreement as she had to make a claim for housing benefit.
13. Her husband had prepared the agreement, printed it off and took it to the Respondent. The Respondent did not return it to her immediately, but later went to see her at the shop in December 2019 and they had signed it that day. She advised that although it had been signed on 7 December 2017, it had in fact commenced on 1 November 2017 and this is evidenced by the clause defining when rent for the property was due. She noted that there is no actual commencement date as it only says "November 2017" however the commencement date is 1 November 2017 again evidence as this is the date that rent is due.
14. She advised that she is no longer relying on the terms of the Notice to Quit as this in fact related to a previous tenancy which had been entered into when the Respondent had first rented the property with her partner. She considered that the old tenancy was no longer the tenancy agreement which regulated matters.
15. She advised that in around October/November 2018 the Respondent had separated from her partner again, this appeared to be the time when rent arrears began.
16. The Applicant had proceeded to serve an AT6 in November 2018 giving notice that she would seek recovery of the property due to rent arrears under Ground 12 of the 1988 Act. The AT6 had been hand delivered to the Respondent.
17. She advised that the Respondent had made some attempts to repay the arrears, they had reduced at one stage by around £200 but they had increased again. The Applicant advised that she had tried to be reasonable with the Respondent. The last payment to rent was the beginning of September and there had been no further payments since that date.
18. She also does not believe that the Respondent is in the property any longer. She is concerned that the property appeared to be a mess, she is not getting the arrears repaid, and she is not currently getting rent for the property either.
19. She advised that the Respondent has support from the local council and she believes that she would have had support regarding managing her money. She advised that the Respondent had three children of school age.
20. She was unaware of any outstanding housing benefit issues affecting the Respondent.

Findings in Fact

21. The tribunal have found the following facts to be established:-
22. A tenancy agreement was entered into between the Applicant and the Respondent for the property. It commenced on 1 November 2017.
23. Clause 5 provides that rent of £675 was payable in advance each month on 1st of the month.
24. Clause 28 provides for termination of the tenancy.
25. Clause 28 provides that the landlord may bring legal action to recover possession of the accommodation under the grounds set out in Schedule 5 of the Housing (Scotland) Act 1988 and these grounds are thereafter set out in full in the tenancy agreement.
26. The rental arrears when the AT6 Notice was served were £675.
27. The rental arrears as at 4 October 2019 were £1738.71.
28. That an AT6 Notice had been served by hand delivery service on the Respondent by the Applicant.

Reasons for Decision

29. On the basis of all the evidence before me including the application, the additional documents and the verbal submissions, I found that an assured tenancy existed, that Ground 11 exists and that it would be reasonable to grant the order.
30. Although, I note that the tenancy was dated 7 December 2019, it appears to me from the terms of the tenancy itself and from the evidence of the Applicant that the intention of the parties was to create a tenancy agreement which commenced on 1 November 2017. That was when the first rent was to be paid. The Respondent was residing in the property on or before 1 November 2017. The fact that the parties subsequently signed the lease therefore accepting the terms of it. I consider that therefore that an assured tenancy exists.
31. The contractual obligations set out within the tenancy agreement include a duty to pay rent.
32. The tenancy agreement also provided for recovery of the property where the Respondent was in breach of the grounds set out in schedule 5 of the 1988 Act. These grounds are fully narrated in the agreement.

33. I heard evidence of on-going rent arrears, there was evidence of letters to the Respondent regarding the arrears and rental statements. The Applicant gave evidence at today's hearing that the arrears were still outstanding.

34. In considering reasonableness I took into account that the Respondent had been making some payments that she has three young children, and has resided in the property for a number of years. However given that the rent arrears are on-going and as it appears that she has now left the property I consider that it would be reasonable in this case to grant the order for eviction.

35. Accordingly, I am prepared to make an order for eviction under Grounds 12.

Decision

36. The Tribunal grants an order in favour of the Applicant against the Respondent for possession of the property.

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.

M. Barbour

Legal Member/Chair

6.10.19
Date