

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/18/1498

Re: Property at 35 Forres Crescent, Dundee, DD3 0EP (“the Property”)

Parties:

Mr James Black, 14 Inveraldie Crescent, Tealing, Dundee, DD4 0QR (“the Applicant”)

Ms Kirstie McPhee, 35 Forres Crescent, Dundee, DD3 0EP (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for recovery and possession should be granted in favour of the Applicant

Background

1. This case should be read in conjunction with FTS/HPC/CV/18/1495. The group reference is GTS/HPC/GP/18/0322.
2. This is an application in terms of Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). The Applicant is seeking an order for recovery of possession in terms of grounds 8, 11 and 12 of the Housing (Scotland) Act 1988.
3. The parties entered into a Short Assured Tenancy on 3rd October 2016 until 2nd October 2017. The rent payments of £770 were due on or before the 3rd of each month in advance.

4. Sheriff Officers served notice of the Case Management Discussion ("CMD") by letterbox delivery on 8th August 2018.
5. The Tribunal had before it the following documents:
 - a) Application dated 13th June 2018 and received by the Tribunal on 15th June 2018.
 - b) Tenancy agreement between the parties signed 14th September 2016 with the commencement of the tenancy on 3rd October 2016 for a 12 months period until 2nd October 2017 and on a month to month basis thereafter.
 - c) Form AT5 signed by the parties on 14th September 2016.
 - d) Form AT6 dated 29th May 2018 with recorded delivery slip dated 30th May 2018.
 - e) Copy rent account from 3rd October 2016 to 28th March 2018. Plus up to date rent statement form 19th September 2016 to 3rd September 2018.
 - f) Section 11 notice.

Case Management Discussion

6. The Tribunal held a Case Management Discussion ("CMD") on 28th August 2018. The Applicant was present. The Applicant attended without his legal representation. The Respondents were not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Tribunal considered the Application. The Applicant stated that there has been the Respondent had been persistently in arrears of £270 from 3rd December 2016 to 3rd November 2017 thereafter the arrears increased to the amount of £2850 by the point of application. To the Applicant's knowledge there are no outstanding Housing Benefit issues. Housing Benefit had been paid for July and August 2018. The Applicant has received £512.76 per month for July and August 2018 from Housing Benefit. The Applicant had been told by the Respondent that she was to ask for direct payments of Housing Benefit to be made to him but this had not been forthcoming until July 2018. A lump sum payment was made on 23rd March 2018 for £1540. The Applicant was unclear why the Respondent had paid this amount and from what source she had paid it. The Respondent has a shortfall in her Housing Benefit amounting to £257.24 per month. The Applicant had last had correspondence from the Respondent by text message 6 weeks to 2 months ago. The Respondent has not indicated that she would pay the shortfall and make payment to the arrears. The Applicant stated that the Respondent told him that she would pay £2000 in January 2019 if he moved her to a smaller house that she could afford. The Applicant made a motion to increase the amount sought to 3877.24. This was refused. The Applicant's solicitor had sent an up to date rent statement to the Housing and Property Chamber on 3rd August. This was sent on to the Respondent on 23rd August. The Tribunal was not satisfied that this amounted to increasing the sum sought as the email attaching the rent statement indicated that it was to be merely lodged in process. It was not indicated that an increase in the sum was sought. The Respondent did not have fair notice of the increase and was not

present to respond to the motion. As at the date of the CMD the outstanding arrears amount to £4134.48 this is in excess of 3 month rent arrears.

Findings in Fact

7. The parties entered into a Short Assured Tenancy on 3rd October 2016 for a 12 month period until 2nd October 2017 and on a month to month basis thereafter. The lease was signed on 14th September 2016. An AT5 was signed by both parties on the same date as the lease. The rent payments of £770 are due by the 3rd day of each month.
8. The Housing and Property Chamber received an Application on 15th June 2018.
9. The Respondents have persistently not made rent payments. There have been more than 3 missed payments. The amount outstanding has risen to £4134.48, beyond that which was sought in the application.
10. There has been payment of Housing Benefit to the Applicant for the months of July 2018 and August 2018.
11. The arrears due to the Applicant amounts to £4134.48.

Reasons for Decision

12. The Tribunal was satisfied that there were no other issues of reasonableness before them and that the notices had been served in an appropriate manner. The Respondent has persistently been in arrears and is currently in arrears in excess of three months rent. As a consequence the Applicant was entitled to be granted the Order for recovery of possession.

Decision

13. The Applicant is entitled to for an order of for recovery of possession.

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.

Gabrielle Miller

Legal Member/Chair

Date

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