



**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/19/0285

**Re: Property at 16 Bankhead Road, Carmunock, Glasgow, G76 9BW (“the
Property”)**

Parties:

Mr John Summers, 15 Auchdale Drive, Rhyl, Wales, LL14 4EL (“the Applicant”)

**Mr Stephen McIntosh, Mrs Gillian McIntosh, 16 Bankhead Road, Carmunock,
Glasgow, G76 9BW (“the Respondent”)**

Tribunal Members:

Susan Christie (Legal Member) and Leslie Forrest (Ordinary Member)

Decision (in absence of the Respondents)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an Order for Recovery of Possession of the
Property be granted.**

Background

1. The application is for recovery of possession of the Property and was received by the Tribunal on 28 January 2019.
2. A Notice of Acceptance of the Application by the Tribunal made under Rule 9 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 as amended (“the Rules”), is dated 11 February 2019.
3. The application type is stated as being made under Rule 65 of the Rules.
4. On 12 March 2019 a letter was sent to the Parties intimating the day and time of the Case Management Discussion and providing accompanying information.
5. On 13 March 2019 Sheriff Officers served a copy of the letter from the Tribunal dated 12 March 2019 on each of the Respondents, specifically drawing their attention to the Case Management Discussion assigned for 3 April 2019 at 2pm in Glasgow Tribunals Centre, Room 109, 20 York Street,

Glasgow G2 8GT to which each is required to attend. The mode of service being by way of letterbox service.

6. The letter itself sets out the details of the application made and invites the Respondents to make written representations to the Tribunal by 28 March 2019; highlights to the Respondents that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing including making a decision on the application which may involve making or refusing an eviction order; and that if either or both did not attend the Case Management Discussion, this would not stop a decision or order being made by the Tribunal if the Tribunal considers that it has sufficient information before it to do so and the procedure has been fair.
7. No written representations were made by Stephen McIntosh, the First Named Respondent. A letter was submitted however by Castlemilk Law & Money Advice Centre intimating that they represent Ms Jillian McIntosh or McHendry (presumably another spelling of the Second Named Respondent) and intimating that they did not represent Steven McIntosh. The letter intimates that Ms McIntosh does not intend to defend the application, accepts the rent arrears but has no means of paying these.

The Case Management Discussion Note & Outcome

8. The Applicant was represented by Ms Crawford of Clarity Simplicity Limited, solicitors.
9. Neither Respondent was in attendance. I was satisfied proper intimation of the date and time had been made on each Respondent.
10. The documents lodged in support of the application were examined and discussed.
11. No copy AT5 form had been produced along with a Short-Assured Tenancy Agreement (SAT) between the Parties, who were named as Gilliam (typographical error) Mcintosh and Stephen McIntosh in the agreement. It was dated 29 November 2017. The agreement did however state that an AT5 had been served prior to the signing of the tenancy agreement as acknowledged by the Respondents signatures on the SAT. For completeness a copy of the AT5 should be produced prior to the next Hearing.
12. The initial term of the SAT was 30 November 2017 to 30 May 2018 and continued in terms of the contract thereafter monthly until such times as it is ended by either party giving two months' notice to terminate it.
13. The rent being £800 per calendar month to be paid on the last Friday of every month or before the same date of each calendar month thereafter.
14. Part 17 of the SAT replicated exactly the Grounds 1-17 as set out in Parts I and II of Schedule 5 of the Act.
15. No Notice to Quit was produced along with the application.
16. A Notice under section 11 of the Homelessness etc (Scotland) Act 2003 was produced. It did not name the Council it was being submitted to, just 'Section 11 Team South'. It did not contain the landlord registration number, had the wrong dates for the tenancy, the wrong date for the proceedings and the option to specify the relevant legislation was not selected. No evidence of service had been produced. In all, I was not satisfied it was a proper notice

- that had been made as required under the legislation. It transpired on discussion that a fresh corrected Notice had been done thereafter but had not been produced to the Tribunal therefore it could not be received today. A valid substitute Notice will require to be lodged with the Tribunal and intimated prior to the next Hearing of the Application and accompanied by evidence of service and/or acknowledgment of receipt by the relevant local authority.
17. An AT6 Notice of Intention to raise proceedings for possession under Section 19 of the Act was produced along with the application for each Respondent. They are dated 20 December 2018. Those were served on each Respondent by Sheriff Officer service on 21 December 2018 by letterbox service.
 18. On the prescribed AT6 Form SSI 2016/339 at Note 3, based on the Grounds relied upon in this application, 2 weeks' notice is the minimum notice that must be given.
 19. The Notice period requires 2 clear weeks' notice. The date of service and the date on which the notice is to take effect (5 January 2019) are not included when calculating it. In this application the notice given to the Respondents calculated from 22 December 2018 gives 14 days clear notice.
 20. As the Applicant is seeking an order for recovery of possession under section 18 of the 1988 Act and having regard to the Grounds being relied upon a Hearing is required. All Parties will receive intimation of the date and have the opportunity to attend. This will ensure that the procedure is fair and all relevant information provided is considered by the Tribunal.
 21. I was advised the rent arrears currently stand at £6800. A fresh Rent Account has been prepared by the Applicant's solicitors and will be lodged with the Tribunal in line with timescales in the Rules and intimated to the Respondents well in advance of the Hearing.
 22. Outcome-Adjourned & proceeding to a Hearing: 15 May 2019 at 2pm at Glasgow Tribunal Centre, 20 York Street, Glasgow, G2 8GT.

Further Procedure and documentation

23. On 13 April 2019 a letter was sent to the Parties intimating the day and time of the Hearing.
24. On 16 April 2019 Sheriff Officers served a copy of the letter from the Tribunal dated 13 April 2019 on each of the Respondents, specifically drawing their attention to the Hearing assigned for 15 May 2019 at 2pm in Glasgow Tribunals Centre, Room 107, 20 York Street, Glasgow G2 8GT to which each is required to attend. The mode of service being by way of letterbox service.
25. On 29 April 2019 the Applicant's Representative submitted a corrected and amended Statement of Claim seeking to increase the sum relied upon by way of rent arrears to £6800 as at 29 March 2019 along with supporting documentation as evidence of the breakdown of the payments due, dates thereof and extracts from the Applicant's dedicated bank account for the Property management.
26. On 30 April 2019 the Applicant's Representative submitted a corrected Section 11 notice with evidence on service on the relevant local authority.
27. The additional documentation submitted was crossed over to the other Parties on 1 May 2019.

The Hearing

28. Ms Machin, Trainee Solicitor, attended from Complete Clarity solicitors, representing the Applicant.
29. Neither Respondent attended.
30. The Applicant seeks recovery of possession of the Property and relies on Section 18 of the Housing (Scotland) Act 1988 ('the Act') and Ground 8 of Part 1 to Schedule 5 to the Act.
31. The current rent arrears have increased. No payments having been made. No payments having been made by any other means. The applicant has not had any further contact from or on behalf of the Respondents.

Findings in Fact

- I. The Parties entered into a Short Assured tenancy Agreement with an initial term of 30 November 2017 to 30 May 2018 and which continued in terms of the contract thereafter monthly until such times as it is ended by either party giving two months' notice to terminate it.
- II. The rent being £800 per calendar month to be paid on the last Friday of every month or before the same date of each calendar month thereafter.
- III. A valid Notice under section 19 of the Act was served on each Respondent on 21 December 2018 relying on Grounds 8, 11 & 12 of Part 1 to Schedule 5 to the Act.
- IV. A valid Section 11 Notice under the Homelessness etc (Scotland) Act 2003 has been served on the relevant local authority.
- V. As at the date of service of the section 19 Notice the rent arrears outstanding £4400 due to 29 December 2018.
- VI. As at today's Hearing the rent arrears outstanding and owing are £6800 due to 29 March 2019.
- VII. The applicant is entitled to recovery of possession of the Property under Ground 8 of Part 1 to Schedule 5 to the Act.
- VIII. An Order for recovery of possession of the Property from the Respondents is granted.

Reasons for Decision & Decision

The Tribunal is satisfied that the criteria set out in Section 18 of the Act is satisfied and that the Applicant has a valid Ground 8 for recovery. An Order is granted. The Tribunal Decision is unanimous.

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.



Legal Member/Chair

15 May 2019
Date