

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/19/0918

Re: Property at 59 Orbiston Drive, Bellshill, ML4 2LT (“the Property”)

Parties:

Mrs Nabeela Hameed, 17 Douglas Drive, Bellshill, ML4 2RE (“the Applicant”)

Ms Leanne Kyle, 59 Orbiston Drive, Bellshill, ML4 2LT (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member) and Mary Lyden (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent(s) for possession of the Property under section 18 of the Housing (Scotland) Act 1988.

An application was submitted by the Applicant under Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). Said application sought a repossession order in respect of an assured tenancy in terms of section 18 of the Housing (Scotland) Act 1988 (“the 1988 Act”). Said application was based on Grounds 8, 11 and 12 of Schedule 5 to the 1988 Act in that there were rent arrears due amounting to an equivalent of at least three months’ rent.

A Case Management Discussion (“CMD”) took place on 21 May 2019. The Applicant was personally present at the CMD alongside her husband. The Respondent was neither present nor represented. The CMD was continued to a Hearing in order for the Applicant to address the Tribunal on the question of whether or not there was an ongoing claim in place in respect of Housing Benefit, which may have a bearing on the application of Ground 8.

A Hearing took place on 1 July 2019. The Applicant was again personally present alongside her husband. She was represented by Mr Buttery of Freelands solicitors. There was no appearance by or on behalf of the Respondent.

Prior to the Hearing, the Applicant's representative had lodged with the Tribunal copies of the Applicant's bank statements together with correspondence from North Lanarkshire Council, which set out the Housing Benefit position. Mr Buttery confirmed that the tenant appeared to have been in receipt of Housing Benefit prior to January 2019 however was not passing this on to the landlord in payment of the rent. The first payment of Housing Benefit paid directly to the Applicant from the Council came on 28 January 2019. Since then, a further payment of £964.24 was paid on 18 April 2019 and £394.98 on 20 May 2019. The Council notified the Landlord that from 3 June 2019 the Respondent would be paid £107.93 per week in Housing Benefit.

At the date of the Hearing, the arrears stood at £2270.38. The Council had notified the tenant that there had been an overpayment of Housing Benefit which would be recovered from the Tenant's ongoing payments from June 2019 onwards. The monthly rent was £500. The tenant was in arrears of rent in excess of the equivalent of three months. Accordingly, the Applicant moved for the order for repossession to be granted on that basis.

The Tribunal made the following findings in fact:

1. The parties entered into an assured tenancy which commenced on 28 November 2017.
2. In terms of Clause 5 of the said tenancy agreement the tenant was obliged to pay a monthly rent of £500
3. The tenant had failed to maintain rent payments in terms of Clause 5 of the said tenancy agreement and was in arrears of rent at the date of the Hearing amounting to £2270.52.

Decision

The Tribunal was satisfied that the Applicant had established a right to repossession of the property on the basis of Grounds 8, 11 and 12 of Schedule 5 to the 1988 Act. In relation to Ground 8 in particular, the Tribunal was satisfied that the tenant was in arrears of rent amounting to the equivalent of at least three months' rent both at the date of service of the Form AT6 in January 2019, and at the date of the Hearing. The Tribunal was satisfied that the arrears were not caused by failure or delay on the part of the Local Authority to pay Housing Benefit, and therefore was satisfied that the Applicant was entitled to insist on Ground 8 as a mandatory ground of repossession.

Accordingly, the Tribunal granted an order against the Respondent for possession of the Property under section 18 of the Housing (Scotland) Act 1988.

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.

Fiona Watson

Legal Member/Chair

17/19

Date