



Decision of the Case Management Discussion of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for eviction/ possession of a Rented Property in terms of Rule 65 of the Procedure Rules.

Chamber Ref: FTS/HPC/EV/19/2063

Re: 21 Sanquhar Drive, Glasgow, G53 7FT ("the Property")

Parties:

Mr Khalil Nizamil residing at 23 Sanquhar Drive, Glasgow, G53 7FT ("the Applicant")

Michael Ritchie, Hardy MacPhail, Solicitors, 45 Hope Street, Glasgow, G2 6Ae ('the Landlord's Representative').

Mr Asif Younas, 21 Sanquhar Drive, Glasgow, G53 7FT ("the Respondent")

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

Tribunal Member: Jacqui Taylor (Legal Member)

Background

1. The Applicant applied to the Tribunal for eviction/ possession of the Rented Property under section 18(1) of the Housing (Scotland) Act 1988, in terms of Rule 65 of the Procedure Rules. The application was dated 2nd July 2019. The application states:

The Applicant is seeking possession based upon the provision of section 18 of the Housing (Scotland) Act 1988. Possession is sought on the following:

A short assured lease was entered into between the parties for the period 28th April 2015 to 27th April 2016. The lease continued by Tacit Relocation. A notice to quit was served by Sheriff Officers terminating the lease as at 27th April 2019. The respondent remained in occupation under a statutory assured tenancy. A form AT6 has now been served and the notice period has expired.

The rent is £900 per month.

Rent Arrears in relation to the statutory assured tenancy due at the date of service of AT6 amounts to £1800.

The applicant seeks possession on grounds 11 and 12 of Schedule 5 of the 1988 Act.

Ground 11: The Tenant has persistently delayed in paying rent which has become lawfully due.

Ground 12: Some rent lawfully due from the tenant:-

(a) is unpaid on the date on which the proceedings for possession are begun; and

(b) except where subsection (1)(b) of section 19 of this Act applies, was in arrears at the date of the service of the notice under that section relating to those proceedings.

Initial documents lodged with the Tribunal were:-

- A copy of the short assured tenancy between the parties dated 16th July 2015 for the period 28th April 2015 to 27th April 2016.
- Form AT6 dated 10th June 2019, which intimated that the Landlord intended to raise proceedings for possession under grounds 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988 and that proceedings will not be raised before 27th June 2019.,
- Notice to Quit dated 4th January 2019 giving the Tenant formal notice to quit the Property by 27th April 2019.
- Section 33 Notice dated 4th January 2019 giving the Tenant notice that the Landlord requires possession of the property as at 27th April 2019.
- Certificate of Intimation by Stuart Sinclair, Sheriff Officer dated 8th January 2019 confirming that he served the Respondent with a copy of the Notice to Quit and Section 33 Notice on 8th January 2019.
- Certificate of Intimation by Stuart Sinclair, Sheriff Officer dated 12th June 2019 confirming that he served the Respondent with a copy of the AT6 on 12th June 2019.
- Section 11 Notice addressed to Glasgow Homeless Partnership advising that proceedings had been raised with the Housing and Property Chamber on 2nd July 2019.
- Certificate of Intimation by Michael Ritchie dated 2nd July 2019 confirming that he served the Section 11 Notice on the Glasgow Homeless Partnership, by email on 2nd July 2019.

2. Case Management Discussion.

This case called for a Case Management Discussion at 14.00 on 5th September 2019 at The Glasgow Tribunals Centre, 20 York Street, Glasgow.

The Applicant was present and was represented by Michael Ritchie, Solicitor.

The Respondent was not present and was not represented.

The Respondent had been served notice by Ian Wylie, Sheriff Officer, on 31st July 2019 of the case and details of the Case Management Discussion. No written response had been received from the Respondent.

2.1 The Tribunal identified with the Applicant's representative the following facts:

2.1.1 The Applicant is the Landlord of the Property.

2.1.2 The Respondent is Tenant of the Property in terms of the Short Assured Tenancy between the parties.

2.1.3 The term of the Tenancy was from 28th April 2015 to 27th April 2016.

2.1.4 The Applicant had served the Respondent with the notice to Quit on 8th January 2019 requiring him to vacate the Property on 27th April 2019.

2.1.5 The Respondent had not vacated the Property after receiving service of the Notice to Quit and still resides in the Property.

2.1.6 The Rent due in terms of the lease is £900 per calendar month payable in advance.

2.1.7 The Respondent had not paid a deposit.

2.1.8 The Respondent has not paid any rent since before 28th October 2017.

2.1.9 The rent arrears in respect of the statutory assured tenancy amount to £4500.

2.3. Oral representations made at the CMD

2.3.1 Michael Ritchie advised the Tribunal as follows:

- The Respondent is still resident in the Property.
- He referred to the rent arrears statement which had been produced which showed that the outstanding rent arrears as at 28th June 2019 amounted to £2700. He advised that no further rent payments had been made and the current arrears under the statutory assured tenancy amount to £4500. He also advised that there were substantial rent arrears in respect of the previous contractual tenancy of £16200 and that due to the substantial level of the arrears of both the contractual tenancy and the statutory assured tenancy he considered it reasonable for the Tribunal to grant the Order for Possession.

2.3.2 The Applicant advised that the Tenant has never told him that his rent difficulties were due to housing benefit issues.

3. Decision Following the Case Management Discussion:

3.1. Requirements of Section 65 of the Procedure Rules.

'Section 65 (a) states that the application under section 18(1) of the 1988 Act must state:

(a) (i) **the name, address and registration number of the Landlords.**

This section had been completed with the details of Mr Khalil Nizami, 23 Sanquhar Drive, Glasgow, G53 7FT as Landlord of the Property. Mr Khalil Nizami is registered proprietor of the Property in terms of Land Certificate GLA140741.

(ii) the name and address of the Landlord's representative.

This section had been completed with the details of Hardy MacPhail, Solicitors.

(iii) the name and address of the Tenant.

This section had been completed with the Respondent's details.

(b) Section 65 (b) states that the application must be accompanied by the following documents:-

(i) The Tenancy Agreement (if available).

A copy of the lease had been provided.

(ii) A copy of the notice of intention to raise proceedings for possession of a house let on an assured tenancy.

A copy of form AT6 had been provided. The form was dated 10th June 2019 and stated that proceedings would not be raised before 27th June 2019. The grounds on which the Landlords were seeking possession are grounds 11 and 12 of the Housing (Scotland) Act 1998. Two weeks notice was required and therefore the AT6 was valid.

(iii) A copy of the Notice to Quit served by the Landlord on the Tenant (if applicable).

A copy of the Notice to Quit dated 4th January 2019 had been provided. The Notice stated that the Landlord gave notice that the Tenant had to vacate the Property by 27th April 2019. The Notice to Quit was valid as it required the Tenant to vacate the Property at the ish date (the 27th April) and more than 40 days notice had been provided. The said Certificate of Intimation by Stuart Sinclair, Sheriff Officer dated 8th January 2019 confirming that he served the Respondent with a copy of the Notice to Quit on 8th January 2019 was also produced.

(iv) Evidence as the applicant has that the possession ground or grounds have been met.

A rent statement showing transactions from 28th April 2019 was provided. The statement showed that the Tenant's rent arrears amounted to £2700 at 28th June 2019.

(c) The application form had been correctly signed and dated by the Landlord as required by Section 65(c) of the Procedure Rules.

3.2. Requirements of Section 18(1) of the Housing (Scotland) Act 1988

This section states that the Tribunal will not make an order for possession of a property let on an assured tenancy except on one or more grounds set out in Schedule 5 of the Act.

The application stated that the application for the eviction/ order for possession was based on the following grounds of Schedule 5 of the 1988 Act:-

Ground 11: Whether or not any rent is in arrears on the date on which proceedings for possession are begun, the tenant has persistently delayed paying rent which has become lawfully due and

Ground 12: Some rent lawfully due from the tenant:-

(a) is unpaid on the date on which the proceedings for possession are begun; and

(b) except where subsection (1)(b) of section 19 of this Act applies, was in arrears at the date of the service of the notice under that section relating to those proceedings.

The Tribunal found that at the date of service of the AT6 (12th June 2019) the Respondent had rent arrears of £1800 and at the date of the application (2nd July 2019) the Respondent had rent arrears of £2700. The Tribunal also found that the Respondent had persistently delayed in paying rent that was lawfully due as he made no payments in respect of the rent payments due on 28th April 2019, 28th May 2019 and 28th June 2019.

3.3 Requirements of Section 18(3) of the Housing (Scotland) Act 1988

The Tribunal accepted the evidence of the Applicant to the effect that the rent arrears is not due to the failure or delay in payment of housing benefit.

3.4 Requirements of Section 18(6) of the Housing (Scotland) Act 1988

The Tribunal found that the requirements of section 18(6) do not apply as the tenancy is a statutory assured tenancy as a valid notice to quit had been served.

3.5 Requirements of Section 19 of the Housing (Scotland) Act 1988

The Tribunal found that a valid AT6 notice had been served on the Respondent giving him more than two weeks notice that the Landlord intended to apply for an Order for Possession on Grounds 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988 and the notice had been validly served on the Tenant by Sheriff Officer on 12th June 2019.

3.6 Requirements of Section 18(4) of the Housing (Scotland) Act 1988

The Tribunal acknowledge in terms of Section 18(4) of the Housing (Scotland) Act 1988 as the application is sought under Grounds 11 and 12 of the Housing (Scotland) Act 1988 the Tribunal may only grant the Order for Possession if they consider it reasonable to do so. The Tribunal finds that the Tenant has persistently delayed in paying rent and the Tenant has made no rent payments since the date of commencement of the statutory assured tenancy and the current arrears under the statutory assured tenancy amount to £4500. The Tribunal considers it to be material that there are substantial rent arrears of £16,200 due in respect of the previous contractual short assured tenancy and consequently the Tribunal determine that it is

reasonable to grant the Order for Possession on these grounds. Accordingly the Tribunal grant the application for the Order for Possession sought.

Note: The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent.

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.

Jacqui Taylor

Legal Member

5th September 2019