



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/19/2166

Re: Property at 30 Rannas Place, Portessie, Buckie, AB56 1SQ (“the Property”)

Parties:

Mr Lee Davenport, 4 Mitchell Street, Lossiemouth, Moray, IV31 6QB (“the Applicant”)

Ms Theresa Townsley, 30 Rannas Place, Portessie, Buckie, AB56 1SQ (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for recovery of possession against the Respondent.

- 1 By application dated 21 May 2019 the Applicant sought an order for repossession of the property against the Respondent. The Applicant submitted the following documentation in support of the application:-
 - (i) Copy Tenancy Agreement between the Applicant and Respondent dated 19th September 2016;
 - (ii) Form AT6 dated 28th May 2019 citing ground 8 of Schedule 5 of the Housing (Scotland) Act 1988 and stating that proceedings would not be raised before 5th July 2019;
 - (iii) Notice to Quit dated 28th May 2019 terminating the tenancy between the parties as at 30 July 2019;
 - (iv) Proof of service of the above Notices by Sheriff Officers;
 - (v) Rent Statement and Bank Statements; and
 - (vi) Section 11 Notice to Moray Council.

- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 4th November 2019.
- 3 A copy of the application paperwork together with notification of the Case Management Discussion was served on the Respondent by Sheriff Officers on 11th September 2019.

The Case Management Discussion

- 4 The Case Management Discussion took place on 4th November 2019. The Applicant was represented by Karen Poke from R&R Urquhart LLP. The Respondent did not attend. The Tribunal noted that she had been served with the paperwork by Sheriff Officers and therefore considered it was able to continue with the Case Management Discussion in the absence of the Respondent.
- 5 Ms Poke advised that no rent had been paid and the amount outstanding as at the date was £8,791.61. There had been no recent contact. They were not aware of any outstanding housing benefit that would contribute towards the arrears. Following service of the section 11 notice Moray Council had been in touch and had said that they had also been trying to get in touch with the Respondent to no avail.

Findings in Fact and Law

- 6 The parties entered into a Short Assured Tenancy Agreement in respect of the property which commenced on 1st October 2016
- 7 The Short Assured Tenancy Agreement does not make provision for the tenancy to be terminated on any of the grounds for repossession as set out in Schedule 5 of the Housing (Scotland) Act 1988 ("the 1988 Act").
- 8 In terms of the said Tenancy Agreement the Respondent is due to pay rent of £500 per month.
- 9 On 20th June 2019 the Applicant sent a Form AT6 Notice of Intention to Raise Proceedings for Possession by Sheriff Officers to the Respondent. The Form AT6 cited ground 8 of Schedule 5 of the 1988 Act. On that same date the Respondent was served with a Notice to Quit terminating the tenancy as at 30th July 2019;

- 10 The contractual assured tenancy between the parties has been terminated.
- 11 As at the date of service of the Form AT6, arrears in the sum of £6191.62 were outstanding.
- 12 As at the date of the Case Management Discussion, arrears in the sum of £8791.62 are outstanding.
- 13 The arrears are not the result of any failure of payment of housing benefit or its equivalent.

Reasons for Decision

- 14 The Tribunal was satisfied that it was able to continue with the Case Management Discussion in the absence of the Respondent. The Tribunal was further satisfied that it was able to make a determination of the application at the Case Management Discussion and that to do so would not be prejudicial to the interests of the parties.
- 15 In this case the Applicant sought repossession on grounds 8 of the Housing (Scotland) Act 1988 ("the 1988 Act"). The Respondent had been properly served with a Form AT6 giving notice of the Applicant's intention to raise proceedings on those grounds
- 16 The Tribunal further accepted that the tenancy had been terminated by the service of a Notice to Quit as at 30th July 2019.
- 17 The Tribunal therefore considered whether the grounds relied upon had been met. Ground 8 is a mandatory ground. It states that the Tribunal must make an order for repossession where there is at least three months rent outstanding both at the date of service of the AT6 and at the date of determination of the application, unless there is evidence to show that the arrears are due to a failure to pay housing benefit or its equivalent.
- 18 The Tribunal was satisfied having regard to the written and verbal submissions from the Applicant that arrears of rent in the sum of £6191.62 had been outstanding when the AT6 was served and arrears as at the date of the Case Management Discussion were £8791.62. The Tribunal further noted that there was no evidence before it to suggest that the arrears were a result of issues with housing benefit. On that basis the Tribunal considered that the provisions of ground 8 had been met.
- 19 The Tribunal therefore made an order for repossession against 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.

Ruth O'Hare

 Legal Member/Chair

Date

4/11/19