



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/19/2202

Re: Property at 11 Ladywell Drive, Tullibody, FK10 2QP (“the Property”)

Parties:

Mr Jamie Buckley, 10 CraigLeith View, Tullibody, FK10 2TY (“the Applicant”)

Mr Thomas Robertson, Ms Tracie Whinham, 11 Ladywell Drive, Tullibody, FK10 2QP (“the Respondents”)

Tribunal Members:

Graham Harding (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is entitled to an order for possession of the property and the ejection of the Respondents from the property

Background

1. By application dated 10 July 2019 the Applicant’s representatives Jardine Donaldson, Solicitors, Stirling applied to the Tribunal for an order for the possession of the property and the ejection of the Respondents from the property under grounds 8, 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988. The Applicant’s representatives submitted copies of a Notice to Quit, Sheriff Officers Execution, Rent Statement, Section 11 Notice and Form AT6.
2. By Notice of Acceptance dated 13 August 2019 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion was assigned.
3. Intimation of the Case Management Discussion was sent to the Applicant’s representatives by recorded delivery post and to the Respondents by Sheriff Officers.

4. A Case Management Discussion was held at Stirling on 26 September 2019. The Applicant was not present but was represented by Ms McCallum of Jardine Donaldson, Solicitors, Stirling. The Respondents did not attend however Mr Robertson had contacted the Tribunal in advance of the Case Management Discussion requesting a postponement due to Ms Whinham being ill and also because Mr Robertson was no longer residing in the property. The Case Management discussion was adjourned to 7 November 2019.
5. A direction was issued to the Respondents requiring them to provide:
 1. Medical evidence as to Ms Whinham's fitness to attend the Case Management Discussion on 26 September 2019 and 7 November 2019;
 2. The Present address of Mr Thomas Robertson;
 3. Confirmation as to whether the application is opposed and, in the event of such opposition, written representations as to their position.
6. Intimation of the Direction and adjourned Case Management Discussion was given to the Respondents by Sheriff Officers on 11 October 2019.
7. No written representations were received from the Respondents prior to the adjourned Case Management Discussion.
8. The Applicant's representatives submitted an affidavit sworn by the Applicant dated 30 October 2019 by letter dated 31 October 2019

The Case Management Discussion

9. A Case Management Discussion was held at STEP Stirling on 7 November 2019. The Applicant did not attend but was represented by Ms McCallum of Jardine Donaldson, Solicitors, Stirling. The Respondents did not attend and were not represented. The Tribunal being satisfied that intimation of the Case Management discussion had been given to the Respondents by Sheriff Officers determined to proceed with the Case Management Discussion in their absence in accordance with Rule 29 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.
10. For the applicant Ms McCallum confirmed that there was no written lease. The Respondents had commenced their tenancy on 10 June 2014 and paid rent of £450.00 per month. This had resulted in a contractual Assured Tenancy being formed under the Housing (Scotland) Act 1988.
11. Ms McCallum confirmed that after the Respondents stopped paying rent she was instructed to serve a Notice to Quit on the Respondents. This was served on them by Sheriff Officers on 18 April 2019. The termination date was 10 June 2019. Ms McCallum confirmed that thereafter the tenancy became a Statutory Assured Tenancy.

12. Ms McCallum advised the Tribunal that on 14 June 2019 the Respondents were sent by recorded delivery post Form AT6 intimating the Applicant's intention to raise proceedings for recovery of possession under grounds 8, 10, 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988. ("the 1988 Act") Ms McCallum went on to say that the current proceedings had been raised on Grounds 8, 11 and 12 only.
13. Ms McCallum confirmed that a Section 11 Notice had been sent to Clackmannanshire Council advising of the raising of proceedings by email dated 10 July 2019.
14. Ms McCallum advised the Tribunal that no rent had been paid by the Respondents since November 2019. The rent due when the AT6 was served amounted to £3150.00 and the current rent due was now £4950.00 There was more than three months' rent due both at the time of serving the AT6 and at the date of the Case Management Discussion. The terms of Ground 8 of Schedule 5 of the 1988 Act were therefore satisfied and Ms McCallum submitted that the order should be granted on this ground which was a mandatory ground. As it was a mandatory ground Ms McCallum was not insisting on the other grounds in the application.

Findings in Fact

15. The parties entered into an Assured tenancy under the 1988 Act that commenced on 10 June 2014. There was no written lease.
16. Following service of a Notice to Quit on 18 April 2019 the Tenancy converted from a Contractual Assured Tenancy to a Statutory Assured tenancy on 10 June 2019.
17. The Respondents had accrued rent arrears by June 2019 of £3150.00.
18. The Respondents were served with a Form AT6 by Recorded Delivery post on 14 June 2019.
19. Clackmannanshire Council were given notice of the proceedings by a Section 11 Notice on 10 July 2019.
20. The rent arrears had risen to £4950.00 as at the date of the Case Management Discussion on 7 November 2019.

Reasons for Decision

21. The Tribunal was satisfied that by taking occupation of the property and paying rent in the sum of £450.00 per month a Contractual Assured Tenancy had been constituted under the 1988 Act. This became a Statutory Assured Tenancy after service of the Notice to Quit and the Respondents remaining in the property after 10 June 2019.
22. The form AT6 was properly served on the Respondents and proper notice of the proceedings was given to the Local Authority.
23. The Respondents were in arrears of rent by more than the equivalent of three months' rent both at the date of service of the AT6 and at the date of the Case Management Discussion. This satisfied the terms of Ground 8 of Schedule 5 of the 1988 Act and was a mandatory ground for granting the order sought.
24. Despite having been served with a Direction from the Tribunal the Respondents had failed to comply with any of the requirements in the Direction despite having had plenty of opportunity to do so. The Tribunal was aware that Mr Robertson was no longer living in the property but clearly was aware of the proceedings and had previously been in contact with the Tribunal. The Tribunal was of the view that there could be no prejudice to him in the order being granted if he had vacated the property.
25. In all the circumstances it was reasonable to grant the order sought and indeed the Tribunal was obliged to do so as Ground 8 of Schedule 5 is a mandatory ground.

Decision

26. The Tribunal finds the Applicant entitled to an order for the possession of the property and the ejection of the Respondents from the property in terms of Ground 8 of Schedule 5 of the 1988 Act.

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.

Graham Harding
Legal Member/Chair

7 November 2019
Date