

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/19/3683

**Re: Property at Flat 1/2, St Helens Villa, High Road, Sandbank, PA23 8PN (“the
Property”)**

Parties:

**Mrs Maureen Beattie, Struthan Na Feoraig, North Campbell Road, Inellan,
Dunoon, PA23 7SB (“the Applicant”)**

**Mr James Scott, Flat 1/2, St Helens Villa, High Road, Sandbank, PA23 8PN
 (“the Respondent”)**

Tribunal Members:

George Clark (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the application should be decided without a
Hearing and made an Order for Possession of the Property.**

Background

By application, received by the Tribunal on 18 November 2019, the Applicant sought an Order for Possession of the Property under Section 18 of the Housing (Scotland) Act 1988 (“the Act”). The Grounds relied on included Ground 8 of Schedule 5 to the Act, namely that both at the date of the service of the Notice required under Section 19 of the Act (the Form AT6 Notice) and at the date of the hearing, at least three months’ rent lawfully due from the Respondent was in arrears.

The application was accompanied by copies of a Short Assured Tenancy Agreement between the parties, commencing on 8 January 2014 and, if not terminated on 9 July 2014, continuing on a month-to-month basis until terminated by two months’ written notice given by either Party to the other, a Form AT6 Notice and Notice to Quit, both dated 24 October 2019, with proof of service of both Notices on that date. The Form AT6 Notice advised the Respondent of the Grounds being relied on by the Applicant and that proceedings would not be raised before 8 November 2019. The Notice to Quit required the Respondent to vacate the Property by 9 January 2020. The

Applicant also provided with the application a Rent Statement showing arrears as at 8 November 2019 of £9,354.65, with no rent having been paid since 8 October 2018. On 19 December 2019, the Tribunal advised the Parties of the date, time and venue for a Case Management Discussion and the Respondent was invited to make written representations by 9 January 2020. The respondent did not make any written representations to the Tribunal.

Case Management Discussion

A Case Management Discussion was held at Greenock Sheriff Court on the morning of 22 January 2020. The Applicant was represented by Mr Kenneth Caldwell of Patten & Prentice LLP, solicitors, Greenock. The Respondent was not present or represented. Mr Caldwell advised the Tribunal that the Applicant had been unable to obtain a copy of the Form AT5 Notice which would have been required to create a Short Assured Tenancy and asked the Tribunal to proceed on the basis that it was an Assured Tenancy. He told the Tribunal that no rent had been received since the date of the application. The arrears now stood at £10,084.65. He asked the Tribunal to make the Order for Possession without a Hearing.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to determine the application without a Hearing.

Section 18 of the Act states that, if the Tribunal is satisfied that any of the Grounds in Part I of Schedule 5 to the Act is established then, provided the Notice required under Section 19 of the Act (The Form AT6 Notice) has been given, and, in respect of *inter alia* Ground 8 of Schedule 5, the terms of the tenancy make provision for it to be brought to an end on the Ground in question, the Tribunal shall make an Order for possession. Ground 8 of Part I of Schedule 5 to the Act applies where both at the date of the service of the Form AT6 Notice and at the date of the hearing, at least three months' rent lawfully due from the tenant is in arrears.

The tenancy agreement gave notice to the Respondent that the Applicant might seek to recover possession on one or more of the Grounds set out in Schedule 5 to the Act and the Tribunal had seen evidence of service of the Form AT6 Notice which specified the Grounds on which an Order for Possession would be sought. The Tribunal was also satisfied that the rent had been in arrears by at least three months both at the date of service of the Form AT6 Notice (24 October 2019) and at the date of the Case Management Discussion. Accordingly, the requirements of Section 18 of the Act had been met and the Tribunal was bound to make an Order for Possession of the Property.

Decision

The Tribunal determined that the application should be decided without a Hearing and made an Order for Possession of the Property.

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.

George Clark

Legal Member/Chair

22 July 2020

Date