



**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/19/2310

**Re: Property at Woodhaven House, Riverside Road, Rattray, Blairgowrie, PH10
7GA (“the Property”)**

Parties:

**The Royal Bank of Scotland PLC, 36 St Andrew Square, Edinburgh, EH2 2YB
 (“the Applicant”)**

**Mr Sayed Jamal Shah, Woodhaven House, Riverside Road, Rattray,
Blairgowrie, PH10 7GA (“the Respondent”)**

Tribunal Members:

Valerie Bremner (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that a possession order in terms of section 18 of the
Housing (Scotland) Act 1988 should be granted.**

Tribunal Member:

Valerie Bremner (Legal Member)

Background

1. This is an Application in terms of Rule 65 of the Tribunal Rules of Procedure for a Possession Order in terms of Section 18 of the Housing (Scotland) Act 1988. The Application was made on 23rd July 2019 and accepted by the Tribunal on 12th August 2019. The Ground under which a possession order was sought was stated to be Ground 2 of Schedule 5 of the Housing (Scotland) Act 1988. The Tribunal fixed a Case Management Discussion for 4th October 2019.

2. At the case management discussion on 4th October 2019 The Tribunal had sight of the Application, a Notice to Quit, a Form AT6, an execution of service by Sheriff Officer of these documents, dated 14th May 2019, photographs of two pages of a lease, a copy of two pages of a lease which were illegible, a photograph of a Home Office Document, a Notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003, copy correspondence from the Liquidator of Rattray Homes Limited and emails from the Applicant's solicitor. At that case management discussion the Respondent had not attended, but had written in asking for an adjournment due to "insufficient paperwork" and "support" for his defence. In any event the case management discussion was adjourned to a later date at the request of the Applicant's solicitor, the Tribunal having raised a number of issues in respect of the type of tenancy, whether the heritable security had been granted before the tenancy, whether the Respondent had received a notice in terms of Ground (2) (b) of the 1988 Act or if this requirement should be dispensed with by the Tribunal, whether the Notice to Quit had terminated the tenancy and if whether the AT6 Notice was in appropriate terms and had been timeously served.

3. A case management discussion was fixed for 15th November 2019 but the Applicant's solicitor requested a further adjournment of the case management discussion until January 2020 to allow for service of further documentation on the Respondent. The case management discussion was postponed until 17 January 2020.

4. At the case management discussion on 17th January 2020, the Respondent Mr Shah attended and represented himself. Ms Gould of TLT solicitors appeared for the Applicant by conference call. On this date as well as all of the previous paperwork the Tribunal had sight of another AT6 and a Notice to Quit both dated 17 October 2019 and an execution of service of these by Sheriff Officer on 18th October 2019. The Tribunal also had sight of a letter from the Applicant's solicitor to the Respondent dated 29th October 2019 and a handwritten note from the Respondent received by the Tribunal on 14th November 2019. This note indicated that he would not be leaving the property on 1st December 2019 " unless A show my case to Tribunal". The Respondent produced a full copy of a lease agreement for the property which purported to be an assured shorthold tenancy agreement in terms of the Housing Act 1988.

Submissions

5. Ms Gould for the Applicant sought a possession order for the property and narrated a lengthy background. The property had been subject to a standard security registered on 25th October 2007 by Rattray Homes Ltd in favour of the Applicant. On 10 February 2016 the Applicant had obtained decree against Rattray Homes Ltd at Perth Sheriff Court in terms of the Conveyancing and Feudal Reform (Scotland) Act 1970 as the heritable creditor in respect of a standard security granted over the property by Rattray Homes Limited, the company having failed to keep to the conditions of the loan. The Applicant wished to sell the property now to attempt to recover the money due in terms of the loan.

6. When the Liquidator appointed in respect of Rattray Homes Ltd sent persons to value the property around the end of March 2017, having been told by a Director of the company that the property was vacant, the Respondent was apparently staying in the property and handed over to those attending, paperwork in respect of his immigration status and some pages of what purported to be a tenancy agreement and advised that he had been resident in the property since 2015 in terms of a lease, paying rent to a Mr Brian Simpson, a Director of Rattray Homes Ltd. The liquidator had written to both Brian Simpson and also to the Respondent Mr Shah to obtain more information on the situation but had not received any response from the Respondent and only one phonecall from Mr Simpson.

7. Further enquiries had suggested that the person in residence at the property on occasion may have been a Mr Hussain and the Applicant obtained a decree to eject an unauthorised occupant at Perth Sheriff Court in July 2019 but Mr Shah the Respondent had attended court at that time to advise that he was resident at the property in terms of a lease he said he had entered into with Rattray Homes Ltd in 2015. As a result of the tenancy which had apparently been entered into without the knowledge or consent of the Applicant, the Applicant was now making an application for a possession order in respect of the property.

8. Ms Gould submitted that a possession order should be granted. She submitted that Ground 2 of Schedule 5 of the Housing (Scotland) Act was established and invited the Tribunal to dispense with the requirement under Ground 2 (b) for Notice to be given to the Tenant at the start of the tenancy at the latest, that possession might be recovered on this ground, as the Applicant had had no knowledge of the tenancy or the paperwork that had been signed or served at the start of the tenancy on 1st July 2015.

9. Ms Gould further submitted that the tenancy was one which could be described as an assured tenancy in terms of the Housing (Scotland) Act 1988 as it was clearly an agreement for a year to rent the property as a separate dwelling house in exchange for rent. She referred to the AT 6 Form and Notice to Quit served on 18th October 2019 which she submitted were in proper form and gave clear notice that the Respondent had to leave by 1st December 2019. She accepted that Part 3 of the AT6 which referred to "failure to keep to the conditions of the loan" was unclear and had no application to the Respondent, however Ground 2 was clearly stated in the Notice. She accepted that the AT6 Form she was relying on had been served after proceedings started and not as set out in S19 of the Act. Ultimately, she invited the Tribunal to dispense with the requirement for an AT6 given the background, the length of time the Respondent had been aware of the request to leave the property, the time he had had to take advice and the fact that the Applicant had required to commence proceedings using illegible paperwork and had been unable to view the entire lease agreement. She suggested that the tenancy was wholly unauthorised, and the Applicant had taken all appropriate steps to obtain possession of the property to which they were legally entitled.

10. The Respondent advised the Tribunal that he had entered into a lease agreement with Rattray Homes Ltd in 2015, dealing always with Brian Simpson. He produced the agreement which appeared to run from 1st July 2015 until 30th June 2016 and renewed on a monthly basis thereafter. He had at no time been advised that the property could be the subject of a possession order if there was a default in terms of the conditions of the standard security. He had always paid the rent which was now £1050 per month and said that he would not have entered into the agreement had he known this could happen. He told the Tribunal that he could not be evicted as he put it, because this would lead to his arrest. He pointed to paperwork he had from the Home Office and advised that he could not change address without advising the Home Office first due to residence conditions to which he was subject, or he would be liable to arrest. He had legal assistance with immigration matters but he said it took several months to obtain a response from the Home Office and he asked that the Tribunal make the Home Office aware of the Application.

11. The Respondent agreed that he had received all the correspondence referred to by the Applicant's solicitor and had received a Notice to Quit and AT6 Form from the liquidator and a letter in April 2017. He had gone to Perth Sheriff Court in July 2019 and had explained that he lived at the property as a tenant. He said that Mr Hussain was a friend of his who had simply answered the door when he was unwell and in hospital. He confirmed that he understood the application and what had been asked of him in terms of letters and notices, ie that he was required to leave and the date when he was required to do this. He had received the Notice to Quit and AT6 from the Applicant's solicitor in October 2019. He was not opposed to leaving but his concern was that he needed time to advise the Home Office of any change of address. He had telephoned Mr Simpson whom he had dealt with in respect of the lease 16 times and understood he would "sort this matter out". He advised that he had serious medical conditions and displayed a certificate of unfitness to work in 2018 when it appeared he spent several days in hospital in intensive care. He indicated he suffered from cirrhosis and leukaemia. He accepted that he had received correspondence from Perth and Kinross Council in August of 2019 (which he had submitted to the Tribunal) offering to assist him with finding new accommodation, but he said when he had gone to take up the assistance offered they had been unable to help him he said because he "had money".

12. The Respondent requested that the date of any possession order being made be postponed given his requirement to advise the Home Office of any change of address and also because of his medical conditions.

13. Ms Gould on behalf of the Applicant opposed the request to postpone the date of any possession order given what she described as the lengthy background and the Applicant's attempts to recover possession of the property.

14. The Tribunal found that Ground 2(a) of Schedule 5 of the 1988 Act was satisfied and felt it was reasonable to dispense with the requirement under Ground 2(b). In addition the Tribunal took the view that it was reasonable to dispense with the requirement of the AT6 Notice in terms of S19(1)(b) of the Act and made a possession order in respect of the property. The Tribunal did not feel it was appropriate to postpone the date of possession in his matter.

Findings in Fact

15. The Applicant is the heritable creditor in respect of a standard security at the property which was registered in 2007. The standard security was granted by Rattray Homes Ltd in favour of the Applicant.

16. At some stage towards the end of 2016 or early in 2017 a liquidator was appointed in respect of Rattray Homes Ltd.

17. In February 2016 the Applicant obtained a decree at Perth Sheriff Court in respect of the property in terms of the Conveyancing and Feudal Reform (Scotland) Act 1970 as the heritable creditor in respect of a standard security granted over the property by Rattray Homes Ltd, the company having failed to keep to the conditions of the loan.

18. The Applicant is entitled to sell the house as a result of the default by Rattray Homes Ltd and requires vacant possession in order to exercise that right.

19. In late March or early April 2017 when the liquidator instructed a valuation of the property, having been advised that it was vacant, the Respondent was found to be living at the property.

20. The Respondent entered into a tenancy with Rattray Homes Ltd starting on 1st July 2015. This agreement was for a year and this continued on a monthly basis after the first year. This tenancy was created after the heritable security was created.

21. The tenancy which purported to be a tenancy under the Housing Act 1988 is an assured tenancy in terms of the housing (Scotland) Act 1988.

22. This tenancy was unauthorised and was created without the consent or knowledge of the heritable security holder, the Applicant in this matter.

23. Two Notices to Quit and Forms AT6 were served on the Respondent on 14th May and 18th October, both 2019 and he had received a letter from the Liquidator in April 2017 advising that the Applicant would be seeking possession of the property. On 29th October 2019 the Applicant's solicitors wrote to him following the service by Sheriff officer of the latter Notice to Quit and Form AT6 making it clear that he was required to leave the property by December 1st 2019.

24. A Notice in terms of the Homelessness etc (Scotland) Act 2003 was served in respect of this application. The Council which received the Notice contacted the Respondent to offer assistance with housing in August 2019.

25. The Respondent understood fully what was being asked in terms of this Application and had received all the paperwork referred to above

Reasons for Decision

26. This Application requested a possession order in terms of Ground 2 of Schedule 5 which is a ground which is a mandatory ground on which the Tribunal must order possession if the statutory requirements are met.

27. The Tribunal had no hesitation in finding that this was an assured tenancy which was subject to the Housing (Scotland) Act 1988. The agreement itself purported to be an assured shorthold tenancy in terms of the Housing Act 1988 which in this respect has no application in Scotland. Given the fact that this was a tenancy for a private dwelling house for residential use where rent was paid and it had been created in 2015 for a period of a year it was clear that this was an assured tenancy under the Housing (Scotland) Act 1988.

28. The original Notice to Quit and AT6 served by the Liquidator in May 2019 did not give a date to leave the property which coincided with the end or ish date of the agreement. The Notice to Quit and AT 6 served in October 2019 appeared to give notice to leave as at the ish or end date and the Tribunal was satisfied that the Notice to Quit had terminated the tenancy. The AT6 form served on 18th October 2019 had been served after proceedings had been started and as such did not meet the requirement of s19 of the Act. However in terms of S19(1)(b) of the Act the Tribunal can dispense with this requirement if it considers it reasonable to do so. Having heard the background here and importantly the information which had been sent to the Respondent over a period of time the Tribunal was in no doubt that the Respondent had been given proper notice of the requirement to leave the property at a particular date and indeed he did not dispute this. In these circumstances the requirement for an AT6 form was dispensed with in terms of S19(1)(b) of the 1988 Act as it seemed entirely reasonable to do given the unusual circumstances and history in respect of the tenancy.

29. As far as the possession Ground 2 is concerned, in this application it was agreed that no Notice had been given in writing at the start of the tenancy at the latest, giving the Respondent notice that possession could be recovered on this ground. As the Applicant had had no knowledge of the creation of this tenancy they also had no knowledge of the circumstances surrounding its start and it seemed wholly unfair to require the terms of Ground 2 (b) to be met which would in fact be impossible for them to do. The Tribunal was also aware that in terms of a letter from the Liquidator of Rattray Homes Ltd to the Respondent he had known of the position since April 2017 and in particular that the Applicant at some future date would take steps to take possession of the property in order to sell it. It was therefore reasonable to dispense with the requirement for Notice in terms of Ground 2 (b) of the 1988 Act,

30. Having dispensed with the above requirements the Tribunal made a possession order in terms of S18 of the Housing (Scotland) Act 1988 as the ground for possession in Ground 2 to the Act had been met.

31 The Tribunal did not exercise its discretion within s20 of the 1988 Act to postpone the date of possession. Although the Respondent may be subject to conditions in respect of his residence within the United Kingdom it is his responsibility and not for the Tribunal to keep the Home Office advised of his address and he has known for several months that he might well require to leave the property. Given the history and all of the circumstances here it did not seem appropriate to postpone the date of the possession order.

Decision

The Tribunal made a possession order in respect of the property in terms of Ground 2 Schedule 5 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.

Valerie Bremner

17 January 2020

Legal Member/Chair

Date