

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/19/2674

Re: Property at Flat 2/3, 3 Glencairn Drive, Glasgow, G41 4QP (“the Property”)

Parties:

Mr Naveed Rashid, c/o Property 4U, 434 Cathcart Road, Glasgow, G42 7BZ (“the Applicant”)

Mr Jonathan Skinner, Flat 2/3, 3 Glencairn Drive, Glasgow, G41 4QP (“the Respondent”)

Tribunal Members:

Morag Leck (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession should be granted in favour of the Applicant.

Background

1. By Application received by the Tribunal on 26th August 2019 (“the Application”), the Applicant sought an order for possession under section 18 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The grounds for possession relied on were Grounds 8, 11 and 12 of Schedule 5 to the 1988 Act.
2. The application was accompanied by copies of the following documents :-
 - i) Tenancy agreement commencing 1st August 2016
 - ii) Notice to Quit (NTQ) and covering letter dated 10th June 2019 together with an execution of service by Sheriff Officer
 - iii) Form AT6 dated 6th August 2019 together with an execution of service by Sheriff Officer

- iv) Notice under section 11 of the Homelessness Etc. (Scotland) Act 2003 dated 23 August 2019
 - v) Rent Statement up to 1/8/19
 - vi) Confirmation that the Applicant's wife consented as joint owner to proceedings being raised in the sole name of her husband.
3. By Notice of Acceptance dated 21 October 2019 a Legal Member of the Tribunal with delegated powers accepted the Application which was referred to a Case Management Discussion (CMD) on 4 December 2019.

Case Management Discussion

4. The CMD was held on 4 December 2019 at the Glasgow Tribunals Centre. It was attended by the Applicant's legal representatives, Mr Kenneth Caldwell. The Applicant did not attend. There was no appearance by the Respondent. The Notice of the Hearing had been served on the Respondent by Sheriff Officers on 4 November 2019 .The CMD therefore preceded in his absence. The application was heard alongside a related case which proceeds under Chamber Reference FTS/HPC/CV/19/2676
5. Mr Caldwell referred to the terms of his application. He referred to the Tenancy Agreement and submitted that a contractual Assured Tenancy had been in place since 1st August 2016. Following the NTQ which had been served on the Respondent on 10th June 2019 which required the Respondent to vacate the property at the ish date of 1st August 2019, thereby terminating the contractual tenancy, a Statutory Assured Tenancy was in place. An AT6 had then been served on the respondent on 6th August setting out the grounds of recovery being mandatory ground 8 and discretionary grounds 11 and 12 of schedule 5 to the 1988 Act. The effective date as set out in the AT6 was 21st August 2019 and an application for recovery of possession had been submitted to the Tribunal on 23rd August 2019.
6. Mr Caldwell submitted that if the Tribunal were satisfied that Grounds 8 were met then the Tribunal could make an order on that basis. No expenses were sought. He explained that the Section 11 Notice had been served on Glasgow City Council by email and that an acknowledgement of receipt of the Notice had been requested by his office and received this morning by email. This was shown to the Tribunal.
7. Mr Caldwell submitted that the rent arrears stated in the application remained outstanding. As referred to in this and the conjoined application only housing benefit payments had been received in relation to the rent due There had been no interruption in the payment of those benefits during the tenancy.

Reasons for Decision

8. Rule 17 of the First –tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 states that the Tribunal may do anything at a CMD 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 and that it would determine the application without a hearing.
9. Section 18 of the Act provides that the Tribunal shall not make an Order for possession of a house let on an Assured Tenancy except on one or more of the grounds set out in Schedule 5 of the 1988 Act and that the Tribunal shall make an Order if satisfied that any of the Grounds in Part 1 of Schedule 5 is established.
10. Ground 8 of Part 1 of Schedule 5 states that the Tribunal must make an Order for Possession where, both at the date of service of the Notice given under section 19 of the 1988 Act (the Form AT6 Notice) and at the date of the hearing, at least three months' rent lawfully due from the tenant is in arrears.
11. The Tribunal was satisfied that the arrears of rent lawfully due from the Respondent as at the date of Service of the Form AT6 Notice and at the date of the CMD exceeded three months. The requirements of section 18 had therefore been met and the Tribunal required to grant an Order for Possession of the Property. Given that the Tribunal found Ground 8 to be established, it did not consider further whether Grounds 11 and 12 were also established.

Decision

12. The Tribunal grants an Order in favour of the Applicant against the Respondent for recovery of 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.

M Leck

Legal Member

Date

4th December 2019.