



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/22/3754

Re: Property at Flat 1/2, 233 Kenmure Street, Glasgow, G41 2JG (“the Property”)

Parties:

Mr Mohammad Farooq, 52 Albert Road, Glasgow, G42 8DN (“the Applicant”)

Mrs Shabana Naeem, Flat 1/2, 233 Kenmure Street, Glasgow, G41 2JG (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member) and Ann Moore (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

This was an application dated 11th October 2022 brought in terms of Rule 65 (Application for order for possession in relation to assured tenancies) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant provided with his application copies of the short assured tenancy agreement, section 19 notice (form AT6), Section 11 notice, rent arrears statement, pre-action correspondence and relevant executions of service.

All of these documents and forms had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland) Act 1988*, and the procedures set out in that Act had been correctly followed and applied.

The form AT6 intimated to the tenant that the landlord intended to raise proceedings for possession of the house on grounds 11 and 12 of Schedule 5 to the *Housing (Scotland) Act 1988*.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 7th February 2023, and the Tribunal was provided with the execution of service.

The Tribunal received an e-mail from the Respondent sent on the evening of 8th March 2023, in which she advised that she did not intend to participate in the Case Management Discussion the following day.

Case Management Discussion

A Case Management Discussion was held at 10:00 on 9th March 2023 by Tele-Conference. The Applicant did not participate, but was represented by Mr Haq and Mr Hassan, letting agents. The Respondent did not participate, nor was she represented.

Mr Haq invited the Tribunal with reference to the application and papers to grant the order sought on grounds 11 and 12 of Schedule 5 to the *Housing (Scotland) Act 1988*. The form AT6 narrated rent arrears of £4,150.00 in terms of an attached rent arrears statement at the time of the notice.

That figure had increased to £5,950.00 as of the date hereof. The monthly rental due in terms of clause 2.1 of the tenancy agreement is £750.00 per month.

Clause 20.4 of the tenancy agreement provides that the landlord may terminate the tenancy at any time by serving a form AT6 on grounds 11 and 12, which are set out in full in the written lease agreement.

Mr Haq explained that the Respondent had made repeated assertions for many months that she would pay the rent arrears, but that she had not done so.

Statement of Reasons

In terms of Section 18(4) of the Act, if the Tribunal is satisfied that any of the grounds in Part II of Schedule 5 to this Act is established, the Tribunal shall not make an order for possession unless the Tribunal considers it reasonable to do so.

Section 18(4A) of the Act provides that in considering for the purposes of subsection (4) above whether it is reasonable to make an order for possession on Ground 11 or 12 in Part II of Schedule 5 to this Act, the First-tier Tribunal shall have regard, in particular, to the extent to which any delay or failure to pay rent taken into account by the Tribunal in determining that the Ground is established is or was a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit.

The Tribunal was satisfied that grounds 11 and 12 contained in Part 2 of Schedule 5 to the Act had been established, and considered that it was reasonable to make an order for possession. The Tribunal was not satisfied that rent is in arrears as a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit. There was no evidence to establish any such reason for rent arrears.

The Tribunal was satisfied that the Applicant had complied with the pre-action requirements under the *Rent Arrears Pre-action Requirements (Coronavirus) (Scotland) Regulations 2020*.

In the case of *City of Glasgow District Council v Erhaiganoma* 1993 SCLR 592, The Inner House of the Court of Session stated at page 594 that “Where prima facie reasonableness has been made out, we think that it is then for the tenant to put circumstances before the court to show otherwise.”.

In this application, the Respondent had not responded to this application advancing any arguments that it was not reasonable to issue an order for possession, and had not participated in the Case Management Discussion. The Respondent had put forward no circumstances to show that it would not be reasonable for the Tribunal to issue an order for possession. The arrears of rent are substantial.

Having considered the whole circumstances, the Tribunal was satisfied that it was reasonable to issue an order for possession.

Decision

In these circumstances, the Tribunal made an order for possession of the house let on the tenancy as sought in this application.

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.

Neil Kinnear

09/03/2023

Legal Member/Chair

Date

