

**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/22/4420

Re: Property at 18 Forsyth Street, Greenock, PA16 8DT (“the Property”)

Parties:

Mr Alistair Mckinnon, 2 Cloch Brae, Gourock, PA19 1AS (“the Applicant”)

Mr Chris Leck, 18 Forsyth Street, Greenock, PA16 8DT (“the Respondent”)

Tribunal Member:

Karen Kirk (Legal Member) and Janine Green (Ordinary Member)

Introduction

This Hearing was a Case Management Discussion fixed in terms of Rule 17 of the Procedure Rules and concerned an Application for Recovery of Possession on termination of an assured tenancy under Section 18 of the Housing (Scotland) Act 1988. The purpose of the Hearing being to explore how the parties dispute may be efficiently resolved. The purpose of the hearing was explained and it was understood a final decision on the Application could also be made.

Attendance and Representation

The Applicant was present and was represented by Ken Caldwell, Patten Prentice, 2 Ardgowan Square, Greenock, PA16 8PP.

The Respondent was present.

Decision

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

- 1. Allowed the Applicant's Application to amend, there being no opposition and,**
- 2. Granted an order against the Respondent for possession of the Property under section 18 of the Housing (Scotland) Act 1988.**

Preliminary Matters

The Tribunal raised with the Applicant's representative the application for amendment he had lodged. He explained that the case had difficulties due to the tenancy being from a tenancy pack style which provided that the tenancy was for a term of 6 months. There was no provision for it to continue thereafter on a month to month basis but instead the terms allowed for termination by either party on 2 months notices (clause 7(7)(2))

The Applicant's representative explained that prior to this application for repossession the Applicant had sought to recover the property but had served in error a defective Notice to Quit. The Respondent had had the benefit of legal advice

The Applicant's representative submitted that his primary position was that following the initial term of the tenancy, the tenancy then continued on a 2 monthly basis. He further submitted that the Notice to Quit on 8th September 2022 with 2 months notice and lodged with the Application was therefore competent on 8th September 2022 and effective on 9th November 2022. The tenancy consequently converted to a statutory tenancy and he was relying on same.

However the Applicant's representative confirmed he had decided after the application was lodged in the event of challenge to in addition serve a fresh AT6 on the 18th November 2022 becoming effective on 9th January 2023, with a Notice to Quit on the basis that following the initial term the tenancy renewed on a 6 month basis but he made clear this was not his primary submission.

On the 4th April 2023 the Applicant's representative lodged an application to amend the application as "a secondary belt and braces approach". to cover any challenge on the relevant *ish* to allow the application to be amended to include the second Notice to Quit, the subsequent AT6 and to also allow the inclusion of Ground 8A.

The Respondent made no challenge to the amendment. The Tribunal decided to determine the amendment request after hearing the full merits of the Application and from both parties in full. There was no objection to this from either party.

There were no other preliminary matters raised by either party.

Case Management Discussion

For the Applicant

The Applicant's representative set out that the Applicant sought an Order for Possession under section 18(1) of the 1988 Act. This was based on Grounds 8 and the amended Ground 8A, of Schedule 5 of this Act. In support of same he referred to

the fact that the tenancy began in 2008 following an employment connection between parties. It is the Applicant's only rental property. Same was previously occupied by Respondent's relative. Parties entered into a law pack tenancy on 9th January 2008. The Applicant's representative said that the rental charge and terms remain unchanged. The Respondent had health issues and took ill health retirement. The Applicant's representative said the Respondent expressed an intention to clear arrears which had accrued and to purchase the property. Accordingly there was a "*lax approach*" on arrears.

The Applicant's representative said that a separate payment application had been pursued by the Applicant for the arrear and on 17th March 2023 an order was granted against the Respondent for the sum of £42,012.00. The Applicant's representative submitted the current balance was now £44,012.00. It was the Applicant's understanding that the Respondent had had the benefit of legal advice and having worked for IBM for 28 years suffered a stroke in 2001. Following retirement he worked as a contractor and his was unstable employment with his last contract role being in 2019. The Applicant was informed the Respondent had entered into a high interest loan and there was a lack of prioritisation of rent payments.

The Applicant's representative said that the Respondent had not given any indication of housing benefit, there continued to be a lack of any payments and that given the level of arrears with no payments an order was reasonable. It was further submitted that the pre-action protocol for rent arrears had been complied with and the Respondent had received all necessary government guidance. The submission was the fact the arrears were in excess of £44k an order for repossession went beyond reasonableness.

For the Respondent

The Respondent made no challenge to the submissions on behalf of the Applicant. He said he totally accepted everything that had been said. He said he remained hopeful he could get together the necessary monies to the Applicant owed. He did not challenge the order sought and said he would accept any decision made. He told the Tribunal he took responsibility for what had happened and when asked what the Tribunal should consider regarding reasonableness he said there was nothing he wished to add and that he had been looking for alternative accommodation.

Findings in Fact

- 1. The Tribunal was satisfied that a decision could be made at the Case Management Discussion and that to do so would not be contrary to the interests of the parties having regard to the Overriding objective. The Tribunal considered it had before it all the information it required to determine the application. The Respondent had not challenged the application nor the amendment. He had received legal advice.**
- 2. The Tribunal was satisfied that the Applicant was the heritable proprietor of the Property.**

3. The Tribunal was satisfied that the tenancy was in terms of the 1988 Act, an assured tenancy dated 9th January 2008. Rent is payable at £500 per month.
4. The Applicant was relying on Ground 8 and amended Ground 8A, under Schedule 5 of the 1988 Act to make the Application. The Application also referred to in the attached paper apart Grounds 11 and 12.
5. In terms of Section 18 the Tribunal was satisfied that the Respondent was in arrears of rent lawfully due as at the date of the relevant and valid notice and at the date of the hearing and that these rent arrears comprised of more than 3 months rent. As at the date of the application the arrears were £42,012. As at the date of the hearing the arrears were £44,012
6. A valid Notice to Quit was served by Sheriff Officer on 8th September 2022.
7. A relevant AT6 notice was valid and had been served and received by the Respondent on the 18th November 2022.
8. Notice to the Local Authority had been given in terms of the Homelessness Etc. (Scotland) Act 2003 on 9th December 2022
9. Copy pre action requirement correspondence was lodged dated 12th December 2012.
10. A full Rent Statement for the property was lodged dated 5th December 2022 and another on 4th April 2023. Rent owed from same amounted to in excess of £42,000. The Tribunal found it was established in terms of Ground 8, Schedule 5 of the 1988 Act that the Respondent was more than 3 months in arrears of rent both at the date on which the notice of intention to seek possession of the house was served and at the date of the hearing. At the date of the Hearing the arrears were £44,012.
11. The Tribunal found that in terms of Ground 8A, Schedule 5 of the 1988 Act as amended the Respondent had accrued arrears under the tenancy in respect of one of more periods, and the cumulative amount of those arrears equates to or exceeds an amount that is the equivalent of 6 months rents under the tenancy when the AT6 notice was served. The Respondent as at the date of the valid AT6 notice was served on 18th November 2022 in arrears
12. The Tribunal having regard to all the circumstances the Tribunal found an Order in its discretion was reasonable in terms of the Coronavirus (Scotland) Act 2020.
13. Accordingly in terms of Section 18 of the 1988 Act the Tribunal granted an Order against the Respondent for possession of the Property.

Reasons for Decision

The Tribunal considered it was appropriate that the application to amend be allowed however the Tribunal accepted the primary submission for the Applicant that the Notice to Quit was valid and the *ish* was valid in the circumstances. The Tribunal noted the case had been complex due to the tenancy having a lack of provision for tacit relocation. The primary submission was that as the tenancy did have provision for a 2 month notice termination any subsequent renewal was for a 2 month period. The Tribunal noted that the amendment was to allow a secondary submission that following the term and given the lack of relevant provision the tenancy renewed for a 6 month basis. The Tribunal preferred the primary submission on the basis of clause

7 of the tenancy pack that following the term the tenancy renewed on a two monthly basis given this was the specified notice period to be given by either party to terminate. It was acknowledged the terms of the tenancy were far from ideal but the notice period provided sufficient provision upon which the Applicant relied. The Tribunal noted the requirements of Section 18 had been met and found Grounds 8A and Grounds 8 of the 1988 Act, Schedule 5 to met. The Application contained further grounds but the Applicant relied on these. The Tribunal noted the arrears were excessive, no payments had been received, the Applicant was retired and this was his only rental property and the Respondent had not challenged the Application but had been noted to have received legal advice. Based on its findings fact the Tribunal granted the application and prior to doing so allowed the amendment. The Tribunal noted that in the Applicant's paper apart he originally sought to recover on Grounds 1, 8A, ,11 and 12 in any event.

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.

Legal Member/Chair

28 April 2023
Date