



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18(1) of the Housing (Scotland) Act 1988 (Act)

Chamber Ref: FTS/HPC/EV/20/0325

Re: Property at 3 South Park Grove, Hamilton, ML3 6QG (“the Property”)

Parties:

Mr Grant Schofield (“the Applicant”)

Harper MacLeod LLP (“the Applicant’s Representative”)

Ms Stephanie Walker (“the Respondent”)

Tribunal Member:

Alan Strain (Legal Member)

Decision (in absence of the Respondent)

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

Background

This is an application under section 18(1) of the Act and Rule 65 of the Procedure Rules for eviction and recovery of possession on the basis of grounds 8, 11 and 12 of Schedule 5 to the Act.

The following documents were considered by the Tribunal:

1. Application received 31 January 2020;
2. Short Assured Tenancy Agreement (**SAT**) dated 19 April 2017;
3. Pre Irritancy Notice dated 31 October 2019 and proof of delivery;
4. Irritancy Notice dated 18 December 2019 and Certificate of Intimation by Sheriff Officer dated 19 December 2019;
5. AT6 dated 18 November 2019 setting out grounds 8, 11 and 12;

6. Notice to Quit dated 18 November 2019;
7. Royal Mail Track and Trace and Proof of Delivery of AT6 and Notice to Quit dated 18 November 2019 and 19 November 2019;
8. Notice to Quit and AT6 dated 27 December 2019;
9. Royal Mail Track and Trace and Proof of Delivery of AT6 and Notice to Quit dated 27 and 28 December 2019;
10. Section 11 Notice and proof of service dated 30 January 2020;
11. Schedule of Rent Arrears at 15 June 2020;
12. Letter from Tribunal service to Respondent dated 3 July 2020 notifying the date of the CMD;
13. Amended Grounds dated 1 July 2020 along with supporting documents;
14. Letter of 3 July 2020 from Tribunal Administration to Respondent enclosing 11 above.

Case Management Discussion (CMD)

The case called for a CMD by conference call on 15 July 2020. The Applicant participated and was represented by his solicitor. The Respondent did not participate and was not represented.

The Tribunal were satisfied that service of notification of the CMD had been made by the Tribunal Administration on the Respondent. The Respondent accordingly had notice that the Tribunal could proceed and determine matters in his absence if it considered that it had sufficient information to do so and the procedure was fair.

The Tribunal decided that it was fair and reasonable to proceed in the circumstances.

The original application proceeded on the basis that the SAT was not an SAT in that an AT5 had not been served. The SAT contained an irritancy clause which enabled termination prior to its ish date as a result of breach of contract by the Respondent. In terms of Clause Eighth of the SAT if rent due was outstanding for 14 days after it was due then the Applicant was entitled to terminate the SAT.

The Tribunal considered and allowed the Applicant's application to amend the application dated 1 July 2020 which incorporated alternative grounds to the effect that even if the Tribunal found that the SAT had not been validly terminated by the irritancy notice then it had been validly terminated at its "ish" on 30 March 2020.

Due to the alternate case there were 2 sets of Notices to Quit and AT6s.

The Applicant's solicitor confirmed that the current rent outstanding was £7,860.

The Tribunal then considered the documentary evidence it had received from the Applicant and in so far as material made the following findings in fact:

1. The Parties let the subjects under an SAT dated 19 April 2017;
2. The Monthly rent was £524;
3. The SAT contained an irritancy clause in Clause EIGHTH;

4. Pre Irritancy Notice dated 31 October 2019 had been served on the Respondent;
5. Irritancy Notice dated 18 December 2019 had been served on the Respondent on 19 December 2019;
6. AT6 dated 18 November 2019 setting out grounds 8, 11 and 12 had been served on the Respondent on 19 November 2019;
7. Notice to Quit dated 18 November 2019 had been served on the Respondent on 19 November 2019;
8. Section 11 Notice had been served on the local authority on 30 January 2020;
9. As at the date of service of the AT6 the rental arrears were £4,993.40 which exceeded 3 months' rent;
10. As at the date of the CMD the rental arrears were £7,860 which was in excess of 3 months' rent;
11. The arrears were in no part due to any delay or failure in payment of a relevant benefit.

The Tribunal considered that the SAT had been validly terminated by irritancy on 19 December 2019. The SAT provided for termination by the Applicant in event of rent being outstanding for in excess of 14 days. The Applicant had served a pre irritancy notice and subsequently irritated the SAT.

A valid AT6 had been served setting out Grounds 8, 11 and 12 on 19 November 2019. The Tribunal considered the relevant tests for Ground 8 to be satisfied. In particular at the date of service of the AT6 and at the date of the Hearing at least 3 months' rent was outstanding. The Tribunal determined that the tests were satisfied.

It then fell to the Tribunal to determine whether the arrears were in any part due to the failure or delay in payment of a relevant benefit. The Tribunal determined that it was not.

Ground 8 is a mandatory Ground in which the Tribunal has no discretion. The Tribunal was accordingly satisfied that the terms of Ground 8 were satisfied and that the order should be granted as sought.

The Tribunal did not require to make any findings with regard to the remaining Grounds given its determination with regard to Ground 8.

The Tribunal also considered the alternate grounds incorporated by amendment. The Tribunal was satisfied that even if it had not determined the matter on the basis of the SAT having been validly irritated it would have determined that the SAT had been validly terminated at its "ish" date on the alternate case. The Tribunal would also have been satisfied that Ground 8 was made out on the alternate case and granted the order for recovery of possession and eviction as sought.

In granting the order the Tribunal was satisfied that the decision was in accordance with the overriding objective.

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.

Alan Strain

15 July 2020

Legal Member/Chair

Date