



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

Chamber Ref: FTS/HPC/EV/19/3139

Re: Property at 20/6 Jamaica Mews, Edinburgh, EH3 6HW (“the Property”)

Parties:

Mr Robin William Dempsey, 1 Eshiels Steading, Peebles, EH45 8NA (“the Applicant”)

Mr Evan Popplestone, 20/6 Jamaica Mews, Edinburgh, EH3 6HW (“the Respondent”)

Tribunal Members:

George Clark (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be granted without a Hearing and made an Order for Possession of the Property.

Background

By application, received by the Tribunal on 3 October 2019, the Applicant sought an Order for Possession under Section 18 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Grounds relied on were Grounds 8, 11 and 12 of Schedule 5 to the 1988 Act.

The application was accompanied by copies of a Short Assured Tenancy Agreement, commencing on 30 November 2007, a Form AT6 Notice dated 14 September 2019. The Form AT6 Notice advised the Respondent that the Applicant intended to raise proceedings under Grounds 8, 11 and 12 of Schedule 5 to the 1988 Act and that proceedings would not be raised before 21 September 2019. The Applicant also provided the Tribunal with a Rent Statement showing arrears as at the date of application of £3,850, the monthly rent being £550 and no payments having been made since 28 February 2019. The Applicant stated that the tenancy agreement included a declaration that, *inter alia*, Grounds 8, 11 and 12 were

grounds for terminating the let, and that prior to the expiry of its contractual term, so it had not been necessary to convert the tenancy to a statutory assured tenancy by serving a Notice to Quit.

On 31 October 2019, the Tribunal advised the Parties of the date, time and venue for a Case Management Discussion and the Respondent was invited to make written representations by 21 November 2019. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

A Case Management Discussion was held at Riverside House, Gorgie Road, Edinburgh on the afternoon of 5 December 2019. The Applicant was represented by Miss Nicola Caldwell of TC Young solicitors, Glasgow. The Respondent was not present or represented. The Applicant's representative advised the Tribunal that no rent had been paid since the date of the application and that the arrears now stood at £3,300, after deduction of the sum of £2,200 which had been the subject of an Order for Payment made by the Tribunal in an earlier application. The sum due exceeded three months' rent and Miss Caldwell asked the Tribunal to make an Order for Possession without a Hearing.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations provides that the Tribunal may do anything at a Case Management Discussion 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.

Section 18 of the 1988 Act states 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 to the Act and that, if the Tribunal is satisfied that any of the Grounds in Part I of Schedule 5 to the Act is established, then the Tribunal shall make an Order for Possession. Section 19 of the 1988 Act provides that the Tribunal shall not entertain proceedings for possession of a house let on an assured tenancy unless the landlord has served on the tenant a notice in accordance with Section 19 (a Form AT6 Notice). In terms of Section 18(6) of the 1988 Act, the Tribunal shall not make an Order for Possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless the ground for possession is, *inter alia*, Ground 8 in Part I of Schedule 5 to the Act and the terms of the tenancy make provision for it to be brought to an end on the ground in question.

Ground 8 of Part I of Schedule 5 to the 1988 Act applies where, both at the date of service of the Notice required under Section 19 of the Act and at the date of the Hearing, at least three months' rent lawfully due from the tenant is in arrears.

The Tribunal was satisfied that the tenancy was a Short Assured Tenancy, that the Notice required by Section 19 of the 1988 Act had been given, that the tenancy agreement was not a statutory assured tenancy, that it made provision for it to be brought to an end on Ground 8 and that the rent was in arrears by at least three months both on the date of service of the Form AT6 Notice and the date of the Case

Management Discussion. Accordingly, the requirements of Section 18 and Ground 8 of Schedule 5 to the 1988 Act had been met and the Tribunal was bound to make an Order for Possession.

Having determined the application under Ground 8, it was not necessary for the Tribunal to consider further the application under Grounds 11 and 12.

Decision

The Tribunal determined that the application should be granted without a Hearing and made an Order for 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.

George Clark

Legal Member/Chair

5 December 2019

Date