



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/22/1440

Re: Property at Flat 1/1, 118 Calder Street, Glasgow, G42 7RB (“the Property”)

Parties:

Daniel McCall T/A DB Properties, 146 Kingspark Road, Glasgow, G44 4SX (“the Applicant”)

Mr Gordon McDermit, Flat 1/1, 118 Calder Street, Glasgow, G42 7RB (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member) and Linda Reid (Ordinary Member)

Decision (in absence of the Parties)

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 17 May 2022;
2. Assured Tenancy Agreement (**AT**) dated 1 May 2017;
3. AT6 served 30 October 2020;
4. Certificate of Service by Sheriff Officers of AT6 dated 30 October 2020;
5. Schedule of Rent Arrears at 12 September 2021;
6. Email of 19 October 2023 to the Respondent with CMD Notification;
7. Section 11 Notice with email notification to local authority; and

8. Updated Schedule of Rent Arrears as at 5 November 2023.

Case Management Discussion (CMD)

The case called for a CMD by conference call on 29 November 2023. The Applicant did not participate but was represented by his solicitor. The Respondent did not participate and was not represented.

The Tribunal delayed the start of the CMD to see if the Respondent would participate. He did not.

The Tribunal were satisfied that the Parties had received notification of the Case Management Discussion and that the Tribunal could determine the matter if it considered it had sufficient information to do so and the procedure was fair.

The Tribunal had noted previously that there was no section 11 Notice. The Tribunal had informed the Applicant's solicitor that it could not grant the order sought without the section 11 Notice and evidence of service on the local authority. The Applicant's solicitor undertook to forward this documentation to the Tribunal.

The Tribunal accordingly continued the case to a Hearing on a date to be fixed but informed the Applicant's solicitor if the section 11 Notice could be produced then the Tribunal may be in a position to grant the order sought on the papers.

By email of 6 December 2023 the Tribunal received the section 11 Notice and proof of service by email on the local authority. The Tribunal also received an updated Schedule of rent arrears as at 5 November 2023 which showed that the amount of arrears had risen to £32,285.

Having received all outstanding documentation the Tribunal then reconvened to consider whether or not it had sufficient information upon which to make a Decision.

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 AT commencing 1 May 2017;
2. AT6 had been served on 30 October 2020 by Sheriff Officer;
3. Section 11 Notice had been served on the local authority;
4. Monthly rent was £385;
5. As at the date of service of the AT6 £11,880 rent was due;
6. As at the 5 November 2023 there was £32,285 rent due;
7. The rental arrears were not due to any delay or failure to make payment of a relevant benefit;
8. Pre Action correspondence had been issued to the Respondent;
9. The Respondent had persistently delayed payment of rent which had become lawfully due;
10. The Respondent was in arrears when the AT6 was served and when the current proceedings were initiated.

The Tribunal considered and accepted the documentary evidence of the Applicant which was, in any event, uncontested. The Tribunal considered that it had sufficient information upon which to make a Decision and that the procedure was fair.

The Tribunal considered the relevant tests for Grounds 11 and 12 to be satisfied. The amount of rental arrears was significant (in excess of 83 months arrears). The Tribunal considered that the arrears were not in any part due to the failure or delay in payment of a relevant benefit.

Despite Grounds 11 and 12 having been satisfied the Tribunal still had to consider whether or not it was reasonable to grant the eviction order in the circumstances.

The Tribunal had no evidence from the Respondent or information to suggest it would be unreasonable to grant the order. The Tribunal proceeded on the basis of the information provided by the Applicant. Given the significant and increasing arrears the Tribunal was satisfied that it was reasonable and that the order should be granted as sought.

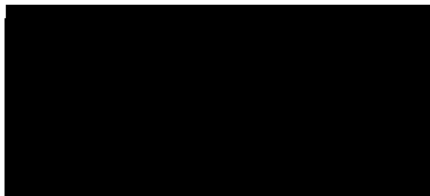
In granting the order the Tribunal was satisfied that the decision was in accordance with the overriding objective.

Outcome

- **Order for eviction and recovery of possession granted**

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.



20 December 2023

Legal Member/Chair

Date