

**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/24/2375

Re: Property at 44B Queen Mary Avenue, Glasgow, G42 8DT ("the Property")

Parties:

**Mr Mian Muhammed Asif, Asif Centre 31-32 Multan Road, Chaburi Lahore, 54500,
Pakistan ("the Applicant")**

**Ms Louise Stewart, 44B Queen Mary Avenue, Glasgow, G42 8DT ("the
Respondent")**

Tribunal Members:

Gillian Buchanan (Legal Member) and Mary Lyden (Ordinary Member)

Decision

At the Case Management Discussion ("CMD"), which took place by telephone conference on 2 October 2024, the Applicant was not in attendance but was represented by Mr Kenneth Lang of Mellicks, Solicitors, Glasgow. The Respondent was present.

Prior to the CMD the Tribunal received from The CMD was also in respect of the related case bearing reference FTS/HPC/CV/24/2378.

the Applicant's representative emails dated 13 September and 1 October 2024.

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that:-**

Background

The Tribunal noted the following background:-

- i. The Applicant is the heritable proprietor of the Property.
- ii. The Applicant leased the Property to the Respondent in terms of an Assured Tenancy ("the Tenancy") that commenced on 29 March 2015.
- iii. The initial term of the Tenancy was for the period to 28 March 2016.
- iv. The Tenancy continued thereafter on a year to year basis.

- v. On 23 January 2024, the Applicant served on the Respondent by Sheriff Officers a Notice to Quit ending the contractual basis of the Tenancy as at 28 March 2024.
- vi. On 11 April 2024 the Applicant served on the Respondent by Sheriff Officers a Form AT6 Notice of Intention to Raise Proceedings for Possession of the Property under section 18 of the Housing (Scotland) Act 1988 ("the 1988 Act") and Grounds 11 and 12 of Schedule 5 thereto requiring the Respondent remove from the Property by 26 April 2024.
- vii. On each of 22 March, 2 April and 22 May 2024 the Applicant's representative issued to the Respondent letters that complied with the pre-action protocol requirements specified by the Scottish Ministers.
- viii. The Applicant has served on Glasgow City Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.

None of the foregoing matters were in dispute.

This application is for an eviction order against the Respondent in favour of the Applicant. At the outset of the CMD the Respondent indicated that she was not opposing the grant of an eviction order.

The CMD

At the CMD the parties made the following oral representations:-

Mr Lang for the Applicant

- i. The monthly rent payable by the Respondent is £525. Mr Lang referred to the rectification proceedings previously raised before the Tribunal.
- ii. The rent arrears outstanding and due have reduced to £2360.
- iii. The term of the TSB mortgage over the Property has expired.
- iv. Aberdeen Considine on behalf of TSB have raised a Court action for repossession of the Property against the Applicant.
- v. The Applicant has to sell the Property.
- vi. The Applicant does not live in Scotland.
- vii. There is no interest clause in the Tenancy.

The Tribunal observed and reminded Mr Lang that the application is for an eviction order based on rent arrears alone having regard to the Form AT6 Notice previously served on the Respondent. Mr Lang accepted that position.

The Respondent

- i. The Respondent has been on the housing list with Wheatley Homes for the last 2 years.
- ii. She is registered with another housing association too.
- iii. She has to bid for houses that become available.
- iv. Having explained her situation she has been advised by the Homeless Unit that as long as she is paying her rent arrears and she still has housing, she will not be classed as homeless.
- v. Once an eviction order is granted she will take that to the housing office and that will speed up the application process.
- vi. She lives in the Property with her four children ages 14, 11, 9 and 1 years of age.
- vii. The Property has 3 bedrooms.
- viii. She has applied for a 3 or 4 bedroom house.

- ix. She is dealing with the local authority, Wheatley Homes and Cathcart Housing Association.
- x. There are not many properties with three or more bedrooms available.
- xi. She works part-time for Sky.
- xii. The rent arrears of £2360 stated to be due includes the rent due for October 2024 which is not payable until 29 October 2024.
- xiii. Rent arrears started to accrue in 2022. The Respondent was ready to leave the Property and had an oral agreement with the Applicant that she would not be charged certain sums but she accepted she never moved out so the arrears are due.
- xiv. She pays all her own rent.
- xv. The Respondent does not want to rent in the private sector. Prices there are "crazy".
- xvi. She would consider housing outwith her current local authority area.
- xvii. Her preference to is to be rehoused by a housing association.

The Tribunal adjourned to consider the parties' submissions.

Findings in Fact

The Tribunal made the following findings in fact:-

- i. The Applicant is the heritable proprietor of the Property.
- ii. The Applicant leased the Property to the Respondent in terms of the Tenancy that commenced on 29 March 2015.
- iii. The initial term of the Tenancy was for the period to 28 March 2016.
- iv. The Tenancy continued thereafter on a year to year basis.
- v. On 23 January 2024, the Applicant served on the Respondent by Sheriff Officers a Notice to Quit ending the contractual basis of the Tenancy as at 28 March 2024.
- vi. On 11 April 2024 the Applicant served on the Respondent by Sheriff Officers a Form AT6 Notice of Intention to Raise Proceedings for Possession of the Property under section 18 of the Housing (Scotland) Act 1988 ("the 1988 Act") and Grounds 11 and 12 of Schedule 5 thereto requiring the Respondent remove from the Property by 26 April 2024.
- vii. On each of 22 March, 2 April and 22 May 2024 the Applicant's representative issued to the Respondent letters that complied with the pre-action protocol requirements.
- viii. The Applicant has served on Glasgow City Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
- ix. The monthly rent payable by the Respondent is £525.
- x. The rent arrears outstanding and due are £1835.
- xi. The Applicant does not live in Scotland.
- xii. There is no interest clause in the Tenancy.
- xiii. The Respondent lives in the Property with her four children ages 14, 11, 9 and 1 years of age.
- xiv. The Property has 3 bedrooms.
- xv. The Respondent works part-time for Sky.
- xvi. The Respondent pays all her own rent.
- xvii. The Respondent does not want to rent in the private sector.
- xviii. Her preference to is to be rehoused by a housing association.

Reasons for Decision

The application proceeds upon Section 18 of the 1988 Act and Grounds 11 and 12 of Schedule 5 thereof.

Section 18 states:-

"18.— Orders for possession.

(1) The First-tier 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 this Act.

(2) The following provisions of this section have effect, subject to section 19 below, in relation to proceedings for the recovery of possession of a house let on an assured tenancy.

(4) If the First-tier Tribunal is satisfied that any of the grounds in Part I or 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.

(4A) 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 -

(a) 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, and

(b) the extent to which the landlord has complied with the pre-action protocol specified by the Scottish Ministers in regulations.

(5) Part III of Schedule 5 to this Act shall have effect for supplementing Ground 9 in that Schedule and Part IV of that Schedule shall have effect in relation to notices given as mentioned in Grounds 1 to 5 of that Schedule.

(6) The First-tier 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—

(a) the ground for possession is Ground 2 in Part I of Schedule 5 to this Act or any of the grounds in Part II of that Schedule, other than Ground 9, Ground 10, Ground 15 or Ground 17; and

(b) the terms of the tenancy make provision for it to be brought to an end on the ground in question.

(6A) Nothing in subsection (6) above affects the First-tier Tribunal's power to 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, where the ground for possession is Ground 15 in Part II of Schedule 5 to this Act.

(7) Subject to the preceding provisions of this section, the First-tier Tribunal may make an order for possession of a house on grounds relating to a contractual tenancy which has been terminated; and where an order is made in such circumstances, any statutory assured tenancy which has arisen on that termination shall, without any notice, end on the day on which the order takes effect.

(8) In subsection (4A) above—

(a) "relevant housing benefit" means—

(i) any rent allowance or rent rebate to which the tenant was entitled in respect of the rent under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971); or

(ii) any payment on account of any such entitlement awarded under Regulation 91 of those Regulations;

(aa) "relevant universal credit" means universal credit to which the tenant was entitled which includes an amount under section 11 of the Welfare Reform Act 2012 in respect of the rent;

(b) references to delay or failure in the payment of relevant housing benefit or relevant universal credit do not include such delay or failure so far as referable to any act or omission of the tenant.

(9) Regulations under subsection (4A)(b) may make provision about—

(a) information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),

(b) steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,

(c) such other matters as the Scottish Ministers consider appropriate.

(10) Regulations under subsection (4A)(b) are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10))."

Schedule 5 Grounds 11 states:-

"Whether or not any rent is in arrears on the date on which proceedings for possession are begun, the tenant has persistently delayed paying rent which has become lawfully due."

Schedule 5 Ground 12 states:-

"Some rent lawfully due from the tenant—

(a) is unpaid on the date on which the proceedings for possession are begun; and

(b) except where subsection (1)(b) of section 19 of this Act applies, was in arrears at the date of the service of the notice under that section relating to those proceedings."

The Respondent did not challenge the Tenancy to be anything other than an Assured Tenancy under the 1988 Act as stated by the Applicant.

The Respondent did not challenge the effect of the Notice to Quit served by Sheriff Officers on 23 January 2024, namely to terminate the contractual basis of the Tenancy then in existence. The Tenancy between the parties is therefore now a statutory assured tenancy.

The Respondent did not challenge the validity of the Form AT6 Notice served by the Applicant on 11 April 2024.

The Respondent has been in rent arrears since late 2022.

The Respondent accepted rent arrears to be due but suggested the October 2024 payment did not fall due until the end of that month. Whilst Mr Lang did not have instructions to concede the position he noted the terms of the Tenancy in terms of which rent is payable on the 29th of each month.

Having regard to there being no real matters of dispute between the parties the Tribunal determined it is reasonable to grant an eviction order.

Decision

The Tribunal grants an eviction order against the Respondent in favour of the Applicant.

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.

Gillian Buchanan

Legal Member/Chair

2 October 2024
Date