



**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/24/3835

Re: Property at 2/2 (2L), 22 Oban Drive, Glasgow, G20 6AF (“the Property”)

Parties:

Mr Malcolm Downie, 1 Poundland Cottage, Kilkerran, Maybole, KA19 7SL (“the Applicant”)

Mr Andrew Higgins, 2/2 (2L), 22 Oban Drive, Glasgow, G20 6AF (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member) and Sandra Brydon (Ordinary Member)

Decision

(in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a possession order be granted in terms of Grounds 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988 as the grounds have been met in this application and it is reasonable to grant the order.

The decision of the Tribunal was unanimous.

Background

1. This application for a possession order under section 18 of the 1988 Act and Rule 65 of the First Tier Tribunal (Housing and Property Chamber) Rules of procedure 2017 was first lodged with the Tribunal on 20 August 2024 and accepted by the Tribunal on 4th November 2024. A case management discussion was fixed for 2nd May 2025 at 2pm for this and a related application for payment with reference FTS/HPC/CV/24/3836.

Case Management Discussion

2. The case management discussion was attended by Mr Fraser, solicitor of Wallace Hodge solicitors on behalf of the Applicant. There was no appearance by or on behalf of the Respondent Mr Higgins. The Tribunal noted that the application, supporting papers and the date of the case management discussion for both applications had been intimated by Sheriff Officers to the Respondent by placing the papers through the letterbox at the property on 12th March 2025. The Tribunal was satisfied that the Applicant had received fair notice of the applications and case management discussion date and determined that it was fair to proceed in his absence.

3. The Tribunal had sight of the applications, a short assured tenancy agreement, a tenant pack, deposit information, notice that the property is subject to a heritable security, Form AT5, a rent statement up to July 2024, a Form AT6 and Notice to Quit, proof of service of these documents, a pre action protocol letter, a Notice in terms of section 11 of the Homelessness etc. (Scotland) Act 2003, an email receipt and a series of emails between the parties.

4. Mr Fraser advised the Tribunal that the parties had entered into a short assured tenancy at the property with effect from 1st August 2017. The Applicant and his wife were named as landlords on the tenancy agreement but she was now deceased. There had been two tenants on the tenancy agreement at the start of the tenancy, Mr Higgins and his then partner, but they had split up and the Tribunal had sight of an email dated 12th October 2021 in which the other tenant asked to be released from the tenancy as he had separated from the Respondent Mr Higgins and had moved out and that the Respondent Mr Higgins (who was copied into the email) wished to take over the tenancy on his own. There was an email from the landlords agreeing to continue with Mr Higgins as the sole tenant and this was from November 2021.

5. The short assured tenancy was initially for a period of 12 months and the tenancy agreement contained a clause which set out that if the tenancy was not brought to an end by either party after the initial term that it would continue on a month to month basis after that period. The rent throughout the tenancy was £595 per month.

6. Mr Fraser advised the Tribunal that the Respondent was a single male thought to be living alone at the property. His employment circumstances were not known and many attempts had been made to contact him regarding the rent arrears without success. He had not at any time suggested he had issues with delay or non-payment of a benefit but the rent statement produced showed that rent arrears had started to accrue after the other tenant was permitted to leave the tenancy with part payments being made some months and nothing having been paid by way of rent since June 2023. The rent statement lodged did not go beyond July 2024 but the Tribunal was advised that the rent was still not being paid and this being the last property which the Applicant had owned with his wife he now wanted to deal with matters given the large amount of rent arrears accrued.

7. A notice to Quit had been served on the Respondent dated 29th February 2024 which gave notice that he was required to remove from the property on or before 1st May 2024. A form AT 6 had also been served setting out that the Applicant was seeking recovery of possession of the property in terms of grounds 8A, 11 and 12 of Schedule

5 of the 1988 Act due to rent arrears which at that time had reached £8230.00. Email correspondence lodged with the Tribunal demonstrated that it was expected the Respondent was to move out in May 2024 but he did not do so.

8. A pre action protocol letter was sent to the Respondent dated 30th July 2024.

9. The local authority were sent a S11 notice in relation to the application.

10. Rent arrears at 30th July 2024 amounted to £11205 but the actual current figure was now greater than that amount as the Respondent tenant was simply not paying.

11. After discussion Mr Fraser sought a possession order on the basis of Grounds 11 and 12 of Schedule 5 of the 1988 Act only and not under Ground 8A.

12. The Tribunal was satisfied that it had sufficient information upon which to make an order and that the proceedings had been fair.

Findings in Fact

13. The Applicant and his wife (now deceased) entered into a short assured tenancy agreement as Landlords with the Respondent and one other person as tenants on 1st August 2017.

14. This tenancy was for a year and after the initial term continued on a monthly basis.

15. The monthly rent payable in terms of the tenancy is £595 per month.

16. The second tenant was released from the tenancy by agreement of the landlord and the Respondent in November 2021 and the tenancy continued after that date with the Respondent as the only tenant.

17. Rent arrears started to accrue in terms of the tenancy after that date with part payments being made and no rent has been paid at all by the Respondent since June 2023.

18. The Applicant sent the Respondent a Notice to Quit the property dated 29th February 2024 giving notice that the Respondent required to remove from the property on or before 1st May 2024.

19. On the same date the Applicant's agent sent the Respondent a Form AT6 giving notice of his intention to raise proceedings for possession of the property and indicating that an application to the Tribunal would not be made before 1st May 2024.

20. These notices were sent by post and email to the Respondent on 29th February 2024.

21. The Respondent was expected to move out of the property in May 2024 but did not do so.

22.The Applicant sent to the local authority a notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 on 20th August 2024.

23. A pre action protocol letter was sent by the Applicant's agents to the Respondent by email on 30 July 2024.

24. The rent arrears accrued in terms of the tenancy stood at £8230 when the Notice to Quit and At6 forms were sent to the Respondent in February 2024.

25.As of July 2024 the rent arrears had reached £11205 and no rent has been paid since June 2023.

26. The rent arrears have not accrued due to any delay or failure in payment of a relevant benefit.

27. The Respondent has persistently delayed paying rent which is lawfully due by him in terms of the tenancy

28. £8360 in unpaid rent was lawfully due by the Respondent when the notice to quit and AT6 were served on the Respondent on 29th February 2024 and as of July 2024 the rent arrears lawfully due by the Respondent had reached £11205.

Reasons for Decision

29. The Tribunal was satisfied that the appropriate procedural steps had been taken regarding service of the Notice to Quit and AT6.The Respondent did not appear or offer representation in this application and little is known of his circumstances.No rent has been paid in terms of this tenancy since June 2023 with no explanation and the Respondent was expected to move out in May 2024 and did not do so. Given the history and amount of rent arrears it is reasonable to grant the order.

Decision

The Tribunal determined that a possession order be granted in terms of Grounds 11 and 12 of Schedule 5 of the Housing(Scotland) Act 1988 as the grounds have been met in this application and it is reasonable to grant the order.

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.

Valerie Bremner

Legal Member/Chair

2/5/25
Date