

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”)

Chamber Ref: FTS/HPC/EV/19/0303

Re: Property at 36 Livingston Place, Airdrie, ML6 9LG (“the Property”)

Parties:

Mr Lendrick Gillies, 132 St John's Road, Edinburgh, EH12 8AX (“the Applicant”)

Mrs Theresa Ramsey, 36 Livingston Place, Airdrie, ML6 9LG (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application was refused.

An application was submitted to the Tribunal by the Applicant in terms of Rule 65 of the Rules. Said application sought a repossession order against the Respondent in respect of an assured tenancy agreement between the parties.

A Case Management Discussion (“CMD”) took place on 18 April 2019. Sam Paulo of Coulters Lettings Limited appeared on behalf of the Applicant. There was no appearance by or on behalf of the Respondent.

Mr Paulo moved for the application to be granted as sought. He explained that Coulters Lettings Ltd had acquired management of the Property via a transfer of a portfolio of properties from another lettings agent. A conjoined application under Rule 70 of the Rules seeking a payment order in respect of rent arrears was also considered separately by the Tribunal on the same date (under Case Reference

FTS/HPC/CV/19/0306). The Applicant had served a Form AT6 on the Respondent, relying on the rent arrears grounds 8,11 and 12. The tenant was currently in arrears of rent of more than three months.

The Tribunal pointed out that the tenancy agreement lodged with the application made no reference at all to any right of the landlord to seek repossession on any of the grounds of repossession contained within Schedule 5 to the Housing (Scotland) Act 1988 ("the 1988 Act"). There was no Notice to Quit lodged with the application. Whilst the Applicant had served a Form AT6 seeking repossession on the basis of grounds 8, 11 and 12 of the 1988 Act, the Applicant did not appear to have complied with the requirements of section 18 of the 1988 Act which is set out below:

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.

(3) If the First-tier Tribunal is satisfied that any of the grounds in Part I of Schedule 5 to this Act is established then, subject to subsections (3A) and (6) below, the Tribunal shall make an order for possession.

(3A) If the First-tier Tribunal is satisfied—

(a) that Ground 8 in Part I of Schedule 5 to this Act is established; and

(b) that rent is in arrears as mentioned in that Ground as a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit,

the Tribunal shall not make an order for possession unless the Tribunal considers it reasonable to do so.

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

(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 or Ground 8 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 subsections (3A) and (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.

With specific reference to section 18(6), the current tenancy agreement was a contractual tenancy agreement. Mr Paolo confirmed that no Notice to Quit had been served on the tenant to bring the tenancy to an end and its ish and to convert the contractual tenancy to a statutory tenancy. Accordingly, on that basis the Tribunal could not grant the Order sought, as section 18(6) of the 1988 Act had not been complied with.

The Tribunal accordingly refused the Application.

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.

Fiona Watson

Legal Member/Chair

18/4/19

Date