



**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/19/0575

**Re: Property at 5 Neidpath Road West, Giffnock, East Renfrewshire, G46 6SS
("the Property")**

Parties:

**Mr Paul Molinari t/a JHP Properties, C/O D J Alexander Lettings Ltd, 1 Wemyss
Place, Edinburgh, EH3 6DH ("the Applicant")**

**Mr Azeem Sadiq Ali, 5 Neidpath Road West, Giffnock, East Renfrewshire, G46
6SS ("the Respondent")**

Tribunal Members:

Joel Conn (Legal Member)

Decision (in absence of the Respondent)

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

Background

1. This is an application by the Applicant for an order for possession in relation to an assured tenancy in terms of rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended ("the Procedure Rules"). The tenancy in question was a Short Assured Tenancy of the Property by the Applicant to the Respondent commencing on 10 December 2015.
2. The application was dated 21 February 2019 and lodged with the Tribunal shortly thereafter. The application was originally under Rule 66 and lodged both the documents necessary for such an application as well as a notice in terms of section 19 (also known as an "AT6") of the Housing (Scotland) Act 1988 dated 23 January 2019. The AT6 provided the Respondent with notice that proceedings would not be raised before 8 February 2018. Evidence of service of the said AT6 upon the Respondent by a Sheriff

Officer on 24 January 2019 was provided to the Tribunal by email on 2 April 2019, in advance of the case management discussion. Further, on 2 April 2019, the Applicant's agent requested that the application be considered under Rule 65 only, in consideration that the documents relied on for Rule 66 were yet to expire.

3. The said AT6 relies upon three grounds under Schedule 5 to the 1988 Act; Grounds 8, 11 and 12. Both grounds rely upon rent arrears of £15,225 being outstanding as at the date of the AT6. The lease for the Tenancy, lodged with the application, discloses a monthly rent of £2,175. There is thus over seven months of rent arrears said to be due as at the date of the AT6.
4. Evidence of a section 11 notice in terms of the Homelessness Etc. (Scotland) Act 2003 served upon East Renfrewshire Council on 19 February 2019 was provided with the application.

The Hearing

5. On 12 April 2019, at a case management discussion ("CMD") of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting at Glasgow Tribunals Centre, I was addressed by David Gibb, Head of Accounts and Property Support at DJ Alexander, the letting agent to the Applicant. As of 10:05, there was no appearance by the Respondent and my clerk confirmed that no contact had been received from or on behalf of the Respondent.
6. The Applicant's agent stated that there had been no contact from the Respondent since 25 January 2019. At that time, subsequent to an earlier order of the Tribunal under Rule 70 in regard to rent arrears, the Respondent had emailed to state that he had suffered a difficult year but believed matters to be turning around and that he wished to make payment of arrears outstanding by instalments. The Applicant's agent stated that a response was sent requesting a proposal but there was no response and, some weeks later, the Applicant's agents noted that the Respondent had been made bankrupt. (During the CMD I confirmed for myself that the Respondent did indeed appear to have been made bankrupt on 18 February 2019, with a date of sequestration of 20 November 2018.)
7. I was thus satisfied that there was no appearance by the Respondent nor any attempt by him to provide submissions or explain his non-appearance. In the circumstances, I was satisfied to consider the application in full at the CMD in the absence of the Respondent.
8. The Applicant's agent addressed me on the current level of rent arrears, confirming that no payments towards rent had been made for many months, and none since the AT6. Arrears stood at £21,774 as at 10 April 2019. There was nothing to suggest any application for benefits was being

made or that any part of the substantial arrears arose due to difficulties with benefit payments.

9. I sought addressed on the correct designation of the Applicant, who had been referred to by two trading names in the application. The Applicant's agent confirmed that the landlord was Paul Molinari who traded as JHP Properties. An amendment of the application to that correct designation was made and granted.
10. The Applicant's agent confirmed no order in respect of expenses was to be made.

Findings in Fact

11. On 10 December 2015, the Applicant let the Property to the Respondent by lease (under a Short Assured Tenancy) with a start date of 10 December 2015 and an end date of 10 June 2016 ("the Tenancy").
12. Under the Tenancy, the Respondent was to make payment of £2,175 per month in rent to the Applicant on the 10th of each month.
13. The Tenancy's terms, within an incorporated schedule initialled by the Respondent, make provision for the Tenancy being brought to an end on Grounds 8, 11 and 12 of Schedule 5 to the Housing (Scotland) Act 1988 while it is still an "assured tenancy" in terms that Act.
14. On 23 January 2019, the Applicant's agent drafted an AT6 form in correct form addressed to the Respondent, giving the Respondent notice in terms of section 19 of the 1988 Act of an intention to raise proceedings for possession in terms of Grounds 8, 11 and 12 of Schedule 5 to the 1988 Act, all based on there being rent arrears at that date of £15,225 (being seven months of rent arrears) as at the date of the AT6. The AT6 gave the Respondent notice that proceedings would not be raised before 8 February 2019.
15. On 24 January 2019, the AT6 was served upon the Respondent by a Sheriff Officer instructed on behalf of the Applicant and was thus competently served upon the Respondent. The Respondent was thus provided with sufficient notice of the Applicant's intention to raise proceedings for possession on the said grounds.
16. On 21 February 2019, the notice period under the AT6 having expired, the Applicant raised proceedings for an order for possession with the Tribunal, on the grounds narrated in the AT6s.
17. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon East Renfrewshire Council on 19 February 2019 on the Applicant's behalf.

18. On 26 March 2019, a Sheriff Officer acting for the Tribunal intimated the application and associated documents upon the Respondent, providing the Respondent with sufficient notice of the CMD of 12 April 2019.
19. On 12 April 2019, the Respondent was in arrears under the Tenancy of £21,774, being over ten months of unpaid rent in total. Within this figure are at least five months of consecutive unpaid rent from 10 December 2018 to 10 April 2019 totalling £10,875.
20. No information was provided to the Tribunal regarding any delay of failure in the payment of relevant housing benefit or relevant universal credit.
21. No information was provided to the Tribunal regarding any reason why it would be unreasonable to grant an order for possession under any of the discretionary grounds in Part II of Schedule 5 to the 1988 Act.

Reasons for Decision

22. The application was in terms of rule 65, being an order for possession in relation to assured tenancies. I was satisfied, on the basis of the application and supporting papers, and the oral submissions provided by the Applicant's agent at the CMD, that a valid AT6 had been issued on the Respondent; that this had expired without the breaches being resolved; and that the non-payment of rent remained unaddressed as at the CMD. As at the date of the CMD, the total arrears now amounted to over ten months of rent arrears.
23. I was satisfied from the application and supporting papers that there were no known issues of failure or delay in benefit and thus it was reasonable to grant an order in terms of Ground 8 of Schedule 5 to the 1988 Act.
24. I was further satisfied that I was entitled to make a determination that it was reasonable to grant any order in terms of Grounds 11 and 12 of Schedule 5 to the 1988 Act as there were no material circumstances brought to the Tribunal's attention that would suggest it would be unreasonable in the circumstances of over ten months arrears and no payments by the Respondent since at least 10 December 2018.
25. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. I was thus satisfied to grant an order for possession.

Decision

26. In all the circumstances, I was satisfied to make the decision to grant an order against the Respondent for possession of the Property under section 18 of the Housing (Scotland) Act 1988 in normal terms.

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.

Joel Conn

Legal Member/Chair

12 April 2019

Date