



**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/19/0606

Re: Property at 13 York Place, Bellshill, ML4 1RH (“the Property”)

Parties:

Mr Norman Tenby, Mrs Phillipa Barnett Tenby, 37 Ballantrae Crsecent, Newton Mearns, Glasgow, G77 5TX; 37 Ballantrae Crescent, Newton Mearns, Glasgow, G77 5TX (“the Applicant”)

Ms Catherine Gray, 13 York Place, Bellshill, ML4 1RH (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that and order for Eviction should be granted.

This was the second case management discussion (CMD) to consider the application made by the Applicants dated 22nd February 2018 for an order for repossession of the Property in terms of Rule 65 of the Tribunal Rules. The Applicants are the owners of the Property and Landlords. They did not attend the hearing in person but their agent Ms Lesley Barclay, who is representing them in these proceedings, did attend and asked that the application be granted. The Respondent did not attend nor did the Respondent lodge any written representations.

The Applicant had lodged and the Tribunal had sight and considered the following documents:-

1. Copy Tenancy Agreement for the Property dated 4th September 2014
2. Copy AT6 Notice dated 6th February 2019
3. Notice to Quit dated 6th February 2019
4. Proof of service by recorded delivery dated 6th February 2019

5. S11 notice to North Lanarkshire Council

The Hearing

The Legal Member explained the purpose of the hearing and advised that the Tribunal could do anything at a case management discussion which it may do at a hearing. The Respondent, who is the tenant, did not attend this hearing and had made no written representations prior to the hearing despite notice of the hearing and the above documentation being served on her by Sheriff Officers on 16th May 2019. The Tribunal noted the Respondent had not attended nor sent in any written submission at the first CMD.

The Tribunal noted that at the first CMD which was held on 10th May 2019 the Legal Member had asked for the applicant to lodge a copy of the intimation to the local authority required by S11 of the Homelessness Etc. (Scotland) Act and in terms of Schedule 1 of the Notice to Local Authorities (Scotland) Regulations 2008. The applicant's agent Ms Barclay explained that she had submitted a correct form to North Lanarkshire Council but it would appear only the first page of the form had been received into the papers for the Tribunal. At the CMD today the Tribunal had sight of a fully completed and submitted S11 form and was satisfied it had been submitted correctly to the relevant local authority. Ms Barclay advised that the Respondent was still in the property and that the local authority had tried to contact her.

Ms Barclay confirmed her client wished to pursue repossession of the Property as she the arrears of rent were substantially over 3 months in arrears amounting to currently £5891.07.

Ms Barclay confirmed she was looking for an order for possession today as she submitted all the notices had been served and an order should therefore be granted in terms of s18 of the Act...

Findings in Fact

1. The Applicant and Respondent have entered into an assured tenancy of the Property for an initial period of 6 months from 4th September 2017 to 5th March 2018 and thereafter on a month to month basis. .
2. The Tenancy is an Assured Tenancy in terms of the Housing (Scotland) Act 1988.
3. The rent is £350 per calendar month.
4. In terms for the lease Clause 6 narrates that the Landlord may seek recovery of possession of the premises in terms of the Act ...on one or more of the grounds set out in Schedule 5 of the Housing Scotland Act 1988. In particular the section goes on to narrate Ground 8 of Schedule 5 of the Act and says "Both at the date of the service of the notice under section 19 of the Act relating to proceedings for possession and at the date of the hearing at least three months' rent lawfully due from the Tenant is in arrears.
5. The Applicants have served by recorded delivery, a Notice to Quit on the Respondent attempting to terminate the contractual tenancy.

6. The Notice to Quit however only gives 14 days' notice and not the statutory minimum of 40 days or the contractual period of one month.
7. The applicants have also served a notice in the prescribed form in terms of S19 of the Act (an AT6 notice) giving 14 days' notice that they required possession of the Property by 22nd February 2019 being the date set out in the AT6 notice.
8. The AT6 notice refers to Ground 8 and narrates the full particulars of said Ground and refers to rent being outstanding at the time the AT6 was signed and served of £4491.07, which is more than three months' rent.
9. The rent arrears due at today's date are £5,891.07.
10. The rent arrears at the date of service of the AT6 notice and at the date of this hearing exceed 3 months' rent lawfully due.
11. The Respondent who is the tenant has not vacated the property to date.
12. The Respondent has been served notice of this application and has made no representations in relation to this Application.
13. There is no evidence that there was a delay or failure in the payment of housing benefit or other benefit which caused the delay or failure to pay rent.

Reasons for Decision

S 18(3) of the Act states that if the Tribunal is satisfied that any of the grounds in Part 1 of the Schedule 5 of this Act is established then subject to subsection 3A and 6 below the Tribunal shall make an order for possession

Subsection 3A states if the Tribunal is satisfied that

- a) Ground 8 in part 1 of Schedule 5 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 relative housing benefit or universal credit the Tribunal shall not make an order for payment unless it considers it reasonable to do so

Section 18(6) of the Act states that the Tribunal will not make an order for possession of a house which for the time being is 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 1 of Schedule 5 of the Act and..

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

The tenancy is an assured tenancy but as the Notice to Quit is not valid for the reasons stated above it is not a statutory assured tenancy.

S19 of the Act states that the Tribunal shall not entertain proceedings for possession of a house let on an assured tenancy unless the landlord has served on the tenant a notice in accordance with this section.

S19(2) the Tribunal shall not make an order for possession on any of the Grounds in Schedule 5 of this Act unless that ground and the particulars of it are specified in the Notice under this section; but the grounds specified in such a notice may be altered or added to with leave of the Tribunal.

The Applicant having served Notice in terms of S19 of the Act, having specified Ground 8 and having set out the particulars of the Ground and the reasons they are met, has met the requirements of S19 of the Act. The Tribunal is satisfied the Grounds were fully set out in Clause 6 of the lease allowing the Applicants to rely on S18(6) of the Act and that evidence produced from the Applicants confirmed that more than three months rent was due and owing both at today's date and at the date of service of the AT6 notice.

The Applicant's agent confirmed the delay in payment of rent is not due to a failure or delay in payment of housing benefit or universal credit and therefore the Applicants is entitled to an order for possession in terms of S18(3) of the Act.

DECISION

The Tribunal having considered all the evidence before it was satisfied the terms of Section 18 of the Housing (Scotland) Act 1988 had been complied with and granted the order for possession.

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.

Ms Jan Todd

Legal Member/Chair

Date

12/6/19