



**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/19/1354

Re: Property at 22C Dalmeny Drive, Barrhead, G78 1JR (“the Property”)

Parties:

Dr Hazel Macdonald, 41 Rowallan Drive, Kilmarnock, KA3 1TU (“the Applicant”)

Mr Allan Brownlie, 22C Dalmeny Drive, Barrhead, G78 1JR (“the Respondent”)

Tribunal Members:

Sarah O'Neill (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession should be granted in favour of the applicant.

Background

1. An application was received on 3 May 2019 under rule 65 of Schedule 1 to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 rules”) seeking recovery of possession of the property under Grounds 8, 11 and 12 as set out in schedule 5 of the Housing (Scotland) Act 1988 (“the 1988 Act”).
2. The application included: the tenancy agreement; a copy of the notice required under section 19 of the 1988 Act (“the AT6”); and a copy of the notice to quit (NTQ). It also included a rent statement, showing the rent due as at 31 December 2018 to be £3567.85. The application stated that no rent had been paid since then, and that the rent arrears at the date of the application amounted to £4967.85.

3. Notice of the case management discussion (CMD), together with the application papers and guidance notes, had been served on the respondent by sheriff officers on behalf of the tribunal on 24 June 2019. No written representations had been received from the respondent.

The Case Management Discussion

4. A CMD was held on 1 August 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. The applicant was represented by Mr Norman Macdonald, who gave evidence on her behalf. The respondent was not present or represented at the hearing. The tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a CMD had been duly complied with. It therefore proceeded with the CMD in the absence of the respondent, in terms of rule 29 of the 2017 rules.
5. Mr Macdonald told the tribunal that no further rent payments had been made by the respondent since the submission of the application. No rent had been paid since December 2018. The respondent therefore owed well in excess of three months' rent, both at the time of service of the AT6 and at the date of the CMD.
6. The tribunal noted that it was stated in the tenancy agreement that the rent would be paid by the local authority. The rent statement showed that at the start of the tenancy it had been paid more or less in full via housing benefit, but that there had been several periods during which the rent has not been paid at all. Mr Macdonald told the tribunal that he believed that the respondent may have been working during these periods. He pointed out that there had been a recurring pattern of non-payment when the respondent had not been in receipt of benefits.
7. The housing benefit had been paid direct to Quality Lets until September 2016. Mr Macdonald said his recollection was that at that time, a letter had been received from the local authority saying that the respondent's housing benefit entitlement had ended.
8. No rent was then paid from October 2016 until January 2017. Housing benefit had then again been received from February 2017 until December 2017. The rent statement showed that no rent was received between January 2018 and April 2018. From May 2018, the respondent was in receipt of the housing element of universal credit, and all or most of the rent was paid from then until November 2018. No rent at all had been received since then. There had been no communication from the respondent since that time, and letters and phone calls had gone unanswered.
9. Mr Macdonald said he had completed forms asking for the respondent's universal credit to be paid direct to the landlord, but had heard nothing about this. He thought the respondent was now working, but could not be sure about this, given the lack of contact from him.

Findings in Fact

10. The tribunal made the following findings in fact:

- The applicant is the owner of the property.
- There was a tenancy in place between Quality Lets and the respondent. Quality Lets Investments is the registered landlord for the property. The applicant is a partner in Quality Lets, as is Mr Macdonald.
- The tenancy commenced on 14 February 2016. The tenancy agreement stated that it was a short assured tenancy for the period of 6 months, but stated that this would run from 14 February until 15 July 2016. As it was for a period of less than 6 months (which Mr McDonald confirmed was a mistake), it was not a valid short assured tenancy.
- The monthly rent payable in terms of the tenancy agreement was £350 per month.
- The AT6 and Notice to Quit contained the prescribed information and were both dated 30 January 2019. There was evidence that the form AT6 and Notice to Quit had been served on the respondent by sheriff officer on 31 January 2019.
- As at both the date of service of the AT6 and the date of the CMD, the respondent was in rent arrears of at least 3 months.

Reasons for Decision

11. While the tenancy agreement did not constitute a valid short assured tenancy, the tribunal was satisfied that there was nevertheless an assured tenancy in place between the parties. The tribunal was satisfied that the form AT6 and Notice to Quit had been validly served on the respondent.

12. Ground 8 as set out in Schedule 5 of the 1988 Act states:

'Both at the date of service of the notice under section 19 of this Act, relating to the proceedings for possession and at the date of the hearing, at least three months' rent lawfully due from the tenant is in arrears'.

13. In terms of section 18 and Schedule 5 of the 1988 Act, if the tribunal is satisfied that ground 8 is established, then (subject to subsection 3A), the tribunal is required to make an order for possession.

14. Section 18 (3A) provides that where ground 8 is established, and the rent is in arrears 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.

15. The tribunal was satisfied on the evidence before it that the requirements for ground 8 are established. At least three months' rent was due from the respondent both at the time the AT6 was served, and at the date of the CMD.
16. The tribunal then considered whether section 18 (3A) of the 1988 Act was applicable in this case. The respondent had clearly been in receipt of relevant housing benefit or relevant universal credit at various points throughout his tenancy. On the basis of the evidence before the tribunal, however, it appeared that the arrears had largely accrued during periods when the respondent was not in receipt of such benefits. There was no evidence before the tribunal that the rent was in arrears as a consequence of a delay or failure in the payment of any relevant benefits.
17. The tribunal is therefore required to grant an order for possession under section 18 and ground 8 in Schedule 5 of the 1988 Act. Given that the tribunal found ground 8 to be established, it did not consider further whether grounds 11 and 12 were also established.

Decision

18. The tribunal grants an order in favour of the applicant against the respondent for recovery of possession of the property.

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.

S.O'Neill

Legal Member/Chair

1/8/19

Date