



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18(1) of the Housing (Scotland) Act 1988 (Act)

Chamber Ref: FTS/HPC/EV/19/1736

Re: Property at 2 Orchard Road, Dunragit, Stranraer, DG9 8PP (“the Property”)

Parties:

The Co-operative Bank plc, 1 Balloon Street, Manchester, M60 4EP (“the Applicant”)

Mr Peter O’Neil, 2 Orchard Road, Dunragit, Stranraer, DG9 8PP (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member)

Decision (in absence of the Respondent)

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

Background

This is an application under Rule 65 of the Tribunal Procedure Rules and section 18(1) of the Act for eviction and recovery of possession under Ground 2 of Schedule 5 to the Act.

The Tribunal had regard to the following documents:

1. Application received 5 June 2019;
2. Notice to Quit dated 1 February 2019;
3. AT6 dated 1 February 2019;
4. Extract Decree dated 14 December 2018;
5. Section 11 Notice;
6. Proof of posting of Notice to Quit and AT6;
7. CMD Note dated 14 August 2019;

8. Direction dated 5 August 2019;
9. Applicant's agents written submissions.

Case Management Discussion (CMD)

The Applicant did not appear but was represented by Mr Ian Boyd, Solicitor. The Respondent did not appear and was not represented.

The Tribunal was satisfied that the Respondent had received notification of the CMD and that he was aware the Tribunal could proceed in his absence and made a Decision if satisfied that it had sufficient information and the procedure was fair.

The Tribunal considered the documentation and the submissions made by the Solicitor for the Applicant. The case was relatively unusual in that the Applicant did not have a copy of the lease and the Respondent had failed to engage in the process.

The Tribunal was satisfied that the Applicant had taken all reasonable steps to try and obtain a copy of any written lease and ascertain the position with the Respondent's occupancy of the Property.

The Tribunal was content to proceed on the basis that the Respondent's occupancy of the Property was under an assured tenancy (AT) under the Act. The Notice to Quit and AT6 had been validly served on the Respondent.

The Tribunal made the following findings in fact:

1. The Respondent occupied the Property under an assured tenancy;
2. The Applicant was the heritable creditor of the Property and entitled to enter possession by virtue of Decree granted 14 December 2018;
3. The Applicant served Notice to Quit on the Respondent dated 1 February 2019;
4. The Applicant served an AT6 on the Respondent dated 1 February 2019;
5. The Applicant served section 11 Notice on the local authority;
6. The Respondent remained in occupation of the Property.

The Tribunal considered that the AT had been validly terminated by the Notice to Quit on 1 April 2019. The AT6 had been served with insufficient notice under the Act. The Tribunal consider it reasonable to dispense with the requirement for notice under the Act in the circumstances.

The Tribunal was satisfied that it had sufficient information to make a Decision and that the procedure was fair. The Tribunal considered that Ground 2 had been established and that the order for eviction and recovery of possession should be granted.

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.

Alan Strain

5 December 2019

Legal Member/Chair

Date