



**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/20/1430

**Re: Property at 59 Lyarthall, Broxburn, West Lothian, EH52 6AQ (“the
Property”)**

Parties:

**Mr Alan Fairlie, 10 Larchbank, Ladywell, Livingston, West Lothian, EH54 6EB
 (“the Applicant”)**

**Miss Vicki Miller, 59 Lyarthall, Broxburn, West Lothian, EH52 6AQ (“the
Respondent”)**

Tribunal Members:

George Clark (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the application should be determined without a
Hearing and made an Order for Possession of the Property.**

Background

By application, received by the Tribunal on 30 June 2020, the Applicant sought an Order for Possession under Section 18 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Grounds relied on were Grounds 8 and 11 of Schedule 3 to the 1988 Act.

The application was accompanied by copies of a Short Assured Tenancy Agreement between the Parties commencing on 1 June 2017 at a rent of £450 per month, a Form AT6 Notice, given under Section 19 of the 1988 Act, dated 25 January 2020, advising the Respondent of the Grounds under which the Applicant was seeking an Order for Possession and that there would be no proceedings before 28 March 2020, a Notice to Quit, also dated 25 January 2020, requiring the Respondent to vacate the Property by 27 March 2020, and copy bank statements showing no rent payments received since August 2019. Evidence of posting of both Notices on 25 January 2020 and delivery on 28 January 2020 was also provided. The tenancy agreement

provided that the term was from 1 June 2007 to 1 December 2017 and, if not ended on that date, continuing on a monthly basis until ended by either Party.

On 5 October 2020, the Tribunal advised the Parties of the date and time of a Case Management Discussion and the Respondent was invited to make written representations by 26 October 2020. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

A Case Management Discussion took place by means of a telephone conference call on the morning of 9 November 2020. The Applicant was represented by his wife, Mrs Genevieve Fairlie. The Respondent was also present. The Applicant told the Tribunal that some payments had been received through Universal Credit, but that the rent was still many months in arrears. The Respondent accepted that the rent was more than three months in arrears. The Tribunal explained to the Respondent that, as the arrears were at least three months and all the other requirements had been met, the Tribunal was bound to make an Order for Possession, which could be enforced after the period allowed for appeal on a point of law had expired. It would be for the Applicant to decide whether or not to seek to enforce it whenever that period ended.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

Section 18 of the 1988 Act states that the 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 the Act and that if the Tribunal is satisfied that any of the Grounds set out in Part I of Schedule 5 to the Act is established, then, subject to Section 18(6) of the Act, it must make an Order for Possession. Section 18(6) applies where a landlord is seeking an Order for Possession during the contractual term of the tenancy. It does not apply to a statutory assured tenancy.

The Tribunal was satisfied that Section 18(6) of the 1988 Act did not apply as, by service of the Notice to Quit, the tenancy had become a statutory assured tenancy.

Ground 8 is one of the Grounds set out in Part I of Schedule 5 to the 1988 Act and applies where both at the date of the service of the notice under Section 19 of the Act relating to the proceedings and at the date of the Hearing, at least three months rent lawfully due from the tenant is in arrears.

The Tribunal was satisfied that at both relevant dates, the rent had been and was at least three months in arrears. Accordingly, the Tribunal was bound to make an Order for Possession.

Decision

The Tribunal determined that the application should be determined without a Hearing and made an Order for 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.

George Clark

Legal Member/Chair

9 November 2020
Date