



**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/19/3449

Re: 161 Falkland Drive, East Kilbride G74 1EL ("Property")

Parties:

David Hugh Gilliland, 27 Strathallan Wynd, East Kilbride G75 8GU ("Applicant")

**TC Young, Solicitors, 7 West George Street, Glasgow G2 1BA ("Applicant's
Representative")**

Paul Drew, 161 Falkland Drive, East Kilbride G74 1EL ("Respondent")

Tribunal Members:

Joan Devine (Legal Member)

Eileen Shand (Housing Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber)
("Tribunal") determined that an order for possession of the Property should be
made in terms of section 18 of the Housing (Scotland) Act 1988.**

Background

The Applicant sought recovery of possession of the Property in terms of Section 18 of the Housing (Scotland) Act 1988 ("1988 Act"). The grounds for seeking possession were stated to be grounds 8, 11 and 12. The Applicant had lodged with the Tribunal Form E. The documents produced were an undated Tenancy Agreement for the period 30 September 2015 to 30 September 2016; a statement in respect of rent arrears; an AT6 dated 9 July 2019; sheriff officer's certificate of service of the AT6 which narrated service on 11 July 2019 and a Notice in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email to the local authority dated 28 October 2019.

A Case Management Discussion ("CMD") took place on 8 January 2020 in respect of the Application and a related civil application proceeding under reference FTS/HPC/CV/19/3450. The outcome of the CMD was that the case was continued to a full hearing. A direction was issued to the Parties in terms of which the Respondent

was required to (a) provide a written statement setting out his defence, when and how he intimated purported repair issues with the Property to the Applicant and what proportion of rent arrears, if any was admitted; and (b) a full copy of the signed tenancy agreement relating to the Property. By letter dated 26 February 2020 the Applicant's Representative gave notice to the Respondent that the Applicant wished to amend the sum claimed in the civil application to £5,045. A hearing was fixed for 13 March 2020. That hearing was discharged due to the Covid-19 pandemic. A further hearing was fixed for 1 September 2020 at 10am.

Hearing on 1 September 2020

A Hearing took place before the Tribunal on 1 September 2020. The Applicant was in attendance and was represented by Catherine McQuarrie of the Applicant's Representative. The Respondent did not attend the hearing. Notification of the date of the Hearing had been provided to the Respondent by email on 6 August 2020. The Respondent did not lodge with the Tribunal a written statement or a full copy of the tenancy agreement as required in the Direction dated 8 January 2020. The Tribunal determined to proceed to deal with the Application. Ms McQuarrie told the Tribunal that the Respondent had failed to pay rent since making a payment to account in respect of rent due in February 2019. She told the Tribunal that she understood that the Respondent remained in occupation of the Property.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a Tenancy Agreement for the Property.
2. The rent in terms of the Tenancy Agreement was £375 per month.
3. The Respondent, had failed to make payment of rent due for the period 5 February 2019 to 26 February 2020.

Reasons for the Decision

The Application for possession proceeded under grounds 8, 11 and 12 of schedule 5 to the 1988 Act. Those grounds are :

Ground 8

Both at the date of the service of the notice under section 19 of this Act relating to the proceedings for possession and at the date of the hearing or the date of the case management discussion, whichever is the earlier, at least 3 months' rent lawfully due from the tenant is in arrears.

Ground 11

Whether or not any rent is in arrears on the date on which proceedings for possession are begun, the tenant has persistently delayed paying rent which has become lawfully due.

Ground 12

Some rent lawfully due from the tenant:

(a) is unpaid on the date on which the proceedings for possession are begun; and

(b) except where sub-section (1)(b) of section 19 of this Act applies, was in arrears at the date of the service of the notice under that section relating to those proceedings.

The Tribunal determined to make an Order for possession of the Property in terms of Section 18 of the 1988 Act. The basis for possession set out in ground 8 had been established. Ground 8 is a “mandatory” ground. For these reasons, the Tribunal determined to grant an Order for possession. The AT6 had been served on the Respondent and had provided the requisite period of notice. This Application had been made within a period of 6 months after the service of the AT6. Further, the Tribunal determined that the basis for possession set out in grounds 11 and 12 had been established. Grounds 11 and 12 are discretionary grounds. The Tribunal determined that in the circumstances of the case it was reasonable to make an order for possession.

Decision

For the foregoing reasons, the Tribunal determined to make an 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.

