



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 Housing (Scotland) Act 1988 (“the 1988 Act”)

Chamber Ref: FTS/HPC/EV/20/0074

Re: Property at 5 Boyd Street, Prestwick, KA9 1JZ (“the Property”)

Parties:

Mr David MacAllister, c/o Fiona Campbell, 24 Lochlea Road, Glasgow, G43 2XZ (“the Applicant”)

Mr Steven Capstick, 5 Boyd Street, Prestwick, KA9 1JZ (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member)

Decision

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

Background

1. By application dated 8 January 2020 the Applicant seeks an order for possession in terms of Section 18 Housing (Scotland) Act 1988. A copy tenancy agreement, AT5 notice, Notice to Quit and AT6 Notice were lodged in support of the application. The application and AT6 state that an order for possession of the property is sought on grounds 8, 11 and 12 of the 1988 Act.
2. A copy of the application and supporting documents were served on the Respondents by Sheriff Officer on 10 March 2020. Both parties were advised that a Case Management Discussion (“CMD”) would take place on 9 April 2020 and that they were required to attend. The CMD was postponed as a result of Government restrictions due to COVID 19. On 16 June 2020, the parties were

advised that the CMD would now take place by conference call on 17 July 2020 at 10am. Both were provided with a telephone number and passcode. The Respondent was notified by recorded delivery letter sent to the tenancy subjects. The recorded delivery letter was not returned to the Tribunal by Royal Mail but a track and trace carried out on 16 July 2020 established that the letter had not been delivered to the Respondent. The application called for a CMD at 10.10 am on 17 July 2020. The Applicant participated. He advised that his agent was unable to participate due to another commitment. The Respondent did not participate. Following discussion regarding the unsuccessful notification to the Respondent of the date and time of the CMD, the Legal Member determined that the CMD should be adjourned to a later date to allow for notification to be made. The Applicant provided contact details and advised that he should be notified of the new date, as well as his representative.

3. The parties were notified that a further CMD would take place by telephone conference call on 1 September 2020 at 2pm. Both were provided with a telephone number and passcode. The Respondent was notified by recorded delivery letter which was successfully delivered by Royal Mail on 11 August 2020. The application called for a CMD on 1 September 2020 at 2pm. The Applicant participated. The Respondent did not participate and was not represented.

Case Management Discussion

4. Mr McAllister advised the Legal Member that Mr Capstick remains in occupation of the property. The arrears of rent have increased from £2100, when the AT6 Notice was served, to £5600, which is the sum currently owed.
5. The Legal Member noted that the tenancy agreement lodged with the application is dated 11 November 2016. The contractual rent due is £550 per month. The term of the tenancy is 11 November 2016 to 11 May 2017, and "from month to month thereafter". The Notice to Quit lodged with the application calls upon the Respondent to vacate the property on 28 December 2019. This is not an ish date. Following discussion with Mr McAllister, he confirmed that he wished the application to proceed under Section 18(6) of the 1988 Act, as the grounds for possession relied on in the application are incorporated into the tenancy agreement.
6. In response to questions, Mr McAllister advised that he had discussed the issue of service of the AT6 with his agents, who had arranged service on his behalf. They confirmed that service had been carried out as outlined in their email to the Tribunal on 7 February 2020. This email confirmed that the Notice had been sent by recorded delivery post and been hand delivered, although the Legal Member notes that the former was unsuccessful. They also provided copy text messages from the Respondent in response to the Notice, which demonstrated

that he was aware of same. Mr McAllister advised that the letting agent's office is located very close to the property, so hand delivery of letters is easily arranged.

7. Mr McAllister advised the Legal Member that he seeks an order for possession of the property, in terms of ground 8, failing which 11 or 12, of the 1988 Act. He confirmed that Mr Capstick works as a taxi driver, and he does not think that his failure to pay rent is linked to a failure or delay in payment of housing benefit or universal credit.

Findings in Fact

8. The Applicant is the owner and landlord of the property.
9. The Respondent is the tenant of the property in terms of an assured tenancy agreement dated 11 November 2016.
10. The Applicant served an AT6 Notice on the Respondent on 19 November 2019.
11. At the date of service of the AT6 the Respondent owed the sum of £2100 in unpaid rent.
12. The Respondent currently owes the sum of £5600 in unpaid rent

Reasons for Decision

13. The application was submitted with a short assured tenancy agreement. In terms of this agreement the term of the tenancy is 11 November 2016 until 11 May 2017 with a provision that it will continue thereafter on a month to month basis. The Notice to Quit purports to terminate the tenancy contract on 28 December 2019. As this is not an end of the tenancy, the Notice to Quit is invalid, and the tenancy contract has not been terminated
14. Section 18(6) of the 1988 Act states " The First-tier Tribunal shall not make an order for possession of a house which is for the time being 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 I of Schedule 5 to this Act or any of the grounds in Part II of that Schedule, other than ground 9, ground 10, ground 15 or ground 17; and b) the terms of the tenancy make provision for it to be brought to an end on the ground in question". The Legal Member notes that the tenancy agreement lodged with the application is signed and dated by the Respondent. Clause 11 of the agreement narrates in full the grounds for possession in Schedule 5 of the 1988 Act, upon which parties are agreed that an order for possession may be sought. These grounds include grounds 8, 11 and 12. The Legal Member therefore determines that the Applicant can rely on section 18(6) and seek an order for possession of the property, without first terminating the tenancy contract by service of a Notice to Quit. The Legal Member is also satisfied that the Respondent has been served with a valid AT6

Notice, as required by Section 19(1) of the 1988 Act

15. Section 18 of the 1988 Act states, "(1) The First-tier 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 this Act. (3) If the First-tier tribunal is satisfied that any of the grounds in Part I of Schedule 5 to this Act is established then, subject to subsections 3A and 6 below, the Tribunal shall make an order for possession. (3A) If the First tier Tribunal is satisfied - (a) that ground 8 in Part I is satisfied; and (b) that rent is in arrears as mentioned in that ground as a consequence of a delay or failure in the payment of a 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". Ground 8 of schedule 5 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."
16. The Legal Member notes that the monthly rent due by the Respondent is £550. The Respondent owed more than three months rent at the date of service of the AT6 and the date of the CMD. From the information provided by the Applicant, it does not appear that the arrears of rent have been caused by any delay or failure in the payment of a relevant benefit. The Legal Member is therefore satisfied that ground 8 has been established, and that the Tribunal is required to grant an order for possession. As ground 8 has been established, the Legal Member did not require to consider grounds 11 or 12 of schedule 5.
17. As the Applicant has complied with the requirements of the 1988 Act, and as the ground for possession has been established, the Legal Member determines that an order for possession must be granted.

Decision

18. The Legal Member determines that an order for possession of the property should be granted against the Respondent.

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.

Josephine
Bonnar

Josephine Bonnar, Legal Member

1 September 2020