



**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/19/0521

**Re: Property at Flat 63 Glen Lednock Drive, Craigmarloch, Cumbernauld,
Glasgow, G68 0EJ (“the Property”)**

Parties:

**Places for People Homes Limited, C/O Touchstone, 2 Crescent Office Park,
Clarks Way, Bath, BA2 2AF (“the Applicant”)**

**Mr Timothy McCondochie, formerly residing at Flat 63 Glen Lednock Drive,
Craigmarloch, Cumbernauld, Glasgow, G68 0EJ and whose present
whereabouts are unknown (“the Respondent”)**

Tribunal Members:

Melanie Barbour (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that**

Background

1. An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 65 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order for recovery of possession in relation to an assured tenancy under the Housing (Scotland) Act 1988 by the Applicant against the Respondent.
2. The application contained a copy of
 - the Tenancy Agreement;
 - AT6 Form together with a certificate of service by sheriff officer ;
 - Section 11 Notice; and

- a copy of a rental statement.
- 3. The Applicant's representative, Mr Slack, from Messrs Patten and Prentice Solicitors, appeared on behalf of the Applicant.
- 4. There was no appearance from the Respondent. Notice of the Hearing had been by service by advertisement on the Respondent. I was content that this had been carried out and I was prepared to proceed in his absence.

The Hearing

5. The Applicant's representative explained that they were seeking an order for eviction under Grounds 8, 11 and 12 of Schedule 5 of the 1988 Act as the Respondent was in arrears of rent for more than 3 months and this continued to be the case as at today's date.
6. The tribunal had sight of the tenancy agreement in the name of the Applicant and Respondent and noted that it commenced on 16 October 2015.
7. Rent payable was initially £500 per month and that it was to be paid in advance.
8. The tenancy agreement at clause 6 provided for termination of the tenancy, and two months' notice was to be given.
9. Clause 8 provided that the landlord may commence proceedings and recover possession in relation to one of the grounds set out in Schedule 5 of the 1988 Act including Grounds 8, 11 and 12 and those grounds were set out in full in in that clause.
10. An AT6 Form had been served on the Respondent by sheriff officers on 24 January 2019. The AT6 Form set out that the landlord intended to seek eviction under Grounds 8, 11 and 12 and narrated the reasons why eviction under those grounds was sought. A certificate of service had been included in the application.
11. The Applicant's representative advised that when the AT6 Notice had been served the rent arrears were £2,130 which was a sum in excess of three months' rent arrears. He advised that as at today's date the rent arrears were still outstanding and had in fact increased to £4,555.33.
12. The Applicant had attempted to contact the Respondent by emails and calls but there had been no response. The Respondent had in September advised that he was leaving the property as he had lost his job and was no longer able to pay the rent, however he did not leave, but no rent has been forthcoming since that date. He advised that while the Applicant is not aware of the Respondent's present whereabouts, he has not returned the key to the property and these proceedings are therefore necessary.

13. In all of the circumstances he was therefore seeking an order under Ground 8 the mandatory ground.

Findings in Fact

14. The Tribunal have found the following facts to be established:
15. A tenancy agreement was entered into between the Applicant and the Respondent for the property.
16. The agreement provided that rent of £500 was due per calendar month in advance.
17. Clause 8 provided a right to seek to recover possession of the property, under an application being made to the tribunal relying on certain grounds set out of the Schedule 5 of the 1988 Act, including grounds 8, 11 and 12.
18. That the rental statement showed that at the date that the AT6 was served on the Respondent at least three months arrears of rent was outstanding.
19. The AT6 Notice had been served on the Respondent and there was evidence of service of this document.
20. That at today's date the Respondent was more than 3 months in arrears of rent.

Reasons for Decision

21. Section 18 of the 1988 Act provides that:-

18 Orders for possession.

(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.

...

(3A) If the First-tier Tribunal is satisfied—

(a) that Ground 8 in Part I of Schedule 5 to this Act is established; and

(b) that rent is in arrears as mentioned in that Ground 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.

...

(6)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.

...

22. On the basis of the evidence before the tribunal, I found that an assured tenancy existed. That a valid AT6 had been served on the Respondent. The Respondent was in arrears of rent which exceeded three months' rent as at the date of the service of the AT6 Notice and as at today's date, the date of the hearing.

23. In those circumstances, I consider that I am required to make an order under Ground 8 unless the arrears were as a delay in relation to the payment of relevant housing benefit or relevant universal credit. There was no information before the Tribunal that there were any such issues regarding these benefits. Accordingly, I consider that I should grant the Order against the Respondent.

Decision

24. The Tribunal grants an order in favour of the Applicant against the Respondent, 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.

Melanie Barbour

Legal Member/Chair

13. 6. 19

Date