



**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/19/0639

Re: Property at 18 St Andrews Drive, Fraserburgh, AB43 9AW (“the Property”)

Parties:

Mrs Gopa Soni, 20 Smiddyhill Road, Fraserburgh, AB43 9WL (“the Applicant”)

**Mr John McGregor, Ms Kayleigh Stewart, 18 St Andrews Drive, Fraserburgh,
AB43 9AW (“the Respondents”)**

Tribunal Members:

Helen Forbes (Legal Member)

Decision (in absence of the Respondents)

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

Background

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 Rules”) on 20th February 2019 seeking an order for possession of the Property under Grounds 8, 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988 (“the 1988 Act”).

The following documents were before the Tribunal:

- Tenancy Agreement between the parties being a short-assured tenancy dated 20th and commencing on 22nd March 2016
- Form AT5 (Notice required by section 32 of the 1988 Act) dated 20th March 2016

- Form AT6 (Notice required by section 19 of the 1988 Act) dated 3rd January 2019
- Notice to Quit dated 3rd January 2019
- Certificates of Intimation of Notices to Quit and Forms AT6 on both parties by Sheriff Officers on 3rd January 2019
- Section 11 Notice dated 11th February 2019
- Rent Account Statement
- Title Sheet for Property under Title Number ABN82217
- Certificates of Intimation of Case Management Discussion on both parties by Sheriff Officers dated 29th March 2019

Case Management Discussion

A Case Management Discussion took place at Banff Sheriff Court on 17th April 2019. The Applicant's representative, Mr David Gibb, Solicitor, appeared on behalf of the Applicant, accompanied by Mr Soni, the husband of the Applicant. There was no appearance by the Respondents. Notification of the Case Management Discussion had been made upon the Respondents by Sheriff Officers on 29th March 2019. The Tribunal was satisfied that the Respondents were aware of the Case Management Discussion, and that, in terms of Rule 29, the case could be heard in the absence of the Respondents.

Mr Gibb moved the Tribunal to grant the order sought. In terms of the 1988 Act, Ground 8 provides that both at the date of service of the notice under section 19 of the Act, and at the date of the hearing, at least three months' rent lawfully due from the tenant is in arrears. The monthly rent was £700. The arrears of rent at the time of serving the notice under section 19 were in excess of the required three months' rent. At the time of making the application, the arrears were £6775.42. No further payments had been made by the Respondents, so a further three months' arrears had accrued. Mr Gibb submitted that, in terms of the 1988 Act, if satisfied that Ground 8 was established, the Tribunal had no discretion but to grant the order sought.

The Tribunal requested details as to whether the rent was in arrears as a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit, in terms of section 18(3A)(b) of the 1988 Act. Mr Gibb said the Respondents had initially been in receipt of housing benefit but this had ceased. No information was available as to the reason why this had ceased.

Mr Gibb said there was a suggestion that one of the Respondents was no longer residing at the Property, but his client was seeking the order against both parties as there was no formal termination of the tenancy and no return of keys.

Findings in Fact

1. A short-assured tenancy was entered into between the parties commencing on 22nd March 2016.

2. The tenancy agreement provided at Clause 4 that the sum of £700 rent was due each month, payable in advance.
3. Clause 18 of the tenancy agreement allowed the Landlord to seek recovery of possession of the Property under the grounds sought.
4. A form AT6 had been served correctly on the Respondents.
5. The rental statement provided showed that, at the date of service of the Form AT6, the rent arrears were in excess of three months' rent.
6. At the date of the Case Management Discussion, at least three months' rent was due.
7. There was no evidence of outstanding benefit issues which had caused the delay in the payment of rent.

Reasons for Decision

Section 18 of the 1988 Act provides that an order for possession must be made if the Tribunal is satisfied that Ground 8 is established and the delay in payment of rent is not as a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit. There was no evidence before the Tribunal in regard to delay or failure in payment of the said benefits. There was more than three months' rent outstanding at both relevant dates. A valid notice in terms of section 19 of the 1988 Act had been served upon the Respondents. In all the circumstances, the Tribunal had no discretion but to grant the order sought.

Decision

The Tribunal grants an order in favour of the Applicant 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.

Helen Forbes

Legal Member/Chair

17th April 2019

Date