

Housing and Property Chamber
First-tier Tribunal for Scotland



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 (“the 1988 Act”) and Rule 65 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/EV/19/0753

**Re: Property at 11 Eastfield Avenue, Cambuslang, Glasgow, G72 7AL
 (“the Property”)**

Parties:

**Mr Dennis Rooney and Mrs Mary Clare Rooney, 8 Calder Drive, Cambuslang, Glasgow, G72 8NE
 (“the Applicants”)**

**Mitchells Robertson Limited, George House, 36 North Hanover Street, Glasgow, G1 2AD
 (“the Applicants’ Representative”)**

**Mr Krzysztof Nowosiad, 11 Eastfield Avenue, Cambuslang, Glasgow, G72 7AL
 (“the Respondent”)**

Tribunal Member:

Susanne L. M. Tanner Q.C. (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) was satisfied that Ground 8 in Part I of Schedule 5 to the 1988 Act was established by the Applicant, in that both at the date of service of the notice under Section 19 of the 1988 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; that rent arrears were not a consequence of a delay or failure in payment of relevant housing benefit or universal credit; and made an order for possession in terms of Section 18(3) of the 1988 Act.

Reasons

1. Procedural Background

- 1.1. The Applicants' Representative made an application to the tribunal on 7 March 2019 in terms of Section 18 of the Housing (Scotland) Act 1988 ("the 1988 Act") and Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules").
- 1.2. The Applicants seek the Respondent's eviction from the Property in terms of Section 18 of the 1988 Act under Grounds 8, 11 and 12 of Schedule 5 to the 1988 Act.
- 1.3. The Applicants' Representative lodged with the Application:
 - 1.3.1. a copy of a Short Assured Tenancy agreement dated 20 January 2014;
 - 1.3.2. a copy of a Notice to Quit dated 9 January 2019;
 - 1.3.3. A copy of an AT6 notice dated 9 January 2019;
 - 1.3.4. Proof of service of the Notice to Quit and AT6 notice on 11 January 2019;
 - 1.3.5. Letter dated 22 December 2018 with rent statement to Respondent;
 - 1.3.6. Rent statement dated 28 May 2015;
 - 1.3.7. Section 11 notice sent to the local authority;
 - 1.3.8. Email to Glasgow City Council with section 11 notice dated 7 March 2019.
- 1.4. The Application was accepted for determination by a tribunal on 15 March 2019. Both parties were notified by letters dated 9 April 2019 of the date, time and place of Case Management Discussion ("CMD") in relation to the Application on 30 April 2019. The Respondent was invited to make written representations in response to the Application by 25 March 2019 (which was a typographical error and should have stated 25 April 2019). Both parties were advised that they were required to attend the CMD. The parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application which may involve making or refusing an eviction order. The parties were also advised that if they do not attend the CMD this will not stop a

decision or order being made if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair. The Application paperwork and notification was served on the Respondent by Sheriff Officers on 10 April 2019.

- 1.5. The tribunal issued Directions dated 17 April 2019, requiring the parties to comply with the orders no later than close of business on 29 April 2019. The Directions included a Direction to the Respondent to produce any written representations he wished no later than 29 April 2019 (which superseded the typographical error in the date in the letter issued by the tribunal's administration requesting submissions by 25 March 2019.)
- 1.6. The Applicants' Representative sent an email on 29 April 2019 responding that (i) there have been no increases of rent from January 2014 to date; (ii) a rent account was attached showing all payments due and received from January 2014 to date; and (iii) stating that the Applicants have not received any payments of housing benefit / universal credit and are not aware that the Respondent receives or has ever received such benefit. A Rent account for the period 21 January 2014 to 29 April 2014 was attached.
- 1.7. The Respondent did not submit any written representations in response to the Application or any response to the tribunal's Directions.

2. CMD: 30 April 2019 at 1400h, Glasgow Tribunals Centre, 20 York Street, Glasgow

- 2.1. Paul Neilly, from the Applicants' Representative attended the CMD on behalf of the Applicants.
- 2.2. The Respondent did not attend the Case Management Discussion, nor did he make contact with the tribunal or its administration to advise that he could not attend. The tribunal was satisfied that the requirements of Rule 24(1) of the 2017 Rules regarding the giving of notice of a hearing had been duly complied with and proceeded with the Application upon the representations of the Applicants' Representative and all the material before it, in terms of Rule 27(1) of the 2017 Rules.
- 2.3. The tribunal chair explained the purpose of the CMD in terms of Rule 17 of the 2017 Rules and stated that as parties had already been notified, the tribunal could do anything at a CMD which it may do at a hearing, including issuing a decision. The tribunal chair also stated to Mr Neilly that as the case was being heard in the absence of the Respondent, it would be open to the Respondent to apply to the tribunal for recall of any decision made in his

absence and any such application would require the Respondent to state why it would be in the interests of justice to do so.

- 2.4. Mr Neilly invited the tribunal to grant an order for possession on the basis of the information before it, in that the requirements of Ground 8 of Part 1 of Schedule 5 were met. Mr Neilly stated that Ground 13 is not relied upon in the Application.
- 2.5. Mr Neilly stated that the tenancy agreement provides for rent at £475 per calendar month from the start of the tenancy at 30 January 2014. It bears to be a short assured tenancy agreement but the initial period was less than 6 months. Mr Neilly stated that that was the reason that the Applicants were proceeding in terms of the AT6 and Grounds 8, 11 and 12 of Schedule 5 of the 1988 Act, rather than seeking possession upon termination of a short assured tenancy. The tribunal chair noted that the tenancy agreement provided for tacit relocation on a two monthly basis after the expiry of the original period.
- 2.6. The Applicants' Representative confirmed that there had been no rent increases since 30 January 2014.
- 2.7. The AT6 is dated 9 January 2019 and was served on 11 January 2019. It included notice to the Respondent that possession would be sought on the basis of Grounds, 8, 11 and 12 (and 13, which is not in the Application). The rent arrears in the AT6 were stated to be £14,575 which was in excess of three months' rent arrears. This was supported by a letter to the tenancy dated 22 December 2018 which showed rent arrears over the period 2015 to 22 December 2018 which showed total rent arrears of £14,575.
- 2.8. The rent statement for the period 20 January 2014 to 29 April 2019 shows rent arrears of £14,865 as at 11 January 2019 (date of service of the AT6) and £16,290 as at 30 April 2019 (date of the CMD).
- 2.9. The tribunal chair asked Mr Neilly about the difference between the figure of £14,575 which is shown in the AT6 and the letter to the Respondent dated 12 December 2018 and the slightly higher figure of £14,865 which is shown on the rental statement produced to 29 April 2019. Mr Neilly stated that the rent arrears were slightly understated on the AT6 because the Applicants had calculated how much the Respondent was due and had paid each year which resulted in an administrative error in the calculation. Mr Neilly submitted that as the arrears position is worse than the amount the landlord notified to the tenant and it is down to administrative error, that it does not materially affect the grounds upon which the Applicants are seeking possession of the Property.

2.10. In respect of the rent arrears position as at 30 April 2019, Mr Neilly stated that the arrears are £16,290 and that as of tomorrow, 1 May 2019, a further month's rent will be in arrears

2.11. Mr Neilly confirmed that no related payment application had been made in respect of the rent arrears.

2.12. The rent statement shows no payments of Housing Benefit or the relevant part of Universal credit being paid throughout the period 30 January 2014 to 29 April 2019. The Applicants' Representative stated that the Applicants have never received any direct payments of any such benefits and are not aware that the Respondent has ever been in receipt of any such payments.

2.13. There is no information before the tribunal to suggest that there has been any delay or failure in payment to the Respondent of housing benefit or relevant universal credit.

3. The tribunal makes the following findings-in-fact:

3.1. There is a tenancy between the Applicants and the Respondent for the initial period 21 January 2014 to 21 June 2014 and thereafter the tenancy has continued by tacit relocation on two calendar monthly basis.

3.2. Rent is payable by the Respondent to the Applicants in the sum of £475 per calendar month, monthly in advance, starting on 30 January 2014.

3.3. The AT6 (Section 19 notice) was served on the Respondent on 11 January 2019.

3.4. As at 11 January 2019 there were rent arrears of £14,865.00

3.5. As at the date of service of the AT6 notice on 21 September 2018 at least three months' rent lawfully due from the tenant was in arrears.

3.6. The AT6 notice included notice that the Applicants were intending to raise proceedings for possession of the Property on Grounds 8, 11, 12 and 13 of Schedule 5 to the Housing (Scotland) Act 1988 ("the 1988 Act").

3.7. As at the date of the CMD on 30 April 2019 the rent arrears were £16,290.

3.8. As at the date of the CMD, at least three months' rent lawfully due from the Respondent was in arrears.

3.9. The rent arrears are not a consequence of a delay or failure in the payment of Housing Benefit or relevant universal credit.

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

Susanne Tanner

30 April 2019

Susanne L. M. Tanner Q.C.
Legal Member/Chair