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

Chamber Ref: FTS/HPC/EV/18/1216

Re: Property at 33 Johnston Avenue, Stirling, FK9 5DD ("the Property")

Parties:

Mr Manjinder Singh Sandu, The Laurels, Abercromby Drive, Bridge of Allan, FK9 4EA ("the Applicant")

Ms Alexis Williams, 33 Johnston Avenue, Stirling, FK9 5DD ("the Respondent")

Tribunal Members:

Nairn Young (Legal Member)

Decision (in absence of the Respondent)

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

- Background

This application is for recovery of possession of the Property, which is let to the Respondent by the Applicant in terms of a short assured tenancy agreement, commencing of 7 August 2006 ('the Lease'). The matter called for a Case Management Discussion ('CMD') on 13 August 2018. That CMD was adjourned to a further CMD on 28 September 2018. The Applicant was represented at both CMDs by Mr Mackie of Mailers Solicitors, but was not present in person. The Respondent did not attend either CMD.

The CMD of 13 August 2018 was adjourned to allow the Applicant to consider four points, in order to address the Tribunal further on them. These points were:

1. The sufficiency of the terms of the tenancy agreement in relation to the requirements of section 18 and specifically, in relation to section 18(6) of the Housing (Scotland) Act 1988 ('the Act').

2. Provide information in relation to the requirements of s.18(3A) of the Act.

3. Whether it would be reasonable to make an order under Ground 12 of Schedule 5 to the Act.

4. The sufficiency of the form AT6.

- Findings in Fact

1. The Property is let to the Respondent by the Applicant in terms of a short assured tenancy agreement, commencing of 7 August 2006 ('the Lease'). The initial term of the Lease was for 2 years and it has continued by tacit relocation since then. In terms of the Lease, rent of £570 is due on the first of each month.

2. The Lease states, at clause TWENTY SECOND:

   "Notice is hereby given and the Tenant by subscription hereof confirms the Tenant's understanding and recognition that the Landlord may recover possession of the subjects at any time (Including a time prior to the natural expiry of the Lease) on any of the grounds set out in the Housing (Scotland) Act 1988, Schedule 5, Grounds 2, 8, 11-16 inclusive, and that without prejudice to such other rights and remedies as may be available to the Landlord."

3. There is no other reference to grounds 8 or 12 in the Lease, or reference to rent arrears as a foundation for the Lease being brought to an end.

4. On 11 January 2018, the Applicant served on the Respondent, among other things, a notice in form AT6 by Sheriff's Officers. In Part 2 of that notice, the Applicant identified the ground upon which he sought possession as being: "Grounds 8 and 12- THAT AT LEAST THREE MONTHS RENT IS IN ARREARS AT THE TIME OF SERVING THIS NOTICE TO QUIT." Part 3 of the notice, where the reasons for the grounds relied on are specified, reiterated precisely that wording and gave no further particulars.

5. On 11 January 2018 the Respondent had rent arrears of £11,366.75. No payments of rent have been made since that time. The arrears at the time of the CMD on 28 September 2018 were £15,926.75. The arrears were not accrued in consequence of a delay or failure in the payment of relevant housing benefit or universal credit.

- Reasons for Decision

6. On the facts as established, it is clear that both Ground 8 and Ground 12 of Schedule 5 to the Act are made out. The concern of the Tribunal at the previous CMD was firstly that, since the Property is, for the time being, let in terms of a contractual assured tenancy, an order for possession cannot be granted on either ground unless the terms of the tenancy make provision for it to be brought to an end on the ground in question (s.18(6) of the Act). Mr Mackie had been asked to address the terms of the case of *Eastmoor LLP* v *Bulman* 2014 SCDUM 31, in which Sheriff Jamieson states (para.30):

   "Since therefore a tenancy may only be "brought to an end" prior to its ish on certain permitted conventional grounds, I am of the view, as with the sheriff principal in the [*Royal Bank of Scotland* v *Boyle* 1999 HLR 63] case, that the parties must contract in such a way that the contract itself sets out the grounds for bringing to an end the lease prior to determination of its ish. It is not sufficient for the tenancy agreement merely to refer to the number of the ground in schedule 5. Best practice is to refer to its number and terms *ad longum*; if the ground is summarised, the summary must contain the "essential ingredients" of the ground in question."

   Although he did not say so explicitly, in essence Mr Mackie's submission was that this passage was an incorrect statement of the law. He contended that the wording used in the Lease was a standard form of wording and gave sufficient notice to the Respondent that her tenancy could be brought to an end on the bases relied upon. To require further specification of all of the grounds that could be relied upon from schedule 5 would be an absurd interpretation of s.18(6), on the basis that it would require lengthy sections of the schedule to be reproduced in the Lease, to no end. In addition, it is obvious to any tenant that failure to pay rent would result in grounds for termination of a tenancy, so specification in the Lease over and above reference to the grounds by number is unnecessary and would achieve no purpose.

7. I am not persuaded by any of these arguments and consider that the passage from *Eastmoor* quoted above is an accurate statement of the law. The basis for that decision is essentially that s.18(6), read in the context of the law as a whole, restricts the bases upon which an assured tenancy may be irritated conventionally to the grounds in schedule 5; it does not provide landlords with a shorthand means by which they can specify what those grounds might be. I consider that to be the correct interpretation of s.18(6). That being the case, at least the "essential ingredients" of the ground must be specified in the lease itself (as the Sheriff Principal observed *obiter* in the *Royal Bank* case). It is not overly onerous to require this. The terms of schedule 5 are not especially lengthy, even repeated word for word. Whether or not the terms of the ground are 'obvious' is not of any relevance: the important point is that it is clear by stating the ground in the lease, that irritancy may proceed on that basis.

8. The second issue that the Tribunal raised at the CMD of 18 August 2018 was whether or not the form AT6 complied with the terms of s.19(2) of the Act. That section states (so far as relevant): "The First Tier Tribunal shall not make an order for possession on any of the grounds in Schedule 5 to this Act unless that ground and particulars of it are specified in the notice under this section...". Mr Mackie contended that giving details of the amount outstanding at the time of service of the notice would not have improved the Respondent's position: she must be in no doubt that rent arrears are the issue and that at least 3 months were outstanding by the simple statement of the number and terms of the grounds from schedule 5 relied upon.

9. Leaving aside the fact that only the terms of ground 8 were stated in the notice in this case, I consider that the terms of s.19(2) are clear in requiring not only the ground relied upon to be stated in a form AT6, but also the particulars of it. By using two different terms ('ground' and 'particulars of it') Parliament must be taken to have considered that two different requirements were being placed on a landlord. On that basis, I do not consider it sufficient only for the ground to be specified, as was done in this case. Whether or not that improves the position of the tenant is not of relevance, given what I consider to be the clear terms of the Act.

10. I should record that Mr Mackie, in his submissions, suggested that a reading of the terms of the Lease and the form AT6 together in this case may cure any insufficiency in them. I do not consider that undertaking any such exercise would be correct. The requirements of s.18(6) and s.19(2) are distinct requirements, pertaining to separate documents, created at quite disparate times. They must be considered to apply in isolation from each other, to their respective documents.

11. On these two bases, I refused the application. If I am wrong in respect of either, I consider that the other provides sufficient grounds to do so.

- Decision

Application refused.

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.

Nairn Young

Legal Member/Chair

28 SEPTEMBER 2018

Date 28/09/18