



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/19/1672

Re: Property at 166 Raploch Street, Larkhall, ML9 1AL (“the Property”)

Parties:

Mr Malcolm Brownlie, 1 Burnhead Road, Larkhall, ML9 2EJ (“the Applicant”)

Miss Nicola Hutchinson, formerly residing at 166 Raploch Street, Larkhall, ML9 1AL but whose whereabouts are presently unknown (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for repossession against the Respondent

Background

- 1** By application dated 29th May 2019 the Applicant sought an order for payment against the Respondent for unpaid rent arrears. In support of the application the Applicant provided a copy of the Tenancy Agreement between the parties and a rent account showing a balance of arrears of £3665 as at May 2019.
- 2** By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds upon which to reject the application. A Case Management Discussion was therefore assigned for 14th October 2019.
- 3** Service of the application paperwork was attempted by Sheriff Officers on 6th August 2019. Upon attending the property it was found to be vacant. A neighbour advised that the respondent had “gone away” from the address.

Reasons for Decision

- 15** The Tribunal was satisfied that it was able to make a determination of the application at the Case Management Discussion and that to do so would not be prejudicial to the interests of the parties. The Tribunal considered that it was able to proceed with the Case Management Discussion in the absence of the Respondent. Service of the application paperwork had been properly effected by advertisement on the Tribunal website and the Tribunal accepted that the Respondent had vacated the property without providing any details to the Applicant regarding her subsequent whereabouts.
- 16** The Applicant sought an order under section 18 of the Housing (Scotland) Act 1988 and had served the Respondent with a valid Form AT6 notice of his intention to raise proceedings for possession under section 19 of the said Act. The Applicant relied upon grounds 8, 11 and 12 of schedule 5 of the said Act in the Notice.
- 17** Ground 8 is a mandatory ground. If the Tribunal is satisfied that at least three months rent lawfully due is in arrears both at the date of service of the Form AT6 and the date of the Case Management Discussion it must grant an order for repossession, provided the arrears are not due to any failure to pay housing benefit or its equivalent.
- 18** The Tribunal accepted based on the Applicant's submissions that the rent due under the terms of the tenancy agreement between the parties was £475 per month and that at least three months rent was unpaid when the Form AT6 was served. The Tribunal noted that the Form AT6 was served on 14th May 2019, at which point arrears of £3665 had accrued.
- 19** The Tribunal further accepted based on the submissions of the Applicant at the Case Management Discussion that arrears in the sum of £5490 were now outstanding. There was no evidence before the Tribunal to suggest that the arrears of rent were due to any failure to pay housing benefit or its equivalent.
- 20** The Tribunal therefore found that the provisions of ground 8 had been met and determined to make an order for repossession. For the avoidance of doubt and by virtue of its findings in fact the Tribunal further accepted that the provisions of grounds 11 and 12 had been met as a result of the Respondent's persistent failure to pay rent and the accrual of arrears as a result.

Service of the application paperwork was therefore effected by advertisement on the Tribunal website between 6th September 2019 and 14th October 2019.

The Case Management Discussion

- 4** The Case Management Discussion took place on 14th October 2019. The Applicant was present. The Respondent did not attend.
- 5** The Legal Member explained the purpose of the Case Management Discussion. The Applicant explained that the outstanding balance was £5490 as at today's date. He hoped to apply the deposit to the outstanding balance but that was not guaranteed. There had been no contact from the Respondent but he understood she had left the property. Payments had been erratic during the tenancy and he was not aware of any failure or delay in the payment of housing benefit that would reduce the balance of arrears.

Findings in Fact

- 6** The Applicant and Respondent entered into a Tenancy Agreement dated 28 April 2017 which commenced on 1st May 2017.
- 7** The Tenancy Agreement is an assured tenancy agreement as defined by the Housing (Scotland) Act 1988.
- 8** The terms of the Tenancy Agreement make provision at Clause 17 for repossession to be sought on grounds 8, 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988.
- 9** In terms of Clause 4 of the said Tenancy Agreement the Respondent undertook to pay rent of £475 per month.
- 10** On 14th May 2019 the Applicant served the Respondent with a Form AT6 Notice of Intention to Raise Proceedings for Possession. The Notice relied upon grounds 8, 11 and 12 as the grounds for repossession.
- 11** As at the date of service of the AT6 arrears in the sum of £3665 were outstanding.
- 12** As at the date of the Case Management Discussion arrears of rent in the sum of £5490 are outstanding.
- 13** At least three months rent lawfully due by the Respondent were outstanding as at the date of service of the AT6 and as at the date of the Case Management Discussion.
- 14** The arrears are not a result of any delay or failure to pay housing benefit.

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

Ruth O'Hare

Legal Member/Chair

14/10/19

Date