



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber)**

Chamber Ref: FTS/HPC/CV/18/2107

Re: Property at Flat 22A, West King Street, Helensburgh, G84 8EB (“the Property”)

Parties:

Mr Alexander Murray, 12 Glen Drive, Helensburgh, G84 9BJ (“the Applicant”)

Mr Darren Pinner, Flat 22A, West King Street, Helensburgh, G84 8EB (“the Respondent”)

Tribunal Members:

Virgil Crawford (Legal Member)

Representation:

Applicant – Miss N Bonthron, Messrs McArthur Stanton Solicitors, Helensburgh

Decision (in absence of the Respondent)

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

BACKGROUND

1. This application for a payment order in relation to rent arrears called at the same time as a separate application seeking an order for eviction. That application was proceeding under Tribunal reference EV/18/2106. Both applications were dealt with at the same time in terms of Rule 12 of The First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the FTT Rules”).
2. By lease dated 22 September 2017 the Applicant let the Property to the Respondent. The initial period of let was from 22 September 2017 until 22 March 2018. A notice in terms of s32 of the Housing (Scotland) Act 1988 (“the

1988 Act”) – commonly referred to as a form AT5 – was served timeously. The tenancy was, therefore a short assured tenancy in terms of s32 of the 1988 Act;

3. The lease did not contain any provisions stating that it may be brought to an end on any of the grounds contained within Schedule 5 to the 1988 Act;
4. The rent payable was £325 per calendar month;
5. A notice to quit dated 16 February 2018 was served on the Respondent. This required vacant possession as at 22 April 2018. This notice terminated the operation of tacit relocation;
6. The Respondent remained in occupation of the property. He fell in to arrears of rent. As a result, on 23 July 2018, a notice in terms of s19 of the 1988 Act – commonly referred to as a form AT6 - was served on the Respondent. This intimated that proceedings for recovery of possession may be initiated on or after 7 August 2018;
7. On 13 August 2018 two applications were made to the Tribunal, one seeking an order for eviction and one seeking an order for rent arrears. As at the date of the applications the arrears amounted to £1,500;

THE CASE MANAGEMENT DISCUSSION

8. A Case Management Discussion was held on 29 November 2018. This related to both applications. On that date the Case management Discussion was adjourned and 11 January 2019 was assigned for a further Case Management Discussion. It had been represented to the Tribunal that the Respondent had made proposals to clear the arrears of rent and, subject to that proposal being adhered to, the Applicant may reconsider the need to proceed with the Applications;
9. The Applicant did not attend the Case Management Discussion on 11 January 2019 but was represented by a solicitor. The Respondent did not attend. The Tribunal was satisfied that, in terms of Rule 24 of the FTT Rules, the Respondent had been given reasonable notice of the place, date and time of the Case Management Discussion and, accordingly, in terms of Rule 29 of the FTT Rules, proceeded in the absence of the Respondent;
10. As at 11 January, however, the Applicant’s solicitor advised the Tribunal that the proposal had not been adhered to, that the rental payment due in December 2018 had not been paid, that the arrears were now £1,850 and that the Applicant wished orders for eviction and payment of rent arrears;
11. An application was made, in terms of Rule 13 of the FTT Rules, to amend the amount claimed for rent arrears to £1,850. The Tribunal allowed the amendment;
12. Further information was provided that the Applicant had attended with the Respondent to discuss the rent arrears but was met with a stubborn response, the Respondent advising that he had no intention of paying any more rent and indicating he would vacate the Property “sometime in January”; He was, however, still resident at the Property;

FINDINGS IN FACT

13. By lease dated 22 September 2017 the Applicant let the Property to the Respondent. The initial period of let was from 22 September 2017 until 22 March 2018. A notice in terms of s32 of the Housing (Scotland) Act 1988 ("the 1988 Act") – commonly referred to as a form AT5 – was served timeously;
14. The lease did not contain any provisions stating that it may be brought to an end on any of the grounds contained within Schedule 5 to the 1988 Act;
15. The rent payable was £325 per calendar month;
16. A notice to quit dated 16 February 2018 was served on the Respondent;
17. The Respondent was in arrears of rent in the sum of £1,500 as at the date of the application to the Tribunal and in the sum of £1,850 as at the date of the case management discussion;

REASONS FOR DECISION

18. In relation to the matter of rent arrears it was clear that there were arrears and that these amounted to at least £1,850. A payment order in that amount was, therefore, granted.
19. As at both the date of the proceedings being raised and as at the date of the Case Management Discussion, the arrears were in excess of 3 times the monthly rent, the Respondent had persistently delayed paying rent and rent was in arrears at the date of service of the notice in terms of s19 of the 1988 Act and as at the date of raising of the proceedings. The terms of grounds 8, 11 and 12 of Schedule 5 to the 1988 Act were, therefore, met;
20. An issue arose, however, in relation to whether an order for eviction could be granted having regard to the terms of s18 of the 1988 Act.
21. The lease did not contain any provisions indicating it may be terminated on any of the grounds contained within s18. The question then was whether the tenancy was "an assured tenancy, not being a statutory assured tenancy". The Tribunal concluded that the tenancy was a statutory assured tenancy. While it had commenced as a short assured tenancy, a notice to quit had been served, ending tacit relocation and intimating the end of the tenancy. In that event, in terms of s16 of the 1988 Act, the tenancy became a statutory assured tenancy. In those circumstances, the requirements of s18(6) did not apply. While in terms of s18(1) the Property was let on an assured tenancy, as at the date of the application to the Tribunal, it was a statutory assured tenancy;
22. In the circumstances, having regard to the clear breach of the tenancy terms by persistent failure to pay rent, and having regard to the level of arrears and the steps taken by the Applicant to attempt to resolve the issue, the Tribunal considered that it was reasonable, and in the interests of justice, that an order for eviction be granted. The Tribunal, accordingly, granted such an order.

DECISION

The Tribunal granted an order against the Respondent for payment to the Applicant in the sum of ONE THOUSAND EIGHT HUNDRED AND FIFTY POUNDS (£1,850.00) STERLING

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.

Virgil Crawford

11 January 2019

Legal Member/Chair

Date