

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/18/3115

Re: Property at 2D Graham Place, Dundee, DD4 6EJ (“the Property”)

Parties:

Northern Housing Company Limited, 1 Explorer Road, Dundee, DD2 1EG (“the Applicant”)

Miss Lydia Smith, 2D Graham Place, Dundee, DD4 6EJ (“the Respondent”)

Tribunal Members:

Ewan Miller (Legal Member)

Decision

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

Background

The Applicant was the owner of the Property. This had been let to the Respondent with effect from 2 November 2017 on a Short Assured Tenancy. The tenancy had terminated 6 months later and had been continuing thereafter on a month to month basis. The Applicant wished to gain possession of the Property on the grounds that the ish date had expired, but the Respondent had not removed from the Property. An Application was made to the Tribunal on 15 November 2018. A Case Management Discussion had been set and this was notified to the parties on 7 January 2019

Case Management Discussion

A Case Management Discussion took place on 24 January 2019 at Hilltown Community Centre, Alexander Street, Dundee. The Applicant were not present but were represented by Mr Matheson of T C Young Solicitors, Edinburgh The Respondent was present and was represented by Mr Kinghorn of Dundee North Law Centre.

Mr Kinghorn for the Respondent acknowledged that the Respondent was occupying on a Short Assured Tenancy that had passed its ish date. He acknowledged that the relevant notices had been served by the Applicant's lawyer and that there were no discretionary grounds available to prevent an eviction.

He did advise that the Respondent had made an application to a charitable trust (on the recommendation of the Applicant) and to Dundee City Council for funds to clear arrears of rent that were outstanding. On that basis he requested an extended period of 8 weeks before extract to give the Respondent time to address matters. Mr Matheson indicated that his clients opposed any extension. Whilst they would not enforce the eviction order if the arrears were cleared, they did not wish to be put at a disadvantage if the Respondent's efforts to clear the arrears were ultimately unsuccessful.

Findings in Fact

The Tribunal found the following facts to be established-

- The Applicant was the owner of the Property;
- The Property was let by the Applicant to the Respondent under a Short Assured Tenancy dated 2 November 2017;
- The period of lease had expired on 3 May 2018 and had been continuing on a month to month basis since then;
- The Applicants had timeously and validly served a Notice to Quit and s33 Notice bringing the tenancy to an end on 3 October 2018;
- The Respondent had failed to remove from the Property.

Reasons for Decision

The Tribunal was satisfied that it was appropriate to grant an order for possession in favour of the Applicant. Whilst the Tribunal had some sympathy for the position the Respondent found herself in, nonetheless, the Applicants had brought the lease with the Respondent to an end on the basis the ish date had been reached. The appropriate Notice to Quit and s33 Notice had been correctly served by Sheriff Officer. Accordingly the Tribunal had no discretion and was required to grant the order.

In relation to the request for an extended period to be granted before the order became enforceable, the Tribunal did not take the view it could exercise any great discretion here. If the parties had agreed by consent to a longer period then the Tribunal would not have objected. However, the Applicant's representative had taken instruction and an extended period was not consented to. If the arrears were met, however, then the Applicants would not take any enforcement action.

On that basis, the Tribunal resolved to grant the order for possession to take effect from 1 March 2019

Decision

The Tribunal granted an order for possession in favour of the Applicant against the Respondent with effect from 1 March 2019.

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.

Ewan Miller

Legal Member/Chair

29/1/19

Date