



**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/17/0486

**Re: Property at 41 Trinity Avenue, Cardonald, Glasgow, G52 3ES (“the
Property”)**

Parties:

**Mr Nick Suttle, 172 Montague Street, Apt 13A, Brooklyn, New York 11201,
United States (“the Applicant”)**

**Mr Lewis Charles Dunne, Ms Jacqueline Layden, 41 Trinity Avenue, Cardonald,
Glasgow, G52 3ES (“the Respondents”)**

Tribunal Members:

Joel Conn (Legal Member)

Decision (in absence of the Respondents)

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

Background

1. This is an application by the Applicant for an order for possession in relation to an assured tenancy in terms of rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”). The tenancy in question was a Short Assured Tenancy of the Property by the Applicant to the Respondents commencing on 2 August 2013.
2. The application was dated 11 December 2017 and lodged with the Tribunal shortly thereafter. The application relied upon notices in terms of section 19 (also known as an “AT6”) of the Housing (Scotland) Act 1988 dated 16 November 2017 in identical terms, each providing the Respondents with notice that proceedings would not be raised before 6 December 2017. Evidence of service of the said AT6s upon the

Respondents by Sheriff Officers was provided with the application, service being on 20 November 2017.

3. The said AT6s rely upon three grounds under Schedule 5 to the 1988 Act; Grounds 8, 11 and 12. All three rely upon rent arrears of £4,642 being outstanding as at the date of the AT6s. The lease for the Tenancy, lodged with the application, discloses a monthly rent of £550, which detail is further narrated in the AT6s. There are thus over eight months of rent arrears said to be due as at the date of the AT6s.
4. Evidence of a section 11 notice in terms of the Homelessness Etc. (Scotland) Act 2003 served upon Glasgow City Council on 11 December 2017 was provided with the application.

The Hearing

5. On 23 March 2018, at a case management discussion ("CMD") of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting at the Teacher Building, Glasgow, I was addressed by Ms Morrison, a paralegal acting for the Applicant. There was no appearance by the Respondents and both my clerk and the Applicant's agent confirmed that no contact had been received from or on behalf of the Respondents since the scheduling of the CMD. I had been provided with text messages exchanged between the Applicant and the First Respondent of 17 and 18 January 2018 but these did not disclose any representations on the application. In them the First Respondent represented that the Respondents were about to leave the Property. Ms Morrison advised me that she understood the Respondents were still in occupation of the Property as at the date of the CMD.
6. Given that the Teacher Building has rooms across a number of floors, at 10:00 I instructed the Venue Assistant to check with the building's reception and it was confirmed that the Respondents had not entered the building. I was thus satisfied that there was no appearance by the Respondents nor any attempt by them to provide submissions or explain their non-appearance. In the circumstances, I was satisfied to consider the application in full at the CMD in the absence of the Respondents.
7. The Applicant's agent addressed me on the current level of rent arrears, providing a revised Rent Schedule showing no rent payments having been received since 3 July 2017 with seven consecutive monthly rent payments having been missed. Further, the rent statement showed that some arrears had been present on the rent account since 1 February 2014. (I note that this is probably meant to say 2 February 2014, in terms of the rent payment date in the lease. I have assumed all references to the 1st of the month in the statement to mean the 2nd of the month.) The level of arrears had been consistently above £1,000 since 2 March 2016 and at least three months of rent arrears have been due since 2 April 2017. As at 2 March 2018, the revised Rent Schedule disclosed total rent arrears of £6,842, being over twelve months of arrears. The Applicant's agent

submitted that the AT6 had been validly served. The application further detailed that the lease was in sufficient terms, under section 18(6) of the 1988 Act, so that no Notice to Quit was required prior to this application.

8. The Applicant's agent confirmed that the Applicant had received no contact from the Respondents; that the Respondents were not known to be in receipt of Housing Benefit; and that no issues of non-provision of benefit had been raised by the Respondents as a reason for failure to make payment of rent. The Applicant's agent submitted that the Ground 8 of the 1988 Act was thus satisfied and, being a mandatory ground, an order for removal should be granted.
9. I sought to be addressed by the Applicant's agent on whether a CMD was a "hearing" in terms of Ground 8 of Schedule 5 to the 1988 Act, in that the Procedure Rules draw a distinction between a "case management discussion" and a "hearing" yet the terms of Ground 8 requires: "Both at the date of the service of the notice under section 19 of [the 1988 Act]... and at the date of the hearing, at least three months rent lawfully due from the tenant is in arrears". The Applicant's agent submitted that a CMD should be construed as a "hearing" in terms of Ground 8 of the 1988 Act.
10. I sought to be addressed by the Applicant's agent on the Respondents' home circumstances (such as any dependents, whether the Property was specially adapted for the needs of the Respondents or any dependents, and any known issues regarding being rehoused). The Applicant's agent said no such issues were known. The Applicant's agent submitted that it was further reasonable for an order under Grounds 11 and 12 to be made in light of the very long standing issues with arrears and the lack of any rent payments since July 2017.
11. The Applicant's agent confirmed no order in respect of expenses was to be made.

Findings in Fact

12. On 2 August 2013, the Applicant let the Property to the Respondents by lease (stating it was a Short Assured Tenancy) with a start date of 2 August 2013 and an end date of 2 February 2014 ("the Tenancy").
13. Under the Tenancy, the Respondents were to make payment of £550 per month in rent to the Applicant on the 2nd of each month.
14. The Tenancy's terms make provision for the Tenancy being brought to an end on Grounds 8, 11 and 12 of Schedule 5 to the Housing (Scotland) Act 1988 while it is still an "assured tenancy" in terms that Act.
15. On 16 November 2017, the Applicant's agent drafted AT6s form in correct form addressed to each of the Respondents, giving the Respondents notice in terms of section 19 of the 1988 Act of an intention to raise proceedings for possession in terms of Grounds 8, 11 and 12 of Schedule

5 to the 1988 Act, all based on there being rent arrears of £4,642 (being over eight months of rent arrears) as at the date of the AT6s. The AT6s gave the Respondents notice that proceedings would not be raised before 16 November 2017.

16. On 20 November 2017, a Sheriff Officer acting for the Applicant competently served each of the AT6s upon the Respondents. The Respondents were thus provided with sufficient notice of the Applicant's intention to raise proceedings for possession on the said grounds.
17. On 11 December 2017, the notice period under the AT6s having expired, the Applicant raised proceedings for an order for possession with the Tribunal, on the grounds narrated in the AT6s.
18. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon Glasgow City Council on 11 December 2017 on the Applicant's behalf.
19. On 22 February 2018, a Sheriff Officer acting for the Tribunal intimated the application and associated documents upon each of the Respondents, providing the Respondents with sufficient notice of the CMD of 23 March 2018.
20. On 23 March 2018, the Respondents were in rent arrears under the Tenancy of £6,842, being over twelve months of unpaid rent in total. Within this figure are seven months of consecutive unpaid rent accrued since 2 August 2017.
21. No information was provided to the Tribunal regarding any delay of failure in the payment of relevant housing benefit or relevant universal credit.
22. No information was provided to the Tribunal regarding any reason why it would be unreasonable to grant an order for possession under any of the discretionary grounds in Part II of Schedule 5 to the 1988 Act.

Reasons for Decision

23. The application was in terms of rule 65, being an order for possession in relation to assured tenancies. I was satisfied, on the basis of the application and supporting papers, and the updated rent schedule and oral submissions provided by the Applicant's agent at the CMD, that a valid AT6 had been issued on each of the Respondents; that these had expired without the breaches being resolved; and that the non-payment of rent remained unaddressed as at the date of the CMD. As at the date of the CMD, rent had been unpaid for seven months and the total arrears now amounted to over twelve months of rent arrears.

24. Having considered the question as to whether a CMD was a "hearing" in terms of Ground 8 of Schedule 5 to the 1988 Act, I was satisfied that it was. Read simply, the 1988 Act seeks a consideration of whether, at the date of a hearing considering the order for possession, there are three months arrears of rent. The Procedure Rules allow at rule 17(4) for a CMD to be such a hearing where an order for possession is considered and potentially granted.
25. I was satisfied from the submissions of the Applicant's agent that there were no known issues of failure or delay in benefit and thus it was reasonable to grant an order in terms of Ground 8 of Schedule 5 to the 1988 Act.
26. I was further satisfied that I was still entitled to make a determination that it was reasonable to grant any order in terms of Grounds 11 and 12 of Schedule 5 to the 1988 Act as there were no material circumstances brought to the Tribunal's attention that would suggest it would be unreasonable in the circumstances of seven months of continual non-payment of rent and over four years of continuous arrears.

Decision

27. In all the circumstances, I was satisfied to make the decision to grant an order against the Respondents for possession of the Property under section 18 of the Housing (Scotland) Act 1988 in normal terms.

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.

Joel Conn

Legal Member/Chair

Date 23 March 2018