

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/19/3951

Re: Property at 37 Glendinning Crescent, Edinburgh, EH16 6DW (“the Property”)

Parties:

Mr Ian Watt, 13 Redgauntlet Terrace, Edinburgh, EH16 5SD (“the Applicant”)

Ms Ann Brown, 37 Glendinning Crescent, Edinburgh, EH16 6DW (“the Respondent”)

Tribunal Members:

George Clark (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and made an Order for Possession Order against the Respondent.

Background

By application, received by the Tribunal on 12 December 2019, the Applicant sought an Order for Possession against the Respondent under the Housing (Scotland) Act 1988 (“the 1988 Act”), The Ground relied on was Ground 8 of Schedule 5 to the 1988 Act.

The application was accompanied by copies of a Short Assured Tenancy Agreement between the Parties, commencing on 14 October 2011 at a rent of £1,050 per month, a Rent Statement showing arrears as at October 2019 of £4,173.10, with no payments having been received since August 2019 and arrears as at July 2019 of £1,415.82, a Notice to Quit requiring the Respondent to vacate the Property by 31 October 2019, with proof of service by sheriff officer on 19 September 2019, and a Form AT6 Notice served under Section 19 of the 1988 Act, dated 19 November 2019, advising the Respondent that proceedings would not be raised before 6 December 2019, with proof of service by sheriff officer on 20 November 2019.

On 27 January 2020, the Tribunal advised the Parties of the date, time and venue for a Case Management Discussion and the Respondent was invited to make written representations by 17 February 2020.

On 26 February 2020, the Respondent emailed the Tribunal. She stated that she had not received a Notice to Quit or any other documents since 2018 and that she had been advised that the Tribunal should have signed confirmation that she had received such documents. She also raised issues about the condition of the Property and made allegations about the Applicant's conduct. She had become a student, had 4 children and her only income at present was a student bursary and Child Benefit. The Applicant did not indicate that she disputed the amount of the rent arrears, but said that, as her housing benefit had been paid directly to the Respondent, she had never been told how much he was being paid by the Benefits Agency each month.

The Respondent advised that she was unable to attend the Case Management Discussion as she had no family in Edinburgh to look after her young child. She was actively seeking work to try and get back on her feet along with studying full-time.

Case Management Discussion

A Case Management Discussion was held at Riverside House, Gorgie Road, Edinburgh on the afternoon of 27 February 2020. The Applicant was represented by Mr Douglas Harvey of Thorley Stephenson SSC, solicitors, Edinburgh. The Applicant was not present or represented. The Applicant's representative told the Tribunal that his instructions remained to seek an Order for Possession without a Hearing. No payments of rent had been received since the date of the application.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

Section 18 of the 1988 Act states that if the Tribunal is satisfied that any of the Grounds in Part I of Schedule 5 to the 1988 Act is established, the Tribunal shall make an Order for Possession.

Ground 8 of Part I of Schedule 5 to the 1988 Act applies where, both at the date of the service of the Notice under Section 19 of the Act (the Form AT6 Notice) relating to the proceedings for possession and at the date of the hearing, at least three months' rent lawfully due from the tenant is in arrears.

The Form AT6 Notice was served on 20 November 2019, at which point the arrears of rent exceeded three months. That remained the case as at the date of the Case Management Discussion. Accordingly, the requirements of Ground 8 of Schedule 5 to the 1988 Act had been met and the Tribunal was bound to make an Order for Possession against the Respondent. Ground 8 was a mandatory Ground and, consequently, the points made by the Respondent in her email of 26 February 2020 could not affect the Decision that the Tribunal was bound to make.

Decision

The Tribunal determined that the application should be decided without a Hearing and made an Order for Possession against the Respondent.

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.

George Clark

Legal Member/Chair

27 February 2020

Date