



**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/18/1739

Tribunal Members:

Petra Hennig-McFatridge (Legal Member)

Decision in absence of the Respondent

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted.

1. The Case Management Discussion (CMD) took place at Dundee on 23 January 2019. Present was the Applicant's Representative Aaron Doran, local agent for Clarity Simplicity Ltd. The Respondent was not present. The tribunal was satisfied that the Respondent had received sufficient and timely notification of the CMD as Sheriff Officers had confirmed service of the notification and documentation for the CMD on the Respondent on 7.1.2019.
2. The application for an order for possession in terms of Rule 65 had been received by the Tribunal on 11 July 2018. The application was accompanied by a copy of the S11 notice, the AT6 dated 1.5.2018 with the earliest date of raising proceedings stated as 18.5.2018, and Notice to Quit dated 3.5.2018 for 13.6.2018, service confirmation of the AT6 and Notice to Quit on the Respondent by Sheriff Officers on 3.5.2018, copy tenancy agreement for tenancy commencing 10.10.2017 and rental statement dated up to and including 10.7.2018 showing arrears of £6,080 as at that date.
3. At the hearing the Applicant's representative confirmed that the application is made in terms of Rule 65 and the process under which the application is made is S 18 of the Housing (Scotland) Act 1988 and that the application for repossession relies on grounds 8, 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988 and produced an up to date rent statement showing the arrears having increased to £10,640 as at 10.1.2019. This had been emailed to the Tribunal on 17.1.2019. He confirmed that no further payments had been made.
4. He moved for an order on the basis that the rent had been in arrears for 14 months. The rent in terms of the tenancy agreement is £760 per calendar month and at the date of the CMD and on the date of the service of the Notice of Proceedings the rent was in arrears of at least 3 months rent lawfully due.
5. No correspondence had been received from the Respondents and they did not attend the CMD. No representations had been lodged. No contact was made by the Respondent to the Applicants prior to the CMD.

assured tenancy except on one or more of the grounds set out in Schedule 5 to the Act”.

2. In this case the Tribunal is satisfied that the tenancy was terminated by the Notice to Quit giving 40 days notice to 13 June 2018. Although Notice to Quit was served prior to the end of the tenancy, which is stated as 10.10.2018, the tenancy agreement explicitly provided in Clause 28 ii “The landlord may terminate the tenancy by serving on the tenant of a notice to quit. The Landlord may serve such notice to terminate the tenancy agreement where the tenant has materially breached any of his obligations under this Agreement.” The tenancy agreement then sets out verbatim the Grounds narrated in Schedule 5 of the Housing (Scotland) Act 1988. Clause 28 states “These grounds are set out below and notice is hereby given that possession might be recovered on such grounds”. The Notice to Quit and AT6 Notice were served together and thus it would have been clear to the Respondent that the reason for the Notice to Quit is the breach of the obligation in the tenancy agreement to pay rent.
3. In this case a Notice to Quit was not strictly necessary in any event. In terms of S 18 (6) the tribunal “*shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless (a) the ground of possession is Ground 2 or Ground 8 in Part I of Schedule 5 to this Act or any of the grounds in Part II of that Schedule... and (b) the terms of the tenancy make provision for it to be brought to an end on the ground in question*”. The tenancy agreement specifically referred to the Grounds on which the tenancy could be terminated and the required AT6 form was correctly served in terms of S 19 (4) with the minimum period stated as 2 weeks for grounds 8, 11 and 12 from 3.5.2018 to 18.5.2018. The AT6 Notice in terms of S 19 was served stating the grounds, setting out the reasons and gave more than the required period of 2 weeks.
4. The tribunal then has to consider whether the Grounds 8, 11 and 12 of Schedule 5 of the Act apply in this case. Ground 8 is a mandatory ground as there was no suggestion and information that the Respondent received housing benefit or universal credit. Ground 8 was notified to the Respondent in the AT6 notice. Both at the time of the service of the AT6 notice and at the time of the CMD the arrears exceeded 3 months rent.
5. Both Grounds 11 and 12 are discretionary grounds for possession. In this case the arrears as of the time the application was submitted were £6,080 and at the time of the CMD £10,640. Arrears have been documented persistently for 14 months and there has been no explanation from the Respondent why these arose or why in this case it would not be reasonable to grant an order for possession. Both grounds 11 and 12 of Schedule 5 of the Act were notified to the Respondents in the AT6 notice.
6. The facts of the case are not in dispute as the Respondent has made no representations and did not attend the CMD. The notification bundle to the Respondent included the clear warning “The Tribunal may do anything at a

case management discussion which it may do at a hearing, including making a decision on the application which may involve making or refusing and eviction order or payment order”.

7. The tribunal is satisfied that Ground 8 of Schedule 5 of the Act *“both at the date of the service of the notice under section 19 of this Act 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”* applies in this case and arrears of more than 3 months rent were evidenced at the date of service of the Notice of the Proceedings and at the CMD. This is a mandatory ground of granting possession as there is no indication that S 18 9(3A) of the Act applies. Furthermore, in so far as the requirement of Ground 8 is that at the date of the hearing 3 months rent has to be in arrears, a Case Management Discussion at which both parties have been advised to attend meets the requirements of a hearing in terms of Ground 8. The Respondent had been clearly advised of the possibility that an order may be granted at the CMD in the notification correspondence.
8. The tribunal is satisfied Ground 11 of Schedule 5 of the Act: *“whether or not any rent is in arrears on the date on which proceedings for possession are begun the tenant has persistently delayed in paying rent which has become lawfully due”* applies in this case and, applying its discretion in the matter considers that taking into account all relevant matters it is fair in all the circumstances to grant the order for possession on that ground. There has been no explanation as to the reason for the arrears and it is not disputed that rental payments have been persistently in arrears and thus delayed for over a year since December 2017 as shown in the rental payment statement.
9. The tribunal is satisfied Ground 12 of Schedule 5 of the Act : *“some rent lawfully due from the tenant:- (a) is unpaid on the date on which the proceedings for possession are begun; and (b) except where subsection (1) (b) of section 19 of this Act applies, was in arrears at the date of the service of the notice under that section relating to those proceedings”* applies in this case and, applying its discretion in the matter considers that taking into account all relevant matters it is fair in all the circumstances to grant the order for possession on that ground. There has been no explanation as to the reason for the arrears and it is not disputed that since December 2017 as shown in the rental payment statement rent lawfully due has remained unpaid.

Decision: The Tribunal grants the order for possession of the property

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.

P Hennig-McFatridge

Legal Member

Date

23.1.19