



**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/18/2484

Re: Property at 85 Foresthall Drive, Springburn, G21 4EL (“the Property”)

Parties:

Mr Kwoksing Wong, c/o 10 A Princes Terrace, Glasgow, G12 9JP (“the Applicant”)

Mr Scott Forfar, Ms Ellen McAneny, 85 Foresthall Drive, Springburn, Glasgow, G21 4EL; 85 Foresthall Drive, Springburn, G21 4EL (“the Respondents”)

Tribunal Members:

Lesley Ward (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession of the property at 85 Foresthall Drive Springburn Glasgow G12 4EL be granted on the basis that Ground 8 of schedule 5 of the Housing (Scotland) Act 1988 is established and the arrears of rent are not a consequence of a delay or failure in the payment of relevant housing benefit.

This is a case management discussion ‘CMD’ in connection with an application in terms of rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, ‘the rules’ and s18 of the Housing (Scotland) Act 1988, ‘the Act’ to recover possession of the property at 85 Foresthall Drive Springburn Glasgow G12 4EL, ‘the property’. The application was made on behalf of the landlord and owner Mr Kwoksing Wong by Miss Annette Hanna of Victoria Letting. The application was originally made under rule 66 but it was amended to rule 65 before it was served on the respondents. The tribunal held a joint CMD in connection with this application and a second application in terms of rule 70 in respect of rent arrears.

The tribunal had before it the following copy documents:

1. Application dated 11 September 2018 and received by the Tribunal on 13 September 2018.
2. Lease of the property for the initial period of 30 November 2017 until 30 November 2018.
3. 2 AT5 forms signed by each tenant.
4. S11 letter to local authority.
5. AT6 form dated 24 August 2018.
6. Track and trace documents dated 25 August 2018.
7. Notice to quit dated 24 August 2018.
8. Sheriff officer's execution of service of both applications on both respondents dated 9 January 2019.
9. Rent statement as at 30 July 2018.
10. Land certificate for the property.

Miss Annette Hanna and Mr Ian Barclay from Victoria Letting Agency Ltd attended the CMD on behalf of the applicant. The respondents did not attend and were not represented. Ms McAneny called the tribunal administration on the morning of the CMD to advise that they were unable to attend due to a family emergency. They did not seek an adjournment. She was told that the CMD would be likely to proceed in their absence.

Case management discussion

Miss Hanna was seeking an order for possession today. She stated that the rent arrears were continuing to accrue. She had some discussions with the respondent Ms McAneny at the property in December 2018 regarding the arrears. She asked in particular about any application for housing benefit. She stated that she was told by Ms McAneny that there was no entitlement to housing benefit. Despite this Miss Hanna made her own inquiries with universal credit and housing benefit and she produced a letter from Glasgow City Council which confirmed that Miss McAneny was entitled to housing benefit. Miss Hanna applied to the council on behalf of the applicant to have the housing benefit paid directly to the letting agents and this commenced in January 2019. She was unable to confirm if any of the rent arrears were as a result of a delay in housing benefit but from the information in her possession it was her view that for some time housing benefit was being paid directly to the respondents and that this was not being passed on to the applicant. She had asked Ms McAneny about housing benefit and she denied that she was eligible. The Glasgow City Council were unable to confirm how long the claim for housing benefit had been active. Housing benefit is now being paid directly to the letting agent at £405.12 every 4 weeks towards the rent of £825 per month.

With reference to the AT6 Miss Hanna confirmed that this was sent to the respondents jointly in the one envelope. The AT6 was sent by recorded delivery and by first class post. The track and trace lodged was signed for by 'McEneny' which is believed to be Ms McAneny. In her view if a separate letter was sent, in all likelihood Ms McAneny could have signed for both, as she did with the sheriff officer's documentation.

Miss Hanna stated that there were over three months arrears at the date the AT6 was served and the arrears have increased to £10,000 at the end of December 2018.

Findings in fact

1. The applicant is the owner and landlord of the property.
2. The applicant entered into a short assured tenancy with the respondents for an initial period of 30 November 2017 until 30 November 2018 with rent of £825 per month.
3. Rent arrears have accrued from December 2017.
4. As at the date of service of the AT6 the arrears stood at £5775, over three months of rent.
5. As at the end of December 2018 the arrears were £10,000.
6. As at today's CMD the arrears are around £10,000, over three months of rent.
7. The respondents were served with a valid AT6 on 25 August 2018.
8. The rent arrears are not as a consequence of a delay or failure in the payment of relevant housing benefit.

Reasons

This is an undefended application for possession of the property. Papers were served on the respondents on 9 January 2019. They have not made representations regarding the application. They did call the tribunal today to advise that they could not attend but did not ask for the hearing to be postponed. There is nothing in the application before the tribunal to suggest that the respondents have any defence to the application.

The tribunal gave careful thought to the AT6 lodged and the fact that service was effected by recorded delivery and first class post in an envelope addressed to both parties. The tribunal considered the terms of s54 of the Act and page 80 of Stalker of Evictions. The tribunal decided on balance and in the absence of any information to the contrary, service of the AT6 had been effected on both parties.

The tribunal noted that the notice to quit was invalid and did not tie in with the ish date. Nevertheless, the agreement between the parties does provide a full narration

of the schedule 5 grounds and the tribunal was satisfied that s18(6) had been complied with.

The tribunal also considered the housing benefit position. There was no evidence to suggest that the arrears had accrued due to a delay in payment of housing benefit. It appears that the respondent Ms McAneny has been entitled to housing benefit despite telling the applicant's agents she was not entitled. Housing benefit is now being paid directly to the applicant.

In all of the circumstances the tribunal was satisfied that this is a valid application and that an order is mandatory as there are rent arrears of more than three months both as at the AT6 and at today's date.

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.

L Ward

25 January 2019

Lesley A Ward Legal Member

Date