



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/18/2938

Re: Property at GFL, 88 Bedford Road, Aberdeen, AB24 3LQ

Parties:

Mrs Karen Gray, residing at Abergeldie Cottage, 14 William Street, Torphins, Banchory, Aberdeenshire, AB31 4FR (“the Applicants”)

Mr Myles Gray, residing at Abergeldie Cottage, 14 William Street, Torphins, Banchory, Aberdeenshire, AB31 4FR (“the Applicants”)

Mr Michael Christophrous, formerly residing at GFL, 88 Bedford Road, Aberdeen, AB24 3LQ (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for repossession of the Property against the Respondent

Background

- 1 The Applicants submitted an application received 31st October 2018 to the Tribunal under Rule 65 of the First-tier Tribunal (Housing and Property Chamber) Procedure Regulations 2017 for an order for repossession of the Property against the Respondent. In support of the application, the Applicants submitted the following documentation:-
 - a. Copy Lease between the Applicants and the Respondent dated 16 November 2016 and 18 November 2016;
 - b. Form AT6 and Notice to Quit dated 6th August 2018 together with Sheriff Officers certificate of service;

- c. Notice to Aberdeen City Council Council under section 11 of the Homelessness etc (Scotland) Act 2003; and
 - d. Rent Account from 1st April 2018 to 1st October 2018.
- 2 By Notice of Acceptance of Application dated 26th November 2018, the Convener with delegated powers of the Chamber President intimated that there were no grounds to reject the application. The Case Management Discussion was thereafter assigned for 11th January 2019.
 - 3 An attempt to serve the application paperwork upon the Respondent subsequently proved unsuccessful. A report from Sheriff Officers confirmed that the Respondent had removed from the property and was residing at an address in North Humberside. The Case Management Discussion was therefore postponed for service to be effected. The Applicants were unable to provide an alternative address for the Respondent. Accordingly in terms of Rule 6A of the Procedural Rules as amended the Tribunal permitted service of the paperwork together with notification of the Case Management Discussion by advertisement on the Tribunal's website. Service was effected between 8th March 2019 and 25th March 2019.

Case Management Discussion

- 4 A Case Management Discussion took place on the 17th April 2019 at the Credo Centre, Aberdeen. The Applicant's Representative was present.
- 5 The Applicant's Representative confirmed that he was seeking an order for eviction against the Respondent. Whilst it did appear that the Respondent had left, the Applicant wished the protection of an order particularly as there were a number of possessions remaining in the property. The Applicant's Representative advised that there had been no payments of rent since April 2018. He understood from speaking with other residents of the block that the Respondent had gone travelling for a year.

Findings in Fact

- 6 The parties entered into a Tenancy Agreement in respect of the Property dated 16th November 2016 and 18th November 2016.
- 7 The tenancy is an assured tenancy as defined by section 12 of the Housing (Scotland) Act 1988.
- 8 In terms of the Clause 4 of the said tenancy agreement the Respondent undertook to make payment of rent in the sum of £350 per month.
- 9 The said tenancy agreement makes provision for the tenancy to be terminated on grounds 8, 11 and 12 of Schedule 5 of the Housing (Scotland) Act 1988.
- 10 On 7 August 2018 the Applicant served a Form AT6 (Notice of Intention to Raise Proceedings for Recovery of Possession) upon the Respondent in

terms of section 19 of the Housing (Scotland) Act 1988 by Sheriff Officers. In terms of the said AT6, repossession would sought on grounds 8, 11 and 12 of Schedule 5 of the said Act.

- 11 The Applicant is in arrears of more than three months rent.
- 12 The Applicant's failure to make payment of rent is not a result of any failure or delay in the payment of housing benefit or its equivalent.

Reasons for Decision

- 13 Having considered the verbal and written representations from both parties the Tribunal was satisfied that it was able to make sufficient findings to determine the case without a hearing and that to do so would not be prejudicial to the interests of the parties. The Tribunal was satisfied that service of the application had been effected by advertisement which was a proper mode of service under the Procedural Rules.
- 14 The Tribunal accepted that the Respondent had been served with a Form AT6 by virtue of the certificate of service from Sheriff Officers. The Tribunal further accepted that the Tenancy Agreement made provision for the tenancy to be terminated on the grounds stated in the Form AT6, namely ground 8, 11 and 12 of Schedule 5 of the 1988 Act thereby satisfying the provisions of section 18(6) of the said Act. Accordingly whilst a Notice to Quit had been served by the Applicants, this was superfluous and did not require to be considered by the Tribunal in its determination of the application.
- 15 Ground 8 is a mandatory ground. It provides that where a tenant is in arrears of more than three months rent the Tribunal must grant an order for repossession. The only exception is where the arrears are due to a failure or delay in the payment of housing benefit. The Tribunal had nothing before it to suggest that housing benefit was due to be paid in this case. The Respondent had not taken the opportunity to enter the process and had not made any representations in this regard. Indeed it appeared that he had vacated the property. The Tribunal therefore accepted the submissions of the Applicants regarding the outstanding arrears.
- 16 Accordingly on the basis of its findings in fact the Tribunal concluded that ground 8 had been met and therefore it was obliged to make an order for repossession. For the avoidance of doubt the Tribunal was in turn satisfied that the provisions of grounds 11 and 12 were met in that rent lawfully due by the Respondent was unpaid both at the time the AT6 was served and when the proceedings before the Tribunal were raised, and the Respondent had persistently failed to make payment of rent lawfully due.

Decision

- 17 The Tribunal determined to make an order for repossession of the Property 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.

R O'Hare

 Legal Member/Chair

Date

17/4/15