

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 16 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/EV/19/0863

**Re: Property at 80 Meadow Crescent, New Elgin, Moray, IV30 6ER (“the
Property”)**

Parties:

**Mr Lee Conway, 5 Millersgate, Sibsey, Boston, Lincolnshire, PE22 0TP (“the
Applicant”)**

**Mr Przemyslaw Fraczak, 80 Meadow Crescent, New Elgin, Moray, IV30 6ER
 (“the Respondent”)**

Tribunal Members:

Helen Forbes (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 relative to the Property
should be granted in favour of the Applicant**

Background

1. The Applicant sought an order for possession of the Property in terms of Grounds 8, 11 and 12 in Part I of Schedule 5 to the Housing (Scotland) Act 1988 (“the Act”). The application was dated 5th March 2019.
2. The following documents were before the Tribunal:
 - (i) Lease between the parties dated 1st January 2017
 - (ii) Rent account
 - (iii) Notice to Quit dated 29th October 2018
 - (iv) Proof of Delivery of NTQ dated 30th October 2018
 - (v) Form AT6 dated 14th February 2019
 - (vi) Certificate of Execution by Sheriff Officers of Notice to Quit dated 15th February 2019
 - (vii) Certificate of Execution by Sheriff Officers of Form AT6 dated 15th February 2019

- (viii) Section 11 Notice dated 22nd February 2019
- (ix) Title Sheet for MOR2708
- (x) Certificate of Service by Sheriff Officers of notification of Case Management Discussion dated 17th April 2019

Case Management Discussion

3. The Tribunal held a case management discussion on 8th May 2019 at the Spectrum Centre, 1 Margaret Street, Inverness. The Applicant was not present and was represented by Ms Laura McCarthy, Solicitor, Munro and Noble, appearing as a local agent. The Respondent was not in attendance.
4. The Tribunal was satisfied that the Respondent had been given notice of the Case Management Discussion and, accordingly, proceeded in terms of Rule 29 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017.
5. The Lease between the parties purports to create an assured shorthold tenancy under the Housing Act 1988. This is not a valid tenancy in Scotland. The tenancy is an assured tenancy in terms of the Act. The term of the tenancy was for one year from 1st January 2017. The Lease does not provide any additional information as to the term of renewal thereafter. Consequently, the tenancy continues on a yearly basis. The Lease does not provide that the tenancy can be brought to an end under any of the grounds set out in Part I of Schedule 5 to the Act. A Notice to Quit would, therefore, be required to end the contractual tenancy and allow the Applicant to recover possession in terms of the Act.
6. The Notice to Quit was dated 29th October 2018. It provided that the Respondent was to quit the property no earlier than 31st December 2018. The Notice to Quit contained the statutory prescribed information. However, it stated that the date when legal proceedings could be commenced was 20th October 2018, a date preceding the date of service of the Notice to Quit. The Notice to Quit was served by recorded delivery by the Applicant's solicitor on 30th October 2018. It was signed for by the Respondent. The Notice to Quit appears to have been served again by Sheriff Officers on the Respondent together with the Form AT6, required in terms of section 19 of the Act, on 15th February 2019.
7. Ms McCarthy said that the monthly rent was £450. Despite a previous order for payment granted by the Tribunal in the sum of £8,142 on 25th February 2019, no rent had been paid by the Respondent. This sum was outstanding at the time of serving the AT6 on the Respondent. A charge for payment had been served. The sum was still outstanding today, and, as no rent had been paid, the requirements of Ground 8 were met, as at least three months' rent lawfully due was outstanding at the date of service of the AT6 and at the date of the hearing. The Respondent had not vacated the Property and had made no contact with the Applicant.

8. Responding to questions from the Tribunal regarding the error in respect of the date on which legal proceedings could commence in the Notice to Quit, Ms McCarthy submitted that the Notice to Quit was valid and had been correctly served. It gave the Respondent the requisite amount of notice and fair notice that proceedings could be raised, notwithstanding the error in the date.

Findings in Fact

9.
 - i. The tenancy agreement between the parties is an assured tenancy
 - ii. Notice to Quit was served appropriately on 29th October 2018, giving the Respondent the correct amount of notice and ending the tenancy on an ish date of the tenancy, namely 31st December 2018. The Respondent did not remove from the Property. The tenancy became a statutory assured tenancy thereafter.
 - iii. The Form AT6 was in proper form and had been served appropriately.
 - iv. At the date of service of the Form AT6 and at the date of the Case Management Discussion, at least three months' rent lawfully due from the Respondent was in arrears.

Reasons for Decision

10. The error in the Notice to Quit regarding the date on which proceedings could be raised was not a fundamental error. The Notice to Quit gave the Respondent fair notice that an action could be served. At the date of service of the Form AT6 and at the date of the Case Management Discussion at least three months' rent lawfully due from the Respondent was in arrears. The Tribunal was satisfied that Ground 8 of Part I of Schedule 5 to the Act was established. The Respondent did not make any representations to the Tribunal. There was no information before the Tribunal as to the reason for the rent arrears. The Tribunal had no information regarding delay in the payment of any relevant housing benefit or universal credit. In terms of section 18(3) of the Act, the Tribunal shall make an order for possession. In all the circumstances, the Tribunal did not have discretion but to make such an order.

Decision

11. The Tribunal makes an order for Possession of the Property in favour of the Applicant.

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.

H Forbes

Legal Member/Chair

8th May 2019

Date