

Housing and Property Chamber
First-tier Tribunal for Scotland



Statement of Decision 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/17/0554

Re: Property at Flat 6F, Claythorn Park, Glasgow Green, Glasgow, G40 2HY (“the Property”)

Parties:

Mr Lubomir Burian, c/o 114 Union Street, Glasgow, G1 3QQ, (“the Applicant”)

Ms Penny Anderson, Flat 6F, Claythorn Park, Glasgow Green Glasgow, G40 2HY (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted the application.

Background

The Applicant submitted an application seeking an order to evict the Respondent from the property at Flat 6F, Claythorn Park, Glasgow Green, Glasgow, G40 2HY. The Tribunal intimated the application to the Respondent on 17th January 2018 and advised her of the date, time and place of the case management discussion. In that letter, the Respondent was advised that any written representations she wished to make should be sent to the Tribunal by 4th February 2018. The Respondent was also told that she required to attend the case management discussion and was informed that the Tribunal could make a decision on the application if the Tribunal has sufficient information and considers the procedure to have been fair. The Tribunal received correspondence from the Respondent’s solicitor indicating that the application was opposed.

The Hearing

An earlier case management discussion took place on 15th February 2018. The Applicant was represented by Mr. R Cowan and the Respondent represented by Mr. J O'Donnell. The Applicant produced an updated rent statement which showed that the rent arrears apparently totalled £4,515. In terms of the tenancy agreement produced, the monthly rent due was £575. The Applicant sought an eviction order on the basis of Ground 8 to Schedule 5 of the Housing (Scotland) Act 1988, relying upon the rent statement produced which showed more than 3 months' rent arrears outstanding as at the date of the application and at the date of the case management discussion. On behalf of the Respondent, Mr O'Donnell produced a copy of a letter from a Consultant Neurologist confirming that the Respondent suffers from multiple sclerosis. Mr O'Donnell indicated that it had been difficult to obtain detailed instructions from the Respondent. The Respondent's position was that she did not accept that three months' rent was outstanding. Her position was that she had made more payments of rent than were disclosed on the rent statement and that the rent arrears amounted to approximately £1,000. The Tribunal continued the hearing to 8th March 2018 and issued a notice of directions requiring the Respondent to produce evidence of payments of rent, made by her, which were not reflected on the rent statement.

At the hearing on 8th March 2018, the parties were represented again by Mr. R. Cowan and Mr. J. O'Donnell respectively. The Applicant produced an updated rent statement which showed the rent arrears had increased to £5,090. The Respondent had failed to produce any evidence of payments said to be made by her which were not reflected on the rent statement and no further submissions were made on her behalf.

Findings in Fact:

1. The Respondent entered into a Tenancy Agreement dated 23rd and 29th September 2016 in respect of the property at Flat 6F, Claythorn Park, Glasgow, G40 2HY. The period of the lease was from 23rd September 2016 to 23rd March 2017. The rent payable was £575 per calendar month, payable in advance.
2. The short assured tenancy continued by tacit relocation.
3. The Applicant served Notice on the Respondent on 10th November 2017 of his intention to raise proceedings to recover possession of the property in terms of Grounds 8, 11 and 12 to Schedule 5 of the Housing (Scotland) Act 1988, indicating that proceedings would not be raised before 1st December 2017.

4. The Respondent had incurred more than three months' rent arrears as at the date of the application and the date of the case management discussion. The sum due in respect of rent arrears was £5,090.

Reason for Decision

The Tribunal proceeded on the basis of the written documents which were before it and the submissions made by both representatives. The Applicant invited the Tribunal to make the Order sought. Ground 8 to Schedule 5 of the Housing (Scotland) Act 1988 is mandatory. The Tribunal satisfied that Ground 8 was established.

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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

N Irvine

Legal Member/Chair

08.03.2018

Date