



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 18(1) of the Housing
(Scotland) Act 1988**

Chamber Ref: FTS/HPC/EV/20/0698

Re: Property at 5 Maxwell Crescent, Blantyre, G72 0EE (“the Property”)

Parties:

Mr Graham Thomas, 25 Kent Drive, Burnside, Glasgow, G73 5AP (“the Applicant”)

Mr Callum Pepper, 5 Maxwell Crecent, Blantyre, G72 0EE (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for possession of the property and the removal of the Respondent from the property.

Background

1. By application dated 27 February 2020 the Applicant’s representatives Premier Properties, Uddingston applied to the Tribunal for an order for possession of the property and the removal of the Respondent from the property. The Applicant’s representatives submitted a copy of the Tenancy Agreement, Form AT6, Section 11 Notice, Form AT5 and Section 33 Notice in support of the application. The Applicant’s representatives subsequently in correspondence with the Tribunal administration submitted copies of text messages between them and the Respondent, copy email to South Lanarkshire Council attaching Section 11 Notice and email history of correspondence with the Respondent.
2. Following further correspondence between the Tribunal and the Applicant’s representatives the application was amended to proceed under Section 18(1) of the Housing (Scotland) Act 1988.

3. By Notice of Acceptance dated 8 June 2020 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion was assigned.
4. By Notice of Direction dated 8 June the Tribunal required the Applicant to provide confirmation of delivery by recorded delivery post of the Form AT6 on the Respondent.
5. Intimation of the Case Management Discussion was sent to the Applicant's representatives by post on 16 July 2020 and was served on the Respondent by Sheriff Officers on 20 July 2020.

The Case Management Discussion

6. A Case Management Discussion was held by teleconference on 14 August 2020. The Applicant did not attend but was represented by Mr Andrew Aitken of the Applicant's representatives. The Respondent did not attend and was not represented. The Tribunal on being satisfied that proper intimation had been given to the Respondent determined to proceed in his absence in accordance with Rule 29 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.
7. The Tribunal queried if the direction of 8 June 2020 had been complied with. The Tribunal was aware that the email to South Lanarkshire Council attaching the Section 11 Notice had previously been submitted but it had not seen the track and trace receipt confirming delivery of the Form AT6 on the Respondent. Mr Aitken confirmed this was on file and the Tribunal was able to access this on the Royal Mail website which it did.
8. Mr Aitken advised that the Respondent continued to reside in the property. He had made no rent payments since December 2019. The rent arrears had increased to £3295.00 of which £250.00 were in respect of late payment charges. The monthly rent was £425.00. Mr Aitken went on to say that the Respondent was keeping six cats in the property without consent. He was smoking tobacco and cannabis in the property. He was not keeping the property clean and the cats were causing damage to the carpet and walls. The odour from cat urine was overwhelming. He said he had been in the property himself and could confirm this and also the gas engineer who had attended at the property had said the same. Mr Aitken went on to say that in addition the Respondent was not maintaining the garden at the property and it was like a jungle. He said the Respondent was in breach of Clauses 2(5), 2(6), 2(15) and 2(17) of the Tenancy Agreement.
9. Mr Aitken said that communication between his office and the Respondent had completely broken down. He had tried to work with the Respondent and the local authority to assist in having him rehoused but the Respondent would not

wok with him. There were records of multiple missed calls and unanswered voicemails. It was clear the Respondent was still in the property as the cats could be seen at the window and there was a car in the drive. Mr Aitken said the property was occupied by the Respondent and his girlfriend. He did not think either were working. He believed the Respondent was in receipt of Housing Benefit but was not using it to pay rent. He explained that the Respondent's grandmother had been guarantor but she had read in the newspaper that the Respondent had been found guilty of defrauding her of thousands of pounds and she now had no money to pay the rent for him.

10. Mr Aitken submitted that the test for establishing Grounds 11, 12 and 13 of Schedule 5 of the Housing (Scotland) Act had been met and that the Tribunal should grant the order sought.

Findings in Fact

11. The parties entered into a Short Assured Tenancy that commenced on 13 November 2017 and continued until 12 May 2018 and then continued thereafter by tacit relocation for periods of six months.
12. The Respondent was served with a Form AT6 under Grounds 11, 12 and 13 of Schedule 5 of the Housing (Scotland) Act 1988 dated 10 February 2020 by recorded delivery post and delivered on 11 February 2020.
13. The monthly rent is £425.00.
14. The Respondent last made any payment of rent in December 2019.
15. The current amount due by the Respondent to the Applicant is £3295.00 including late payment charges of £250.00.
16. The Respondent is keeping cats in the property without the consent of the Applicant.
17. The Respondent has been smoking in the property in breach of clause 2 of the tenancy agreement.
18. The Respondent has caused damage to the property in breach of Clause 2 of the Tenancy Agreement.
19. The Respondent has failed to maintain the property and garden in good order in breach of Clause 2 of the Tenancy Agreement.

Reasons for Decision

20. The Tribunal was satisfied from the documents produced that a Short Assured Tenancy had been constituted between the parties. It was also satisfied that Form AT6 had been properly served on the Respondent giving him notice of intended proceedings and the grounds on which proceedings would be raised.
21. The Tribunal was satisfied from the documents produced that a Section 11 Notice had been sent to South Lanarkshire Council intimating the raising of these proceedings.
22. The Tribunal found that the oral submissions from the Applicant's representative Mr Aitken taken together with the written representations provided the Tribunal with a clear picture of substantial rent arrears accrued by the Respondent over the past eight months resulting in the Respondent accruing a debt to the Applicant of £3295.00. The Tribunal was therefore satisfied that subject to meeting the test of reasonableness grounds 11 and 12 of Schedule 5 had been met.
23. The Tribunal found Mr Aitken to be a credible and reliable witness and had no reason to doubt the veracity of his oral submissions. He had clearly visited the property and could speak to its condition and the presence of the cats and the smell and signs of smoking within the property as well as the condition of the garden. He appeared to have good local knowledge of the Respondent's circumstances. The Respondent had the opportunity to submit written representations in advance of the Case Management Discussion and had not done so nor had he chosen to attend.
24. Grounds 11.12 and 13 of Schedule 5 of the Housing (Scotland) Act 1988 arrears discretionary grounds and therefore in arriving at a decision on whether to grant the order sought the Tribunal has to balance the interests of both parties. Having heard the submissions from the Applicant's representative and considered the written submissions and documents submitted on the Applicant's behalf the Tribunal is satisfied that it should exercise its discretion in favour of the Applicant. The rent arrears are continuing to rise substantially every month and the Respondent has made no attempt to offer any explanation for non-payment. In addition, there has been clear and unacceptable breaches of the tenancy agreement by the Respondent.

Decision

25. The Tribunal being satisfied from the oral submissions and documents produced that it has sufficient information before it to make a decision without a further hearing finds the Applicant entitled to an order for the possession of the property and the removal of the Respondent from 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.

**Graham Harding
Legal Member/Chair**

**14 August 2020
Date**