



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/20/0508

Re: Property at 24 Drumbeg Drive, Nitshill, G53 6RB (“the Property”)

Parties:

Mr Barry Gallen, 25 Haberlea Avenue, Glasgow, G53 7UZ (“the Applicant”)

Ms Jamie Lee Jackson, 24 Drumbeg Drive, Nitshill, G53 6RB (“the Respondent”)

Tribunal Members:

Lesley Ward (Legal Member)

Decision (in absence of the Respondent)

- 1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession of the property be made in terms of s18 of the Housing (Scotland) Act 1988 on the basis of ground 8 of Schedule 5 to the Act, since on the date of service of the notice in terms of s19 of the Act and on the date of the hearing at least three months rent lawfully due from the respondent is in arrears and the rent arrears are not due to a delay or failure in payment of a relevant benefit.**
- 2. This is a management discussion ‘CMD’ in connection with an application in terms of s18 of the Housing (Scotland) Act 1988, ‘the Act’ and rule 65 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, ‘the rules’ to recover possession of the property. There was a second application before the tribunal for rent arrears in terms of rule 70.**

3. The CMD proceeded by conference call due to the Covid-19 pandemic. The applicant's solicitor Miss Ciara Young attended. The respondent did not attend and was not represented. The tribunal had sight of the copy letter sent to the respondent by the Tribunal on 17 June 2020 and the track and trace which confirmed the letter had been signed for by 'Jackson' on 19 June 2020. The tribunal also noted that the original application was served by sheriff officer on 2 March 2020. The tribunal was satisfied that the respondent had received appropriate notice in terms of rule 24. The tribunal proceeded with the CMD in terms of rule 29.

4. The tribunal had before it the following copy documents:
 - (1) Application dated 11 February 2020.
 - (2) Rent statement.
 - (3) Tenancy agreement dated 6 June 2016.
 - (4) Land certificate.
 - (5) AT6 dated
 - (6) Execution of service of the AT6 by sheriff officer dated 21 November 2019.
 - (7) Notice to quit.
 - (8) Execution of service of the notice to quit by sheriff officer dated 3 May 2019.
 - (9) S11 notice.

Discussion

5. Miss Young was seeking an order for possession today on the basis that the tenancy agreement had been brought to an end by the notice to quit which was served by sheriff officer on 3 May 2019. She stated that the tenancy was therefore a statutory assured tenancy. Eviction could therefore be granted on ground 8 and s18(3) of the Act. In relation to the housing benefit position, she stated that it was the applicant's position that the respondent was likely to be in receipt of housing benefit and that this had never been passed on to the applicant. Arrears of rent have accrued since the start of the tenancy and there were now some 16 months of rent arrears outstanding.

6. Findings in fact and law

- The parties entered into an assured tenancy agreement on 6 June 2016 for let the property for a period of one year.
- The respondent was served with a valid notice to quit on 3 May 2019.
- The tenancy has reached its ish
- Tacit relocation is not operating.
- A statutory assured tenancy has arisen.
- The respondent has been in arrears of rent since July 2016.

- The respondent was served with a valid AT6 on 21 November 2019.
- At the date of service of the AT6 the rent arrears were £7400.
- The rent arrears at the CMD today are in excess of £8400.
- Both as at the date of service of the AT6 and as at today's date there were rent arrears in excess of three months.
- The rent arrears are not due to a delay or failure in payment of a relevant benefit.

Reasons

7. This is an undefended application for recovery of possession of the property. The tribunal was satisfied that the matter could be dealt with in the absence of the respondent as appropriate notice had been sent, the tribunal had sufficient information before it to make a decision and the procedure had been fair.
8. This application was made and the notices were served before the Coronavirus (Scotland) Act 2020 came in to force so schedule 1 of that Act does not apply to this application.
9. The tribunal firstly considered if the tenancy agreement which was entered into in June 2016 was at that time an assured tenancy in terms of s12 of the Act. The agreement lodged is headed 'Rental Agreement by Private Treaty' and it is very short with only a few clauses. It was the applicant's solicitor's position that the agreement was a statutory assured tenancy due to the service of the notice to quit. For this to be the case however, and for the Act to apply, the agreement would have to start off as an assured tenancy. The tribunal considered the definition and given that the respondent was residing in the property and it appears to be let to him as a separate dwelling and there was nothing to suggest he did not reside there as his only or principal, home, the tribunal was satisfied on the balance of probability that the tenancy was an assurance tenancy at the time that it was entered into.
10. A valid notice to quit was served and the tenancy then became a statutory assured tenancy. Substantial rent arrears have accrued and as at the date of the AT6 and as at today's date are in excess of three months and therefore ground 8 is established. There was no suggestion that the arrears were due to a delay or failure in payment of housing benefit.

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.

Lesley Ward

23 July 2020

Lesley A Ward Legal Member

Date