



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

Chamber Ref: FTS/HPC/EV/21/0956

Re: Property at 16 Main Street, Rhynie, Aberdeenshire, AB54 4HB (“the Property”)

Parties:

Mr Richard Armitage, Orrisdale, Main Road, Colby, Isle of Man, IM9 4AE, Isle of Man (“the Applicant”)

Mr Alexander Craib, 16 Main Street, Rhynie, Aberdeenshire, AB54 4HB (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member) and Mike Scott (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that order is granted against the Respondent for possession of the Property under section 18 of the Housing (Scotland) Act 1988.

- Background
 1. An application dated 19 April 2021 was submitted to the Tribunal under Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), seeking a repossession order against the Respondent under section 18 of the Housing (Scotland) Act 1988.
- The Case Management Discussion
 2. A Case Management Discussion (“CMD”) took place on 23 July 2021, by tele-conference. Both parties were personally present and represented themselves.
 3. The Applicant sought the order for repossession in terms of his application. The Respondent had lived in the Property since September 2016. He had paid no rent for two and a half years. There had been agreement reached previously

for the Respondent to purchase the house from the Applicant. Missives had been concluded but the Respondent had failed to adhere to the contract of sale and no purchase price was paid. The Respondent has repeatedly asserted that he will leave the Property but has failed to do so. The Respondent owed in excess of three months' arrears at the time of serving the Form AT6 and continues to owe in excess of three months' rent. The monthly rent is £450. The rent arrears due at the date of the CMD were £12,691.42.

4. The Respondent did not oppose the order sought. He confirmed that he intended to leave the Property as soon as he could find alternative accommodation and intended to sell his business to repay the arrears. He lived in the Property with his three children aged 16, 18 and 20. One child was in education and the other two were in employment. No reason was given as to the reason for failure to pay any rent.

- Findings in Fact

5. The Tribunal made the following findings in fact:

- (i) The parties entered into a Short Assured Tenancy Agreement ("the Agreement") which commenced 24 September 2016;
- (ii) A Notice to Quit and Form AT6 under section 19 of the 1988 Act were served on the Respondent on 15 October 2020 by recorded delivery post;
- (iii) The Form AT6 under section 19 of the 1988 Act relied on grounds 8,11 and 12 under Schedule 5 to the 1988 Act;
- (iv) The Form AT6 under section 19 of the 1988 Act advised that proceedings would not be raised before 16 April 2021;
- (v) The Respondent had failed to remove from the Property and continued to reside therein.

- Reasons for Decision

6. Section 18 of the 1988 Act (as amended by the Coronavirus (Scotland) Act 2020) states as follows:

"18 (1) The First-tier Tribunal shall not make an order for possession of a house let on an assured tenancy except on one or more of the grounds set out in Schedule 5 to this Act.

(2) The following provisions of this section have effect, subject to section 19 below, in relation to proceedings for the recovery of possession of a house let on an assured tenancy.

(4) If the First-tier Tribunal is satisfied that any of the grounds in Part I or Part II of Schedule 5 to this Act is established, the Tribunal shall not make an order for possession unless the Tribunal considers it reasonable to do so.

(4A) In considering for the purposes of subsection (4) above whether it is reasonable to make an order for possession on Ground 8 in Part I of Schedule 5 to this Act or on Ground 11 or 12 in Part II of Schedule 5 to this Act, the First-tier Tribunal shall have regard, in particular, to the extent to

which any delay or failure to pay rent taken into account by the Tribunal in determining that the Ground is established is or was a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit.

(5) Part III of Schedule 5 to this Act shall have effect for supplementing Ground 9 in that Schedule and Part IV of that Schedule shall have effect in relation to notices given as mentioned in Grounds 1 to 5 of that Schedule.

(6) The First-tier Tribunal shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless—

(a) the ground for possession is Ground 2 or Ground 8 in Part I of Schedule 5 to this Act or any of the grounds in Part II of that Schedule, other than Ground 9, Ground 10, Ground 15 or Ground 17; and

(b) the terms of the tenancy make provision for it to be brought to an end on the ground in question.

(6A) Nothing in subsection (6) above affects the First-tier Tribunal's power to make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, where the ground for possession is Ground 15 in Part II of Schedule 5 to this Act.

(7) Subject to the preceding provisions of this section, the First-tier Tribunal may make an order for possession of a house on grounds relating to a contractual tenancy which has been terminated; and where an order is made in such circumstances, any statutory assured tenancy which has arisen on that termination shall, without any notice, end on the day on which the order takes effect.

(8) In subsections (3A) and (4A) above—

(a) "relevant housing benefit" means—

(i) any rent allowance or rent rebate to which the tenant was entitled in respect of the rent under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971); or

(ii) any payment on account of any such entitlement awarded under Regulation 91 of those Regulations;

(aa) "relevant universal credit" means universal credit to which the tenant was entitled which includes an amount under section 11 of the Welfare Reform Act 2012 in respect of the rent;

(b) references to delay or failure in the payment of relevant housing benefit or relevant universal credit do not include such delay or failure so far as referable to any act or omission of the tenant.

7. Ground 8 of Schedule 5 to the 1988 Act states as follows:

"Both at the date of the service of the notice under section 19 of this Act relating to the proceedings for possession and at the date of the hearing or the date of the case management discussion, whichever is the earlier, at least three months rent lawfully due from the tenant is in arrears."

8. Ground 11 of Schedule 5 to the 1988 Act states as follows:

“Whether or not any rent is in arrears on the date on which proceedings for possession are begun, the tenant has persistently delayed paying rent which has become lawfully due.”

9. Ground 12 of Schedule 5 to the 1988 Act states as follows:

“Some rent lawfully due from the tenant—

(a) is unpaid on the date on which the proceedings for possession are begun; and

(b) except where subsection (1)(b) of section 19 of this Act applies, was in arrears at the date of the service of the notice under that section relating to those proceedings.”

10. The Tribunal was satisfied that the grounds relied upon in the Form AT6 had been met. At the date of service of the AT6 on the Respondent, there were rent arrears of more than three months' rent. The monthly rent was £450. At the date of the CMD, the arrears stood at £12,691.42. Accordingly, both at the date of service of the AT6 and at the date the case called before the Tribunal, there were at least three months of arrears due. Further, the Tribunal was satisfied that the Respondent had persistently delayed paying rent which has become lawfully due.

11. Whilst the Respondent did not oppose the Order sought, the Tribunal did consider that it was reasonable to grant the order as sought in any event. The arrears had been accruing since April 2019. Nothing at all had been paid in over two years. The Respondent confirmed that he ran a MOT testing business, and that two of his three children living in the household were also in employment. No explanation was given as to the reason for failure to pay any rent whatsoever in over two years.

12. It was noted that a Direction had been issued by the Tribunal on 9 June 2021 requiring the Applicant to make written submissions on the question of whether or not the Form AT6 and Notice to Quit served on the Respondent were competent. The Tribunal considered the terms of the Direction and the written submissions lodged by the Applicant. The Tribunal was satisfied that the AT6 served was indeed competent. The lease between the parties clearly states at Clause Nineteenth that the Landlord can repossess the property on the basis of Ground 8 of Schedule 5 to the 1988 Act. The wording is as follows: *“the landlord hereby gives notice to the Tenant that possession of the subjects may also be recovered under ground 1 (the subjects comprise the Landlord's former home and are required for occupation by the Landlord) and Ground 8 (three*

months arrears of rent) both of Part 1 of Schedule 5 to the Housing (Scotland) Act 1988 and the Tenant acknowledges such notice to have been duly given before the commencement of this Lease.” There is no requirement for the full ground to be set out in the lease in order for the Landlord to be able to rely on same. The Tribunal is satisfied that wording is sufficiently clear to be relied upon by service of an AT6 in terms of section. Section 18(6) of the 1988 Act states as follows:

“18(6)The First-tier Tribunal shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless—

(a)the ground for possession is Ground 2 or Ground 8 in Part I of Schedule 5 to this Act or any of the grounds in Part II of that Schedule, other than Ground 9.. Ground 10, Ground 15 or Ground 17; and

(b)the terms of the tenancy make provision for it to be brought to an end on the ground in question.”

13. The Tribunal was satisfied that the terms of the lease as set out above make provision for it to be brought to an end on the basis of Ground 8 ,where an assured tenancy. On that basis, no Notice to Quit is required to convert to a statutory tenancy. The Tribunal did consider that the Notice to Quit issued was incompetent due to its failure to rely on an ish date of the lease. However, the Tribunal did not consider that the Notice to Quit was required in any event as section 18(6) has been compiled with and therefore the competency of the Notice to Quit is irrelevant.

- Decision

14. The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for possession of the Property under section 18 of the Housing (Scotland) Act 1988.

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.

Legal Member: Fiona Watson

Date: 23 July 2021

F Watson