



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/21/1239

Re: Property at 38 Corsewall Street, Coatbridge, ML5 1PY (“the Property”)

Parties:

Coatbridge Property & Investment Co LTD, 40 Carlton Place, Glasgow, G5 9TS (“the Applicant”)

Mr Ian Parkinson, 38 Corsewall Street, Coatbridge, ML5 1PY (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

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 20 May 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 of a short assured tenancy agreement in terms of section 18 of the Housing (Scotland) Act 1988 (“the 1988 Act”)
- The Case Management Discussion
 2. A Case Management Discussion (“CMD”) took place on 23 August 2021 by tele-conference. The Applicant was represented by their letting agent, Lesley Barclay of Happy Lets Limited. There was no appearance by or on behalf of the Respondent. The application had been intimated on the Respondent by Sheriff

Officer on 21 July 2021. The Tribunal was accordingly satisfied that the Respondent had been duly notified of the date and time of the CMD and that the CMD could proceed in the Respondent's absence.

3. The Applicant's representative sought an Order for Repossession due to significant and ongoing antisocial behaviour being perpetrated by the Respondent and his visitors. The behaviour complained of included: aggressive and intimidating behaviour towards neighbours, letting agent staff and the landlord themselves; excessive noise; allowing a number of other people to reside in the property and sleep in the common areas; excessive rubbish in the common areas and garden; shouting and swearing. He shouted and swore at an elderly neighbour in the local supermarket, causing distress to said neighbour, believing they had called the police about him. The police are regularly in attendance at the property, causing a disturbance to others in the block. The letting agent has carried out multiple visits to the Respondent to attempt to engage with him and get his behaviour back on track but he has failed to engage. Attempts have been made to introduce social work involvement to assist him, but the Respondent has failed to engage with them. The Respondent is 59 years old and has no dependants in the household. The tenancy agreement commenced in 2012, but the serious antisocial behaviour started around 2 years ago. It is believed that the Respondent abuses both alcohol and drugs, exacerbating the issues and resulting in the Respondent becoming increasingly volatile. His behaviour is causing alarm and distress to neighbours.

- Findings in Fact

4. The Tribunal made the following findings in fact:

- (i) The parties entered into a Short Assured Tenancy Agreement ("the Agreement") which commenced 7 September 2012;
- (ii) A Notice to Quit and Form AT6 under section 19 of the 1988 Act were served on the Respondent on 23 March 2021 by recorded delivery post;
- (iii) The Form AT6 under section 19 of the 1988 Act relied on ground 15 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 5 May 2021;
- (v) The Respondent has engaged in antisocial behaviour causing alarm and distress to neighbours;
- (vi) The Respondent had failed to remove from the Property and continued to reside therein.

- Reasons for Decision

5. Section 18 of the 1988 Act 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.*

(3) *If the First-tier Tribunal is satisfied that any of the grounds in Part I of Schedule 5 to this Act is established then, subject to subsections (3A) and (6) below, the Tribunal shall make an order for possession.*

(3A) *If the First-tier Tribunal is satisfied—*

(a) *that Ground 8 in Part I of Schedule 5 to this Act is established; and*

(b) *that rent is in arrears as mentioned in that Ground as a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit,*

the Tribunal shall not make an order for possession unless the Tribunal considers it reasonable to do so.

(4) *If the First-tier Tribunal is satisfied that any of the grounds in 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 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.

6. Ground 15 of Schedule 5 to the 1988 Act states as follows:

"The tenant, a person residing or lodging in the house with the tenant or a person visiting the house has—

(a) been convicted of—

(i) using or allowing the house to be used for immoral or illegal purposes; or

(ii) an offence punishable by imprisonment committed in, or in the locality of, the house; or

(b) acted in an anti-social manner in relation to a person residing, visiting or otherwise engaging in lawful activity in the locality; or

(c) pursued a course of anti-social conduct in relation to such a person as is mentioned in head (b) above.

In this Ground "anti-social", in relation to an action or course of conduct, means causing or likely to cause alarm, distress, nuisance or annoyance, "conduct"

includes speech and a course of conduct must involve conduct on at least two occasions and "tenant" includes any one of joint tenants."

7. The Tribunal was satisfied that the ground relied upon in the Form AT6 (being Ground 15 of Schedule 5 to the 1988 Act) had been met. There were a number of complaints of antisocial behaviour lodged with the application, including noise, shouting and swearing, acting in an aggressive and intimidating manner towards others, and disturbance caused by repeated visits by the police. The Tribunal was satisfied that the Respondent had engaged in a course of conduct amounting to antisocial behaviour, and that this conduct had caused alarm and distress to neighbours. The Tribunal was satisfied that the conduct was continuing and despite attempts by the Applicant's representative to get the Respondent to engage with them, and to engage with social services, the Respondent had failed to do so. The behaviour was persistent and ongoing, and accordingly the Tribunal was satisfied that it was reasonable to grant the order sought.

- Decision

8. 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.

Fiona Watson
Legal Member/Chair

23 August 2021
Date