



**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/22/2927

Re: Property at 2 Gartloch Court, Glasgow, G69 8FG (“the Property”)

Parties:

Mr Harry O'Donnell, 60 Newark Drive, Pollokshields, Glasgow, G41 4PX (“the Applicant”)

Mr Kenneth William Macdonald, 2 Gartloch Court, Glasgow, G69 8FG (“the Respondent”)

Tribunal Members:

John McHugh (Legal Member) and Linda Reid (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession of the Property should be made in favour of the Applicant.

Background

The Applicant is the landlord and the Respondent is the tenant under a short assured tenancy of the Property dated 3 November 2017. The Applicant seeks an order for possession of the Property on the grounds of non-payment of rent.

The Hearing

A Hearing took place by telephone conference on 16 March 2023.

Miss Wilson of the Applicant’s solicitors attended.

At 07.25 on the morning of the hearing, the Tribunal received an email from the Respondent in the following terms: "Unfortunately i will not be able to attend the hearing at 10am today due an unforeseen family issue/emergency, really sorry for the short notice, Can i ask if the hearing could be postponed for a week so that i can attend."

Miss Wilson confirmed that (other than this email) there has been no contact from the Respondent since the CMD on 6 December and no payments received. She requested that no continuation be granted and that the Tribunal should make the Order sought.

Findings in Fact

The Applicant is the landlord and the Respondent is the tenant under a short assured tenancy of the Property.

The tenancy agreement is dated 3 November 2017.

The tenancy agreement provides that rent is payable by the Respondent to the Applicant at the rate of £1050/month.

Clause 9 of the tenancy agreement provides that interest will run at the rate of 8% on unpaid rent.

As at the date of bringing the present Application the rent outstanding was £6,791.99.

As at today's date the rent outstanding is £13,206.99.

The Respondent has failed to make any payments to the Applicant since December 2022.

The Respondent has failed to respond to the Tribunal's Direction of 6 December 2022.

Reasons for Decision

At the CMD in December 2022, the Respondent had explained that he had fallen into arrears because he had lost his job. He advised that he had found a new job and would commence rent payments plus an additional amount towards arrears. He advised that he had a property to sell which would realise sufficient funds to clear the arrears. The Tribunal made a Direction requiring the Respondent to provide evidence of these matters to the Tribunal 14 days prior to the Hearing. No information has been received.

The Applicant advises that it too has received no contact from the Respondent and no payments since December. The arrears have increased considerably in that time.

Grounds 11 and 12 of Schedule 5 to the 1988 Act have been made out in that the Respondent has been persistently late in paying rent lawfully due and that rent was due both at the date of serving notice of proceedings and raising them.

There is no evidence that any delay in benefits has contributed to the non-payment.

Given the Respondent's failure to comply with the Direction; his failure to make any payments; and his failure to communicate together with the significant level of outstanding rent, both as at the date of the application and at today's date, and the fact that the arrears are increasing each month while the Respondent continues in occupation, we consider it reasonable to make an order for possession of the Property in favour of the Applicant.

As regards the Respondent's last minute request for continuation of the Hearing, we reject that request. The Respondent has provided no meaningful explanation for his inability to attend. He could have arranged for someone else to attend on his behalf. Against the background of his total failure to comply with the Direction or to implement the measures he himself had volunteered at the CMD, the Tribunal has no reasonable basis to conclude that the granting of a continuation would result in any different outcome.

Decision

An Order for possession of the Property will be made in favour of the Applicant.

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.

J McHugh

Legal Member/Chair

16 March 2023
Date
